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Crl.A.No.551 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.551 of 2015

N. Ramesh

...Appellant

vs.

State rep by
The Inspector of Police,
D-6 Anna Sqaure Police Station
(Traffic Investigation)
Chennai 600 005
Crime No.1230 of 2011

...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and orders dated 29.07.2015 passed in S.C.No.340 of 2012 by the IV Additional Sessions Judge, Chennai.

For Appellant : Mr. K. Sudheer Ram
Legal Aid Counsel

For Respondent : Mr.S. Rajakumar
Additional Public Prosecutor.



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J U D G M E N T

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This criminal appeal is filed against the judgment and orders dated 29.07.2015 passed in S.C.No.340 of 2012 by the learned IV Additional Sessions Judge, Chennai.

2. The appellant is the accused in S.C.No.340/2012 and is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
338 IPC (2 counts)	Rigorous Imprisonment for two years for each count and a fine of Rs.1,000/- for each count, in default, to undergo Rigorous Imprisonment for three months for each count.
337 IPC	Rigorous Imprisonment for six months and a fine of Rs.500/-, in default, to undergo Rigorous Imprisonment for one month.
279 IPC r/w 183 & 184 of Motor Vehicle Act	Rigorous Imprisonment for six months and a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for one month.
304(A) IPC	Rigorous Imprisonment for two years and a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for three months.
The aforesaid sentences were ordered to run concurrently.	



<i>Conviction</i>	<i>Sentence</i>
The period of sentence already undergone by them was directed to be set off under Section 428 Cr.P.C.	

3. The case of the prosecution in a condensed form is as follows :

3.1. On 26.01.2012, the appellant in an inebriated condition drove a car bearing Registration number TN 07 AW 2315 on Kamarajar Salai, crossed over to the other side of the road beyond the yellow line near Vivekanandar Illam and hit a motorcycle bearing Registration number TN 20 BQ 8476, an auto rickshaw bearing Registration number TN 03 E 5882 and a motorcycle bearing Registration number TN 72 R 9191, as a result of which, Suresh (P.W.1), Ajay (P.W.2), Thameem Ansari (deceased) and Varun (P.W.3), were injured. Jaffer (P.W.4) the driver of the auto bearing Registration number TN 03 E 5882 which turned turtle escaped unhurt.

3.2. Thiru. Dhandapani (P.W.6) traffic constable, presently posted at the office of the Slum Clearance Board, witnessed the accident and found the car bearing registration number TN 07 AW 2315 at the foot path after hitting three vehicles which were coming in the opposite direction. He sent all the injured persons (P.W.1 to P.W.3 and the



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deceased) to the Government Hospital, Royapettah, and intimated about the accident to the concerned Traffic Police.

3.3. Thiru P. Sadasivam (P.W.18), the then Special Sub Inspector of Traffic, D-6 Anna Square Police Station, went to the scene of accident and registered an FIR in Crime No.38/T3/12 against the appellant for the offences punishable under Sections 337 IPC and 184 of the Motor Vehicles Act. He then prepared an Observation Mahazar (Ex.P16) in the presence of the witnesses Thirupathi and Manikandan (both were not examined) and a rough sketch (Ex.P17). The accused, who was caught by the public was handed over to him. He then admitted the accused, who was in an inebriated condition, in the Government Hospital, Royapettah. He recorded the statements of Suresh (P.W.1) and Ajaykumar (P.W.2) who were admitted in the Government Hospital, Royapettah, as inpatients and also recorded the statement of Jaffer (P.W.4), the auto driver.

3.4. Dr. Sasidhar (P.W.9), Government Hospital, Chennai, gave first aid to Varun (P.W.3) and admitted him as an inpatient. He found the following injuries on him.



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3.6. Dr. P. Aravind (P.W.11), Medical Officer, Sundaram Foundation, gave treatment to P.W.1 for his bone fracture and a copy of the Accident Register was marked as Ex.P7. Dr.Jayashankar (P.W13), Joint Director, Sundaram Medical Foundation conducted surgery for the bone fracture sustained by P.W.1. and certified that the injuries are grievous in nature. The wound certificate was marked as Ex.P11.

3.7. Dr. Karthick (P.W.10), who treated Ajay (P.W.2), found abrasion on left temporal region 4 x 3 cms multiple abrasion left side fore head and contusion left temporal region and gave first aid to him. The Copy of the Accident Register was marked as Ex.P6.

