

BAIL SLIP

Ramesh Kumar, S/o.Durai Raj, accused in S.C.No.147 of 2014 on the file of the I Additional District and Sessions Judge, Thirupur was enlarged on bail in M.P.No.1 of 2014 vide this Court order dated 23.12.2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.662 of 2014

Ramesh Kumar .. Appellant

/versus/

The State rep.by its
The Inspector of Police,
Komaralingam Police Station,
Thirupur District.
Crime No.221/2012 .. Respondent

Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code praying to set aside the conviction and sentence passed against the Appellant/Accused by the learned I Additional District and Sessions Judge, Thirupur in his Judgment dated 28.11.2014 made in S.C.No.147/2014.

For Appellant : Mr.K.Murugesan

For Respondent : Mrs.Kritika Kamal
Government Advocate(crl.side)

J U D G M E N T

This Criminal Appeal is directed against the finding of the I Additional District and Sessions Court, Thirupur holding the accused guilty of offence under Sections 279 and 304(A) IPC.

2. The Trial Court has held the accused guilty for rash and negligent driving of the accused causing death of one Ramasamy while driving the Eicher van and the Trial Court has imposed a fine of Rs.1000/- for the offence under Section 279 IPC, in

default one month Simple Imprisonment and sentenced him to undergo 2 years Simple Imprisonment and to pay a fine of Rs.10,000/-, in default 6 months Simple Imprisonment for the offence under Section 304(A) IPC.

3. Brief facts of the prosecution case is that on 27.09.2012, near Kuppampalayam panchayat office at about 3.00 p.m., when PW.1 [Vadivel] was returning home, he saw Ramasamy in his TVS Super Excel Moped driving from East to West on the extreme left of the road. While so, the Eicher Van bearing registration No.TN 20 BV 1506, which was proceeding in the same direction in a rash and negligent manner, hit the moped and ran over Ramasamy, thereby causing his death. The van has further proceeded and ramped into the nearby shop owned by Ravi [PW.4] and stopped. Based on the complaint given by PW.1, the respondent police has registered a case in Crime No.221 of 2012 for offence under Sections 279 and 304 IPC.

4. The accused was taken to the hospital subjected him for breathe analysis to ascertain whether he was drunk. Since the accused admitted that he has drunk, the doctor has not conducted any breathe analysis or drawn blood sample. The prosecution has filed a final report for the offence under Sections 279 and 304 IPC after obtaining the report from the Motor Vehicle Inspector and the post-mortem certificate of Ramasamy.

5. To prove the case, the prosecution has examined 11 witnesses and 9 Exhibits were marked. The Trial Court found the accused guilty of offence under Sections 279 and 304(A) IPC. Since the prosecution has failed to prove the fact that the accused has drunk at the time of accident, however the rash and negligent driving of the accused causing death of Ramasamy was held to be proved.

6. The learned counsel appearing for the appellant would submit that there is material contradiction between the prosecution witnesses regarding the nature of accident, place of accident, time of accident and the place, time and arrest of the accused. Pointing out the deposition of PW.1, PW.2, PW.3 and PW.4, the learned counsel would submit that the contradiction between the evidence of these witnesses regarding the place on which the accused was arrested itself would go to show neither of the witnesses were present at the time of accident. Pointing out the admission of PW.1 that the road was not straight and there was bend with speed breaker, the learned counsel would submit that in such condition, accident cannot be attributed to the rash and negligent driving of the accused. While PW.1 in his cross-examination states that the accused was in the police station contrarily PW.3 has deposed that he did not go to the police station to give complaint, PW.4 the shop owner has

deposed that immediately after the accident, the accused was caught by the public and he was kept under the custody, till the arrival of police.

7. Per contra, the learned Government Advocate (crl.side) would submit that the nature of accident itself speaks about the rash and negligent driving of the accused. Since he admitted the consumption of alcohol and he has refused to give blood sample, the doctor has recorded the same in the certificate which was marked as Ex.P7. Therefore, though the Trial Court has not held the accused guilty of offence under Section 304 IPC, had rightly held him guilty for the offence under Section 304(A) IPC for causing death of Ramasamy by hitting the two wheeler rash and negligently without having control over the steering and after causing the accident, he has ramped the vehicle into the shop of PW.4 who has deposed about the damage caused to his shop and simple injury sustained by his minor son. Shop and house of PW.4 located next to each other and therefore, the contention of the learned counsel for the appellant that PW.4 could not be accepted as the witness to the accident, is unsustainable.

8. Referring the rough sketch prepared by the prosecution and marked as Ex.P8, learned Government Advocate would submit that the place of accident and the place where the accused was arrested by the police are nearby the Government school, which is also shown in the rough sketch, which is opposite to the scene of accident. The rough sketch of road does not indicate any bend. Therefore, the probability of accident caused despite diligence of the accused is ruled out.

