

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.307 of 2013

Umapathy

... Appellant/Accused

Vs.

State by Inspector of Police,
C-2, Elephant Gate Police Station,
Traffic Investigation Wing,
Chennai 600 001. ... Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence passed by the XVII Additional Sessions Court, Chennai, in S.C.No.350 of 2012 in the judgment dated 28.03.2013.

For Appellant : Mr.K.Subburam

For Respondent : Mr.R.Sekar
Government Advocate (Crl.Side)

JUDGMENT

The instant Criminal Appeal is preferred as against the Judgment of conviction passed in Sessions Case No.350 of 2012, on the file of the learned XVII Additional Sessions Judge, Chennai, dated 28.03.2013. The learned trial judge found the appellant/accused is guilty of the offence under section 304-A of IPC and convicted and sentenced him to undergo rigorous imprisonment of 2 years and to pay a fine of Rs.25,000/-; in default 6 months simple imprisonment and out of the fine amount of Rs.25,000/-, a sum of Rs.20,000/- is ordered to be given to the legal heirs of the deceased Sunil Saibrao Khanda Kela as compensation under section 357 (1) (d) of Cr.P.C. The period of sentence already undergone by the accused is directed to be set off under section 428 of Cr.P.C.

2.The case of the prosecution is that on 11.03.2012 at about 05.00 p.m. near Central Railway Station, Chennai the appellant herein, a driver of MTC bus bearing No.TN01-N-5702 consumed

liquor and drove the Corporation Bus knowing well that his intoxication is likely to cause death to the pedestrians. Thereby the MTC Bus drove by the appellant hit a pedestrian namely Sunil Saib Khanda Kela and caused death.

3. Thereupon complaint in Ex.P1 came to be preferred by one Head Constable Raja, Traffic Wing of the Flower Bazaar Police station. On receipt of Ex.P1 complaint from PW-1, PW-12 the investigating officer has lodged Ex.P11 FIR and inspected the spot and made ready Ex P2 inspection report. He prepared Ex.P12 rough sketch and Ex.P13 observation mahazar and recovered the articles from the scene of occurrence by Ex.P6 mahazar and examined the witness. Having arrested the accused, PW12 sent requisition for post mortem of the Victim. On completion of investigation he filed a final report against the accused before the Learned III Metropolitan Magistrate, George Town, Chennai accusing the appellant herein for offence under Section 304 (II) IPC.

4. I heard Mr.K.Subburam, learned counsel for the appellant and Mr.R.Sekar, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

5. The records reveal that PW1 is the complainant / eye witness to the occurrence and his evidence is supported by PW5, namely Raji a nearby shop keeper. PW1 during his Examination describing the occurrence deposed that the left rear side wheel crushed over the head of the deceased. He further stated that the driver of the said MTC bus / Appellant got down from the bus and there was a smell of alcohol in his breath. The PW1 has identified the accused/ appellant herein Umapathy during his evidence.

6. The other eye witness relied by the prosecution is PW5, who have a shop at platform near Central Railway Station. Both PW1 and Pw 5 concurred that on 11.03.2012 at about 05.00 p.m., the subject Corporation bus driven by the appellant came from the Central Railway Station and dashed against a pedestrian who was walking.

7. The Learned Trial Judge on appraisal of the Evidence of PW1 and PW5 holding that the prosecution has established its case through PW1 and PW5 was pleased to find the appellant guilty of Negligence causing death of pedestrian and thereby convicted the appellant for the above offence.

8.The records further disclose that on the other hand, the Credibility of evidence of PW1 and PW5 were rebutted by the appellant stating that PW5 is having shop at plat form and hence he is at the mercy of the police men and therefore he gave a false evidence against the accused and in so far as PW1 is concerned it is the case of the appellant that PW1 was not at all present at the time of occurrence, whereas he is a created witness for the sake of Prosecution.

9.Yet another contention of the appellant is that the accident took place while the Sunil Saib Rao Khanda Kela was trying to get into the bus near the Central Railway Station and the appellant cannot be attributed with negligence. To substantiate the same, he relied upon Ex.P4 copy of the accident register, wherein it is stated that the accident took place while the Sunil Saib Rao Khanda Kela was trying to get into the bus.

10.The Learned Counsel for Appellant strenuously contends that the appellant was not drunk and he was not negligent at any point of time. To enlighten such contention that appellant was not in an intoxicated mood, he based upon the Conduct of the prosecution that neither blood nor urine sample medically examined nor any Medical Test conducted to ascertain as to whether the accused was under the influence of Alcohol.

11.Whereas, by solely relying upon the Oral evidence of PW1 and PW5, the Learned Judge held that the bus bearing No.TN01-N-5702 was driven in a rush and reckless manner by the appellant and caused the death of pedestrian, the Learned Judge found the appellant/accused is guilty of the offence under section 304-A of IPC and has convicted and sentenced the appellant.