3.8. Thameem Ansari who was admitted in the Government General Hospital, Chennai, was subsequently admitted to M.N. Hospital, Kilpauk for his bone fracture and then to Tosh Trauma & Orthopaedic Speciality Hospital, Kilpauk, where he succumbed to injuries. Dr.Thirumal Selvan (P.W.15), Tosh Trauma & Orthopaedic Speciality Hospital, Kilpauk, issued 'Death Report' (Ex.P12) stating the cause of death as 'Multiple fractures of right femur and Tibia/Septicemia/Acute Respiratory Distress syndrome Pulmonary Embolism'.



WEB COPY 3.9. Thiru P. Sadasivam (P.W.18), on receipt of the death information of the deceased altered the Sections to 304(A), 337 (4 counts) IPC and 184 of Motor Vehicles Act (MV Act) and sent an alteration report (Ex.P20) to the Court. He sent the body of the deceased for postmortem.

3.10. Dr. S. Saravanan(P.W.17), Madras Medical College, conducted autopsy on the body of the deceased on 28.01.2012 and found the following injuries :

- 1) Irregular reddish brown abrasions (a) 4x2 cm on the front of middle third of (R) leg; (b) 7x6 cm on the inner aspect of (L) elbow; (c) 28 x 16 cm on the back of lower third of (R) arm and the adjoining back of upper and middle third of (R) forearm; (d) 0.5 x 0.5 cm on the back of (L) wrist;
- 2) Lacerated wound 5x 1 x 0.3 cm on the front of upper third of (R) arm;
- 3) Lacerated wound 23 x 5-3 cm bone deep on the front and inner aspect of (R) knee;
- 4) Three surgical, external nail fixation wounds 0.5 x 0.5 cm bone



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deep, placed 5 cm apart from the outer aspect of upper half of (R)

thighs;

- 5) Three surgical, external nail fixation wounds 0.7x0.5 cm bone deep on the outer aspect of middle third of (R) leg;
- 6) Surgical, external nail fixation wound 1x0.5 cm bone deep on the front of lower third of (R) leg;
- 7) Vertical surgical fasciotomy wound 12x6xmuscle deep (cm) on the inner aspect of middle third of (Rt) leg;
- 8) Vertical surgical fasciotomy wound 15x5 cm muscle deep on the outer aspect of middle third of (R) leg;
- 9) Swelling and deformity on the lower third of (R) forearm; on dissection, complete irregular fractures of shaft of lower third of (R) ulna and (R) radius with surrounding soft tissue contusion and extravasation of blood;
- 10) Swelling and deformity on the lower third of (R) thigh; on dissection, complete irregular fracture of shaft of lower third of (R) femur with surrounding soft tissue contusion and extravasation of blood;
- 11) Swelling and deformity on the lower third of (R) leg; on dissection, complete irregular fracture of shaft of lower third of (R)



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tibia and (R) fibula with surrounding soft tissue contusion and extravasation of blood.

3.11. On 30.01.2012, Thiru. G. Ravichandran (P.W.21) took up further investigation and recorded the statements of P.W.4 to P.W.6 and P.W.8. The appellant surrendered before the police on 30.01.2012 and was remanded to judicial custody.

3.12. After completing investigation, he laid a final report before the VI Metropolitan Magistrate Court, Egmore, Chennai, in P.R.C. No.199/2012 for the offences punishable under Sections 185 of MV Act, 279 IPC r/w 183, 184 of MV Act and 304 (part II), 338 (2 counts), 337 and 427 IPC r/w 177 MV Act against the appellant. The learned Metropolitan Magistrate, committed the case to the Court of Principal Sessions Judge, Chennai, after furnishing copies of records to the appellant under Section 207 Cr.P.C.

3.13. The Principal Sessions Judge, Chennai, took up the case on file in S.C. No.340/2012 and made over the same to the IV Additional Sessions Court, Chennai. The learned IV Additional Sessions Judge,



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Chennai, framed charges for the offences punishable under Sections 85 of MV Act, 279 IPC r/w 183, 184 of MV Act and 304 (part II), 338 (2 counts), 337 and 427 IPC r/w 177 MV Act against the appellant.

3.14. After the closure of prosecution witnesses the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of Cr.PC. He denied of having committed any offence. However, he did not examine any witness on his side.

