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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Judgment Reserved On 13.04.2022	Judgment Pronounced On 27.05.2022
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Crl.A.No.245 of 2018
and
Crl.M.P.No.12006 of 2018

Kadiriappan

... Appellant/Accused

Vs.

State rep. by
Inspector of Police,
Vellore Taluk Circle,
Vellore District.
Crime No.38 of 2013 of
Virinijipuram Police Station.

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the order of conviction passed in S.C.No.154 of 2013 dated 28.03.2018 on the file of the learned I Additional District and Sessions Judge, Vellore.

For Appellant : Mr.N.R.Elango
Senior Counsel
for Ms.Aruna Elango

For Respondent : Mr.R.Kishore Kumar
Government Advocate

JUDGMENT

The appellant/accused in S.C.No.154 of 2013 was convicted by the learned I Additional District Sessions Judge, Vellore by judgment dated 28.03.2018 convicting the appellant for the offence under Section 185 of Motor Vehicles Act and sentenced



him to undergo six months rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one month rigorous imprisonment, for the offence under Section 304(ii) IPC [3 counts] and sentenced him to undergo seven years rigorous imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo three months rigorous imprisonment for each count, for the offence under Section 308 IPC [6 counts] and sentenced him to undergo three years rigorous imprisonment for each count and to pay a fine of Rs.2,000/- for each count, in default to undergo two months rigorous imprisonment for each count, total fine imposed is Rs.29,000/- and the sentences shall run concurrently. Against which, the present appeal is filed.

2. In the Trial Court, P.W.1 to P.W.22 examined and Ex.P1 to Ex.P23 marked. On the side of the defence, no witnesses examined and no documents marked.

3. The gist of the case is that the appellant/accused is a Driver of passenger bus of Sri Lakshmi Saraswathi Bus Service bearing registration No.TN-23-AK-4758 with 60 passengers on 14.01.2013 at about 10.45 p.m. left the Vellore bus stand, proceeded to Tirupattur. While proceeding on NK-46 at Anppondi Village, aerodrome junction road opposite to Krishna Agencies petrol bunk, the driver drove the vehicle in a rash and negligent manner, knowing well that accident would occur and was also under the influence of alcohol, hit the heap of sand and blue metal stone on the roadside stored for road extension work, thereby capsized the vehicle and the vehicle turned turtle. In the said occurrence, three persons, namely, Kumar, Shabik Ahamed and Harikrishnan sustained grievous injuries, died and six passengers, namely, Kamatchi sustained fracture of pelvis bone, Amanullah, Sudhakar, Manikandan, Ramy, Chidambaram sustained simple injuries. On the complaint of one Sudhakar, FIR was registered by P.W.20/Sub-Inspector of Police, who visited the scene of occurrence, made arrangement for the injured to be taken to the hospital by Ambulance. Thereafter, P.W.22/Investigating Officer took up investigation, prepared observation mahazar and rough sketch, examined the witnesses present in the scene of occurrence, conducted inquest on the three dead persons, sent the body for postmortem and arrested the accused. Thereafter, P.W.22 sent the accused for medical examination which confirmed that the appellant consumed alcohol, obtained postmortem and medical certificate, altered the section and filed the charge sheet in this case. The Trial Court on the evidence of the witnesses and the documents produced convicted the appellant/accused as stated above.

4. The contention of the learned senior counsel appearing for the appellant is that the accident occurred not due to any



rash and negligent driving of the vehicle and none of the passengers including the injured persons stated that the appellant was in a drunken state and driven the vehicle in a rash and negligent manner. Ex.P10/Motor Vehicle Inspector report issued by P.W.19 would confirm that left spring assembly main leaf has been cut, tie rod end damaged and due to the damage of main leaf, the vehicle would wobble and the driver would loose control of the vehicle. He further submitted that the injured witnesses, namely, P.W.1, P.W.2, P.W.7, P.W.8, P.W.10 and P.W.11 stated that they have not spoken to the driver, they were sitting in the rear side of the vehicle and they could not be certain about the reason for the accident. Further, they all uniformly state that they were informed by the Police that the driver was drunk and they had no personal knowledge of the same. Further, it is seen from the observation mahazar/Ex.P2 and rough sketch/Ex.P18, that on the place of the accident, there was sand heaped on the side of the road and that is the reason for the accident. He further submitted that in Ex.P9/certificate of drunkenness, it was recorded that the appellant refused to undergo blood test and urinary test to confirm the presence of alcohol in his body. The signature of the appellant found in Ex.P9 is not that of the appellant, further it is the specific case of the appellant that Ex.P9 was made ready in the Police Station and P.W.16 came to the Police Station, recorded the same and the discrepancy in the recording of identification marks would confirm the same. Further, there is contradiction with regard to the arrest of the appellant. Some of the witnesses state that the appellant was caught in the scene of occurrence, he was beaten brutally, within 15 minutes, ten Policemen reached the scene of occurrence and he was handed over to the Policemen, who took him to the Police Station, there he was detained. On the other hand Investigating Officer states that on the next day at about noon the accused was arrested when he was standing near the bus stand. The arrest and the medical examination of the appellant cast serious doubt.