12.On perusal of the Statement and Examination of PW5 this Court finds that though PW5 admits during Cross Examination that he is having a shop at platform near Central Railway Station nearer to the place of Occurrence, but nowhere in the chief Examination or Statement he had stated that he is a Shop Keeper in Platform near Central Railway Station. Therefore this Court is of the opinion that testimony of PW5 is not trust- worthy and unreliable as he may be tuned witness, in view of rebuttal by the appellant stating that PW5 is a shop Keeper at plat form at the mercy of the police men.

13.At this juncture, on perusal of Ex.P4, it is seen to be stated that the accident took place while the Sunil Saib Rao

Khanda Kela was trying to get into the bus near the Central Railway Station and the same is admitted by the PW4, the Doctor during his Cross Examination.

14.It is further admitted by the Doctor that neither blood nor urine sample medically examined nor any Medical Test conducted to ascertain as to whether the accused was under the influence of Alcohol. The same is fatal to the prosecution case and the same is also reflected in the Impugned Judgment vide para 22 and 30 respectively as following that:

"22. The prosecution has not given sufficient explanation for not testing the blood and urine to find out whether the accused consumed liquor prior to the occurrence. So this Court is of the view that evidence of Pw2, PW4, PW8 and Ex.P2 and P5 are not sufficient to hold that the accused Umapathy consumed liquor prior to the occurrence".

"30. But the prosecution has failed to prove that the accused Umapathy was under intoxication at the time of occurrence. So the argument of the Learned Public Prosecutor that the accused consumed liquor and drove the MTC bus knowing that the consumption of liquor would likely to cause the death of pedestrians is not acceptable"

15.Therefore, it is clear that the Sentence of conviction is based solely relying upon the evidence of PW5, which cannot be safely used for conviction of Appellant.

16.At the same time it cannot be ignored that Ex.P4 copy of the accident register demonstrates that the accident took place while the Sunil Saib Rao Khanda Kela was trying to get into the bus.

17.No relevant and convincing materials have been eliminated in the process of appreciation for arriving at proper conclusion. I find no convincing materials substantiated by the prosecution to hold the appellant guilty of Negligence.

18.For the forgoing reasons I am of the considered view that from the evidence recorded the prosecution has miserably failed to establish the charge against the appellant beyond reasonable doubt and hence the appellant herein cannot be attributed with negligence.

19.In the result, this Criminal Appeal stands allowed and the conviction and sentence imposed on the appellant is hereby set aside. The fine amount, if any, paid by the accused is directed to be refunded to him.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The XVII Additional Sessions Court,
Chennai.

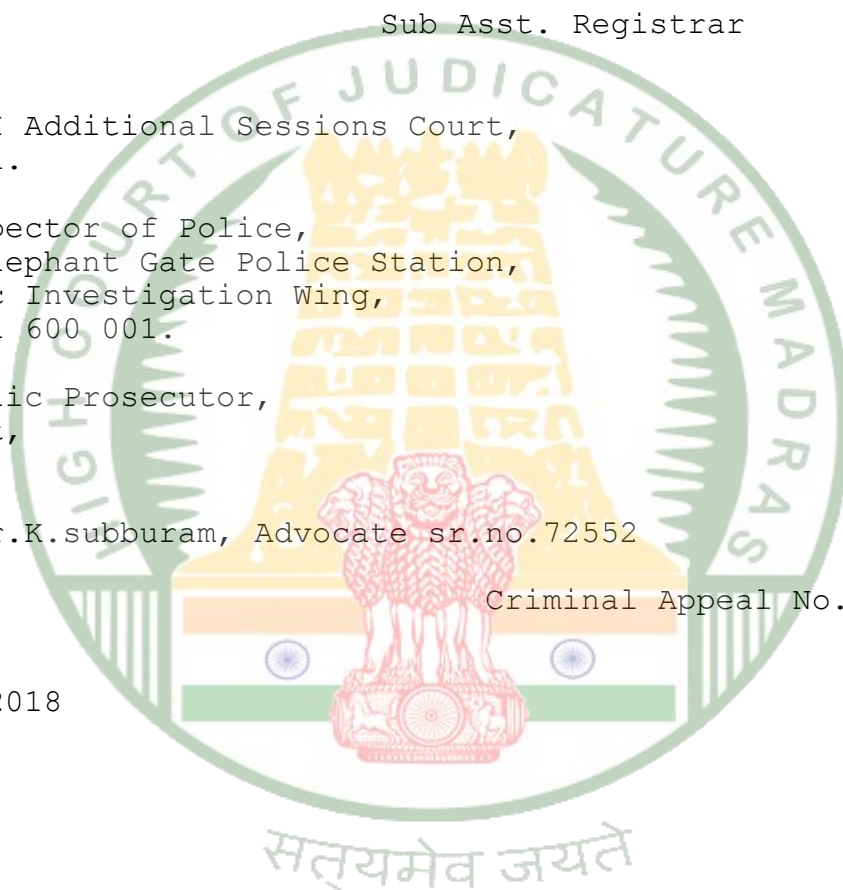
2.The Inspector of Police,
C-2, Elephant Gate Police Station,
Traffic Investigation Wing,
Chennai 600 001.

3.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.K.subburam, Advocate sr.no.72552

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