

When the Accident Tells its Own Story the Law must gear up

The recent tragedy in Morbi Gujarat where more than 140 people have lost their lives including children and many injured has shaken one and all. And why only the Morbi accident, innocent people have lost lives in many such accidents in the past like collapse of the foot over bridge in Mumbai's Shivajii Railway Terminus in 2019, collapse of the Majerhat bridge in Kolkata in 2018 or the bridge collapse in Darjeeling in 2011 or even many railway accidents. Instead of politicization and finger pointing for scoring political points can this incident in Morbi be used as a turning point to bring a change in how we apply the criminal law to bring the offenders to justice without delays? In a criminal trial the accused enjoys the presumption of innocence and prosecution carries the heavy burden of proving the guilt of the accused beyond reasonable doubt but should this conventional approach of proving guilt be applied in such public accidents as well where the facts speak for themselves about the negligence?

The doctrine of *res ipsa loquitur* is entrenched in our law of torts which imposes strict liability in cases of negligence. The maxim is described ... "*Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.*" The principal function of the **maxim** is to prevent the injustice which

would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant.

This principle is used under the law of tort for awarding damages in cases of negligence but should it not be applied in a situation like the Morbi tragedy to fasten criminal liability where the bridge was exclusively under the management of a private company chosen by the local administration and the accident would certainly not have happened in the ordinary course of things if those who had the management used proper care. Not going into the political hullabaloo, but the fact that the bridge was very old required extra vigilance and caution which was lacking as the bridge was opened after renovation and the footfall on the date of the accident was far beyond its capacity. In public accidents like these the maxim *res ipsa loquitur* must be applied even in criminal law to ensure that the wheels of justice move swiftly without the prosecution carrying the heavy burden of proving guilt beyond all reasonable doubts and the accused enjoying the presumption of innocence. We have provisions like S. 113 A (*Presumption as to abetment of suicide by a married woman*) & 113 B (*Presumption as to dowry death*) in the Evidence Act which raise a presumption against the accused in cases of abetment of suicide by a married women and dowry death to provide speedy justice to the victims. Likewise, there is a need to import the application of the maxim *res ipsa loquitur* in criminal law in cases of public accidents which tell their own story of gross negligence resulting in the loss of innocent lives as it is the Constitutional obligation of the State not only to protect the lives of its citizens but also to provide speedy justice which must not only be done but must be seen to be done.

