



Crl.A.No.534 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM : 18.03.2025

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 534 of 2014

The State rep by
The Assistant Commissioner of Police
Royapettah Range,
Chennai – 600014.

.. Appellant

Versus

1. B.V.S.Reddy
2. A. Michael Lazarus @ Antony Michael
3. Rama Krishnan
4. Sampath
5. Narendra Bir Singh
6. K.Ravi

.. Respondents

Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973, to set aside the judgment of acquittal dated 13.08.2013 passed by the XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C. No.7323 of 2010.

For Appellant	:	Mr. S. Vinoth Kumar, Government Advocate (Crl.Side)
For R1 to R4	:	Mr. P.R. Raman, Senior Counsel for Mr. C. Seethapathy

JUDGMENT

This Criminal Appeal had been filed to set aside the Judgment dated 13.08.2013 passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C. No. 7323 of 2010, by which the Respondents/Accused were acquitted from the criminal proceedings.



2. The brief facts, which are necessary for disposal of this Criminal

Appeal, are as follows:

2.1. On 31.12.2007, to commemorate the New Year 2008, the Management of Savera Hotel, Radha Krishnan Salai, Chennai arranged for a midnight programme. For this purpose, the management of the Hotel extended invitation to customers for celebration of party in the evening. In response, many people participated in the midnight celebration ahead of the new dawn. As part of the programme, a makeshift stage in wood was put up on the swimming pool inside the campus of Savera Hotel. The first Accused is the President of the Savera Hotel. The second Accused is the Sales and Marketing General Manager. The third Accused is the Engineer of the Hotel. The fourth Accused is the Assistant Manager, Bar of the Hotel. The fifth Accused is the Stage Contractor, who erected the stage atop the swimming pool, as a makeshift stage for the programme. The sixth Accused is the stage Supervisor.

2.2. On the night of 31.12.2007, when the revelers were celebrating the programme enthusiastically, enthralled by the dance on the makeshift stage, the stage suddenly collapsed due to overweight. In the impact, three persons, who were dancing atop the stage, fell into the swimming pool and drowned and several persons suffered injuries. The rescued persons were taken to nearby Trinity Hospital where the doctors declared the trio to be



“brought dead”. One of the participants, Shrine Ramakrishnan preferred a complaint under Ex.P-1 to the Sub Inspector of Police, Royapettah Police Station, based on which the case in Crime No.1236 of 2007 was registered for the offence under Sections 337 and 338 of IPC. Ex.P-13 is the First Information Report. On receipt of information that 3 persons drowned and were declared dead, an alteration report was submitted to alter the offence into one under Section 304 (a), 337 and 338 of IPC under Ex.P-14.

2.3. On receipt of a copy of the First Information Report, the Inspector of Police Royapettah Police Station proceeded with investigation. He visited the swimming pool inside Savera Hotel and the erection of makeshift stage for celebration of the new year. He prepared an Observation Mahazar under Ex.P-16 and Rough sketch under Ex.P-17 in the presence of witnesses. As per the rough sketch under Ex.P-17, the swimming pool had depths ranging from 7 feet to 12.6 feet. He went to the Mortuary of the Madras Medical College and conducted inquest on the body of the deceased i) Sumeeth Agnihotri, ii) Anand and iii) Ramya in the presence of Panchayatdars. The inquest reports were marked as Ex.P-15, Ex.P-21 and Ex.P-22 respectively. Thereafter, the Investigation Officer went to Apollo Hospital where some of the injured victims were undergoing treatment. He also visited Trinity Hospital where some of the victims were undergoing treatment. He recorded the statement of



the Doctors who treated the injured victims as well as the statement of the injured victims. In the meantime, he made arrangements to shift the dead bodies to Madras Medical College Hospital for conducting postmortem. He issued a requisition letter addressed to the Professor of Forensic Medicine to conduct post-mortem on the bodies of the deceased. The Head Constable Jayaraj from Royapettah Police Station along with requisition letter produced the dead bodies to the Professor of Forensic Medicine, Madras Medical College to conduct post-mortem on the bodies of the deceased, Sumeeth Agnihotri, Anand and Ramya.

2.4. Dr. Rajamani Bheem Rao P.W-39 conducted autopsy on the body of the deceased Sumeeth Agnihotri and issued post-mortem Certificate under Ex.P-9. The Professor, Department of Forensic Medicine conducted post-mortem on the bodies of the deceased Ramya and Anand. He issued post-mortem Certificates under Ex.P-11 under Ex.P-12. The Investigation Officer thereafter examined Dr. Rajamani Bheem Rao P.W-39 and recorded his statement. He also recorded the postmortem Doctor, who conducted postmortem on the other two dead bodies. After completion of investigation, he laid final report against the Accused for the offences punishable under Section 337, 338, 304 (A) (3 counts) before the learned XVIII Metropolitan Magistrate, Saidapet.