9. Heard the rival submissions and perused the records.

10. It is a case of motor accident causing death of one Ramasamy who has driven the two wheeler bearing registration No.TN 41 Y 7507. The accused/appellant is the driver of the offending Van Eicher bearing registration No.TN 20 BV 1506. On 27.09.2012, at about 15.00 hrs, the accident has taken place. Immediately the injured person was taken to the hospital where he was declared dead. The accused was arrested immediately after the complaint received by the respondent police from PW.1 which was registered at 18.00 hrs on the same day. Ex.P7-the certificate issued by the doctor indicates that the accused was taken to hospital for test on 27.09.2012. Since the accused has admitted that he has consumed alcohol and refused to give the blood sample and urine sample, the doctor has recorded the statement of the accused and obtained his signature in the document and forwarded the same to the police.

11. In the given circumstances, the evidence of PW.1 and PW.2, who saw the accident and immediately tried to rescue the deceased Ramasamy coupled with the evidence of PW.4 the nearby shop owner, who has deposed about the damaged portion of shop due to rampage of the Eicher Van would prove that the vehicle driven by the accused was not driven with due diligence. The place of the accused arrest though there is some contradictory version in the prosecution witnesses, nevertheless it is not material contradiction. It does not indicate that the accused was not the driver of the offending vehicle or he did not drive the vehicle rash and negligently. Since the evidence clearly indicates that the accused was the driver of the offending vehicle and the offending vehicle has hit the two wheeler causing the death of Ramasamy and also ramped into the shop of the PW.4, which is 300 meters away from the place of accident. It is suffice to hold the accused guilty for the offence under Sections 279 and 304 (A) IPC. The Trial Court has rightly held the accused guilty and sentenced him to undergo 2 years Simple Imprisonment and to pay a fine of Rs.10,000/-; in default 6 months Simple Imprisonment for the offence under Section 304(A) IPC and sentenced him to undergo 6 months Simple Imprisonment and to pay a fine of Rs.1000/-; in default one month Simple Imprisonment for the offence under Section 279 IPC.

12. Taking note of the fact that the accident has caused due to the negligence of the appellant. This Court finds that there is no material to interfere with the order of the Trial Court and this appeal is liable to be dismissed.

13. Accordingly, the Criminal Appeal is dismissed. The judgment of the I Additional District and Sessions Judge, Thirupur in S.C.No.147 of 2014, dated 28.11.2014 is hereby confirmed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District and Sessions Judge,
Thirupur.

2.The Inspector of Police,
Komaralingam Police Station,
Thirupur District.

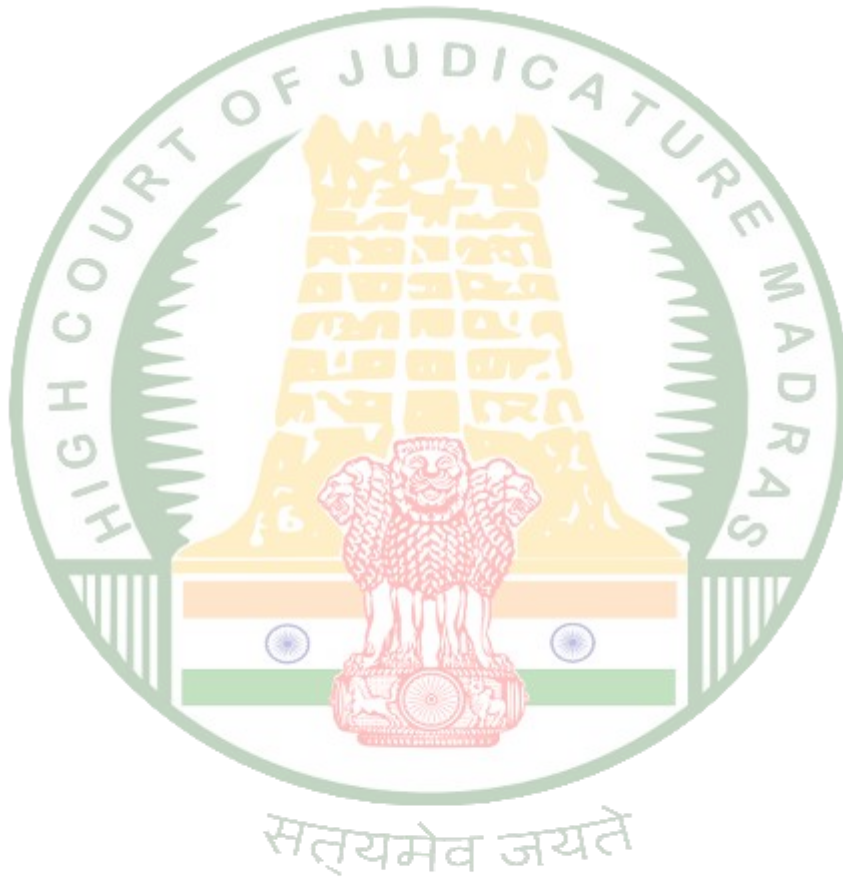
3.The Judicial Magistrate - I,
Udumalpet.

4.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.Murugesan, Advocate, Sr.No. 40530

Cr1.A.No.662 of 2014

CSL/24.06.2019



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