5.He further submitted that P.W.11/the passenger of the vehicle and one of the injured witness confirm that the bus was driven properly, moving smoothly, there was a sudden loud noise, thereafter, the vehicle wobbled and turned turtle. This sudden noise is due to the breakage of main leaf assembly. Further, the learned senior counsel submitted that P.W.1 and P.W.2 who were seated in the rear side of the bus admit that the bus got capsized due to running over the quarry sand heaped on the side of the road. P.W.7, who was seated in the third row of the vehicle, behind the driver had categorically deposed that the appellant was not drunk, he was informed about the drunkenness only by the co-passenger, who was sitting on the side of the driver. P.W.18/Sub-Inspector of Police who took the accused for examination to the P.W.16/Doctor in his evidence admit that on



14.01.2013 at wee hours about 12.15 a.m., the accused was taken to hospital for medical examination, on the contrary, P.W.22/Investigating Officer states that the accused was arrested later and he was produced for medical examination on 15.01.2013 at about 12.15 p.m. P.W.16 confirms that the recordings in Ex.P9, the time was wrongly mentioned as 12.15 p.m., which ought to be 12.15 a.m. Thus, there is cloud of mystery in the manner in which the accused was arrested, secured and produced for medical check up. P.W.16 admits that Ex.P9 is not the usual form, available in the hospital. P.W.12/Manager of the Bus service in his evidence state that within 45 minutes of the accident, he reached the accident spot along with Sankar and Jothi, at that time, he saw the presence of Police personnel and the accused. P.W.13/Conductor of the bus categorically state that the appellant was not in a drunken state. Thus, there are vital contradictions in this case with regard to the manner in which the accident took place, the passengers and the injured witnesses, give contradictory version with regard to the accident. Further, none of the witnesses had seen the driver driving the vehicle in a drunken state. The Lower Court failed to consider these facts, due to the enormity of the offence wherein three persons died and six persons got injured, hence convicted the appellant failing to look into the fact that it was only an accident. In this case, FIR was registered initially under Section 304(A) IPC, arrest of the accused was shown on 15.01.2013, thereafter the section was altered only on 07.03.2013. Had Ex.P9 came into existence as projected by the prosecution, there is no reason to alter the section after three months. Hence, he prayed for acquittal.

6.The learned Government Advocate submits that in this case on the complaint of P.W.1, case was registered on the same day by P.W.18. The accident took place within few minutes, after the Bus left Vellore Bus stand. The bus was driven in a rash and negligent manner. The driver was in a drunken state which is confirmed by the passengers and the injured persons. The bus was driven in such a rash and negligent manner, the driver lost sight of the heaped sand on the road hit and ran over the same, the bus which was already with 60 passengers fully packed, turned to its left and got capsized. Three of the passengers who were sitting in the bus died on the spot due to the injury sustained and six of them injured, took treatment as inpatient, within 15 minutes of the accident, one of them grievously injured, the Police reached the spot within few minutes, service of ambulance deployed and the injured were taken to the hospital immediately. P.W.16/Casualty Doctor attached to Government Hospital, Adukkumbarai Vellore examined the injured, given first aid, admitted them in the hospital, issued Accident Register and wound certificate Ex.P.3 to Ex.P8. The accused was produced before the Doctor, who examined him and issued Certificate of



Drunkenness/Ex.P9. In the wound certificates as well as Ex.P9, capsizing of bus at Vellore to Bangalore Highway at about 11.30 p.m. is recorded. These documents are contemporary documents. From the Drunkenness certificate, it is seen that the accused refused to give his blood and urine samples and also signed the same. Further, the Doctor recorded the breath smell of alcohol and both eyes of the accused congested confirming that the accused was in a drunken state.