3.15. The learned IV Additional Sessions Judge, Chennai, after analysing the oral and documentary evidence on record, vide his judgment and orders dated 29.07.2015, convicted the appellant for the offences punishable under Sections 338 (2 counts), 337, 279 IPC r/w. section 183 and 184 of M.V. Act and 304(A) IPC and sentenced him as stated in paragraph No.2. Aggrieved over the conviction and sentence passed by the learned IV Additional Sessions Judge, Chennai, the present Criminal Appeal has been filed by the appellant.

4. Heard Mr. K. Sudheer Ram, learned Legal Aid Counsel appearing for the appellant and Mr.S. Raja kumar, learned Additional



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Public Prosecutor appearing for the respondent.

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5. The accident caused due to the rash and negligent driving of the Santro Car by the appellant not only led to the death of a motorcycle rider but caused serious injuries to three others, one pillion rider of the deceased Thameem Ansari and two others on another motorcycle. The auto driver luckily, escaped unhurt though his auto turned turtle.

6. Though drunken driving was alleged as the reason for the rash and negligent driving of the accused Ramesh, no medical evidence was adduced by the prosecution for the inebriated condition of the appellant. The accident spot is a high traffic zone. Being a holiday on account of Republic day, the crowd thronging the Marina beach cannot be understated. Similarly, the intersection near Vivekananda Memorial is a busy place with traffic signals and always under police surveillance. That the Santro car driven by the appellant in a high speed that too crossing over to the other side of the road beyond the yellow line and hitting two motorcycles and one auto cannot be attributed to any other reason. The argument of the appellant's counsel that it was due to mechanical failure of the brake appears unconvincing. 'Speed thrills but kills' is often the



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one line slogan by the traffic police. Even if drunken driving is not substantiated, there can be no dispute about the speed of the vehicle. The car, in fact, appears to have hit the two motorcycles causing injuries to both the rider and the pillion rider and one auto before coming to a halt.

7. It was also argued that the victim died due to medical negligence and not due to the injuries. The injured victim was admitted to the Government Hospital, Royapettah on 26.01.2012 from where he was shifted to different private hospitals only due to the excessive bleeding, it appears. However, the postmortem report is clear that the death on 27.01.2012 was due to multiple injuries obviously sustained in the accident.

8. The depositions of P.W.1 to P.W.3 who were the injured victims in the accident as well as that of P.W.6 and P.W.8 the eyewitnesses to the occurrence not only describe in detail as to how the accident took place but also has supported the prosecution case that the appellant was guilty of rash and negligent act. Nothing useful was suggested to them during the course of cross examination to discredit or disbelieve their versions. Merely because no blood test was performed to show that the appellant



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was drunk it cannot be construed that there was no rash and negligent driving by the appellant. It is also clear from the deposition of the Doctor who treated the deceased that the bleeding due to the injury which the deceased sustained did not stop and therefore, the relative and the deceased shifted him from one hospital to another in the fervent hope of saving his life. Even his own brother (P.W.7) who was with the deceased Thameem Ansari had not aired his grievance about any deficiency in the medical aid given to the deceased Thameem Ansari. Therefore, it is crystal clear that the death of Thameem Ansari was due to the serious injuries he had sustained in the accident and not due to any medical negligence. The trial court was right in holding the appellant as guilty and I do not find any reason for any intervention. The conviction and sentence of the trial court is confirmed.

9. In the result,

(i) This Criminal Appeal is dismissed.

(ii) The judgment and orders dated 29.07.2015 passed in S.C.No.340 of 2012 by the IV Additional Sessions Judge, Chennai, is confirmed.



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(iii) The appellant shall surrender before the learned IV Additional Sessions Judge, Chennai, within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure him for serving the remaining period of sentence.

(iv) This Court places on record its appreciation to Mr. K.Sudheer Ram, learned Legal Aid counsel, for his valuable assistance in deciding this case. The High Court Legal Services Committee shall pay a sum of Rs.10,000/- to the said counsel towards his fee.

30.04.2024

bga
Index : yes/no
Speaking /Non speaking Order

Note: As directed by RHJ, issue order copy on 02.05.2024.



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The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai 104.

To

1. The Inspector of Police,
D-6 Anna Square Police Station
(Traffic Investigation)
Chennai 600 005
2. The IV Additional Sessions Judge, Chennai
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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