7. In this case, P.W.1, P.W.2, P.W.7, P.W.8, P.W.10 and P.W.11 are the passengers who got injured in the accident. In fact, P.W.7 and P.W.8 are the husband and wife, P.W.7 was pregnant with 28 weeks, there have been vaginal bleeding due to the accident, all are recorded. Thereafter, she took treatment as inpatient for more than a week and after her health condition stabilized, she was discharged. Other than these passengers, stand byes P.W.3 and P.W.9 confirm that they saw the vehicle driven in a rash and negligent manner, hit the heaped sand on the road and got capsized. P.W.12 to P.W.14, the Manager of the Bus Service, Conductor of the bus and the Owner of the Bus Service confirm that the appellant is the driver of the bus on the fateful day. In this case, witnesses examined, inquest conducted on the three dead persons, namely, Kumar/D1, Shabik Ahamed/D2 and Harikrishnan/D3. The brother and father of D1 to D3 identified the dead body and the body was sent to postmortem. The postmortem Doctor/P.W.21 confirms that the death of all the three persons was due to the injury sustained in the accident, Ex.P12 to Ex.P17 were issued in confirmation of the same. P.W.22/Investigating Officer conducted investigation, examined the witnesses, collected the documents and filed charge sheet in this case. The Trial Court considering the evidence of the witnesses and the materials produced rightly convicted the appellant, as the appellant having consumed alcohol driven the route passenger bus, having no concern for the life of the passengers driven the vehicle in a rash and negligent manner and had caused the accident, thereby three persons died and six persons got injured. Hence, he prayed for dismissal of the appeal.

8. Considering the submissions and on perusal of the materials placed before this Court, it is not in dispute that the appellant is the driver of the route bus of Sri Lakshmi Saraswathi Bus service, the route was between Vellore and Tirupattur, the bus left the Vellore bus stand with 60 passengers at about 10.45 p.m. on 14.01.2013. P.W.12, P.W.13 and P.W.14, the Manager, Conductor and the owner of the bus confirmed the same. Within few minutes, the vehicle hit the heaped sand on the road side, thereby capsized, due to which three persons namely Kumar, Shabik Ahamed and Harikrishnan died on the spot, P.W.1, P.W.2, P.W.7, P.W.8, P.W.10 and P.W.11



sustained injuries, of whom P.W.7 was pregnant at an advanced stage, P.W.11 had fracture on her pelvic bone, sustained grievous injuries and others sustained simple injury. Immediately after the accident, P.W.1 and P.W.2 went to the Police Station, lodged a complaint to P.W.18/Sub-Inspector of Police, who registered a case since the accident was of serious in nature taken place in a highway, immediately several policemen rushed to rescue the injured passengers in the National Highway, the injured were rescued, rushed to the hospital deploying ambulance service. P.W.16/Casualty Doctor attached to Government Hospital, Adukkumbarai, Vellore treated the injured persons, issued Accident Register and wound certificates/Ex.P3 to Ex.P8. The accused was produced before P.W.16, who examined the accused found breath smell of alcohol, added to it both the eyes of the accused was congested. The accused refused to give his blood and urine samples fearing confirmation of consumption of alcohol.

9.The appellant's defence is that there have been contradiction with regard to the arrest of the accused. The Manager/P.W.12 confirms that the accused was present in the scene of occurrence along with Policemen and thereafter taken to Police Station. P.W.18 admits that the accused was taken to the hospital for medical examination on the same day night. The Investigating Officer gives a different version with regard to the arrest of the accused. Considering the seriousness of the accident, wherein three persons died on the spot, several persons got injured and the total chaos, prevailing in the National Highway. The Investigating Officer by over sight might have stated so, which would not affect the case of the prosecution. The dispute with regard to the signature found in Ex.P9 could not be verified with the Section 313 Cr.P.C. Questioning, since the signature in Ex.P9 is in English and the signature found in Section 313 Cr.P.C. questioning is in Tamil, thereafter on perusal of the records it is seen that during charge framing the appellant signed in English as well as in the acknowledgment for receipt of the judgment copy on 23.08.2018. All the signatures are similar, hence the contention of the appellant that signature found in Ex.P9 is not of the appellant is rejected. The appellant refused to give his blood and urine samples for test, hence adverse inference to be taken. Added to it, P.W.16/Doctor confirms that there was breath smell of alcohol. Though in his evidence, he stated that he was not in a drunken state that alone will not absolve the appellant. Further the objection for Ex.P9 which is not in the regular format is also rejected for the reason that as could be seen from Ex.P3 to Ex.P8, wound certificate are hand written and the Accident Register copy is also similar to Ex.P9, which is due to shortage of forms and certificates, all the documents are contemporary documents and there is no reason to doubt the same.



Added to it, P.W.16/Doctor who issued the wound certificate is a public servant who issued the certificate in the normal course. The appellant was in a drunken state is confirmed by more than one person including the injured passengers and others. Thus, there is no reason to doubt or disbelieve the evidence of these witnesses in confirming, appellant was in the drunken state.

10.The other contention that the accident was due to breakage and snapping of main leaf assembly is rejected for the reason that as could be seen from the evidence of P.W.19/Motor Vehicle Inspector and Motor Vehicle inspection report/Ex.P10, wherein damage to the vehicle was recorded in which it is stated that front left spring assembly main leaf cut. This is obviously after the capsizing of the vehicle. Further the opinion of P.W.19/Motor Vehicle Inspector is that the accident was not due to any mechanical defect of the vehicle. P.W.19 further clarifies that in the event of damage of main leaf, there will be wobbling of the vehicle and the vehicle can be brought under control. None of the passengers except P.W.11 have stated about the wobbling of the vehicle or vehicle going out of control of the driver. All the passengers have categorically stated that the vehicle was driven in a rash and negligent manner, hit the sand and thereafter capsized. P.W.11 is a rustic villager, aged about 70 years who state about hearing a loud noise, she is not sure for capsizing of the bus. Thus unknowingly and unintendedly given an answer which is of no significance. On the other hand, there is more than one witness who confirm that the appellant driven the vehicle in a rash and negligent manner, ran over the sand heaped in the road, caused the fatal accident of three persons and injuries to six persons. It is natural that P.W.12/Manager of the Bus service, P.W.13/Conductor and P.W.14/Owner of the Bus support the driver and hence, they were treated hostile. These three witnesses admit that the appellant is the driver, drove the bus on the fateful day. P.W.14 goes one step further and attempts to defend the driver by stating that the accident was due to a TVS 50 vehicle coming on the opposite direction. The Trial Court considering the evidence and the materials produced had given a well reasoned and detailed judgment convicting the appellant. On the available evidence and materials, this Court confirms the conviction and sentence passed by the Trial Court, with modification.

11.Considering the fact that accident took place almost nine years before, after the accident the appellant was removed from the service, thereafter no one employed him as driver, his family is suffering without any earnings and support, further it is an admitted fact that road extension work was going on, heaps of sand and blue metals were placed at regular intervals without any proper indicators, reflectors and warning boards and there



was no light near the accident spot. The appellant had already undergone the sentence of four years and one month, initially during the trial from 15.01.2013 to 14.02.2013 and thereafter, on conviction from 28.03.2018 to 20.04.2022. In view of the same, this Court modifies the sentence imposed on the appellant as that of the period of incarceration already undergone by the appellant.

12. Accordingly, the conviction and sentence imposed on the petitioner in S.C.No.154 of 2013 dated 28.03.2018 by the learned I Additional District and Sessions Judge, Vellore is hereby modified as that of the period of incarceration already undergone by the appellant.

13. In the result, the Criminal Appeal stands partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Vacation Officer)

//True Copy//

Sub Assistant Registrar

cse

To

1. The I Additional District and Sessions Judge,
Vellore.
2. Do - Through,
The Principal District Judge,
Vellore.
3. The Judicial Magistrate - IV,
Vellore.
4. Do - Through,
The Chief Judicial Magistrate,
Vellore.
5. The Superintendent,
Central Prison, Vellore.



6. The Inspector of Police,
Vellore Taluk Circle,
Vellore District.

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7. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.Aswin Prasanna A.S., Advocate, S.R.No.31865

Cr1.A.No.245 of 2018

NRJK(CO)
SU(27/05/2022)