2.5. The learned XVIII Metropolitan Magistrate had taken the charge sheet on file and issued summons to the Accused-1 to Accused-6. On their appearance, the learned XVIII Metropolitan Magistrate furnished them with copies of the prosecution documents under Section 207 of Cr.P.C. Thereafter, charges were framed against the Accused. When they were questioned they denied the charges. Therefore, trial was ordered. During trial, the Prosecution examined 43 witnesses as P.W-1 to P.W-43 and 30 documents were marked as Ex.P-1 to Ex.P-30. No material object was marked. On closure of the prosecution witnesses, the incriminating materials available through P.W-1 to P.W-43 and Ex.P-1 to Ex.P-30 were put to Accused under 303 Cr.P.C. The Accused denied the incriminating materials made available against them. However, no defence witness was examined.

2.6. After hearing the argument of the learned Assistant Public Prosecutor and the learned Counsel for the Accused and on perusal of depositions of the witnesses P.W-1 to P.W-43 and Ex.P-1 to Ex.P-30 the learned Judge by judgment in C.C. No. 7323 of 2011, dated 31.12.2007 acquitted all the Accused by holding that the Prosecution had not proved the case against them beyond reasonable doubt.

2.7. Aggrieved by the Judgment of acquittal, State had preferred this Criminal Appeal



Crl.A.No.534 of 2014

3. Mr. Vinoth Kumar, learned Government Advocate (Crl. Side) appearing for the State submitted that the learned XVIII Metropolitan Magistrate failed to consider the evidence of the witnesses P.W-1 to P.W-43 in proper perspective. It is stated that even though many of the witnesses were treated as hostile, still there are incriminating materials made available in the evidence of the hostile witnesses. The Accused-1 to Accused-6 are responsible for the death of three persons and for the injuries sustained to many by their act of erecting temporary stage over the swimming pool without anticipating the dangers involved in it. In any event, the Accused are fully aware of the risk involved in permitting people beyond capacity to dance on the makeshift stage. The Accused failed to take reasonable care and due to their negligence the wooden platform caved in, which caused injuries to many of them and death of three persons.

4. He invited the attention of this Court to the evidence of the Prosecution Witnesses P.W-1 to P.W-43 particularly the evidence of the *De facto Complainant*, who was present at the place of occurrence. P.W-1 is also the acquaintance of Sumeeth Agnihotri, one of the deceased. He also invited the attention of this Court to the evidence of Doctor P.W-39 who conducted post-mortem on the body of the deceased and the inquest report Ex.P-15, Ex.P-



21 and Ex.P-22. According to the learned Government Advocate (Crl. Side), in the course of the midnight programme, the stage collapsed due to the weight of the participants. Further, the Accused-1 to Accused-6 failed to foresee the perils that may ensue in the event of more number of participants getting into the stage. The Accused 1 to 3 acted negligently and therefore, they are jointly and severally liable for the death of three individuals. It is also submitted that the Accused have converted the swimming pool into a makeshift platform without any prior permission from the authorities concerned. During the programme, due to over enthusiasm of youngsters to dance in the party, where liquor was served, the untoward incident had happened. Instead of erecting such a wooden platform in a safe place, the Accused have erected the wooden plank atop the swimming pools and due to their negligence, the accident had occurred.

5. The learned Government Advocate (Crl. Side) also invited the attention of this Court to the Post-mortem Certificates issued by P.W-39 Dr. Rajamani Bheem Rao which clearly indicates that the death was occasioned due to drowning. Such death was occasioned due to the callous indifference on the part of the Accused-1 to Accused-6 who have erected the wooden platform without getting permission from the Public Works Department to certify the



stability of the makeshift stage. Ex.P-26 and Ex.P-27 submitted by the prosecution clearly proved that no permission or clearance was obtained from the authorities concerned to erect the stage over the swimming pool. The learned XVIII Metropolitan Magistrate failed to consider that the responsibility of A-5 and A-6 does not end merely by putting up the stage and handing over the same to the Hotel management. The Accused 5 and 6 did not ensure that the stage so erected is stronger and sufficient for people to over-board it. Thus, the entire incident is attributable to the negligence of the Accused in converting the swimming pool into a makeshift platform by erecting a wooden plank, knowing fully well that it is not sufficient to hold the revelers. The learned Trial Judge failed to take note of the incriminating materials made available through Prosecution witnesses while acquitting the Accused and it calls for interference by this Court.

6. In support of his contention, the learned Government Advocate (Crl. Side) relied on the following reported decisions:

(i) In the case of ***Rustom Sheriar Irani v. State of Maharashtra*** reported in ***1969 ACJ 70***, wherein it is held as follows:

“2. The principal question which arises in this appeal is whether on the facts found by the High Court the conviction of the appellant under Section 304-A, IPC, is right. This will involve consideration of the meaning to be ascribed to the words “negligent” and “rash” in



Section 304-A IPC.

...At the back of the restaurant and the bakery there is a bhatti consisting two ovens for baking bread, cakes, etc., and lot the passage of smoke and gases from the bhatti there is a duct which is joined to the chimney which is erected outside alongside the eastern wall of the 'C' Block in the gutter-passage between blocks 'C' and 'D'. This English Bakery and Restaurant was a partnership concern consisting of original Accused 1, Behram Rustom Irani and the Appellant.

- 1. On the night between 15th and 16th April, 1962, the chimney of the bakery collapsed and 11 persons were killed, two persons suffered grievous injuries and seven persons received hurts.*

“To impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the Accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the cause causans; it is not enough that it may have been the cause sine qua non”

But on the facts of this case it seems to us that the proximate and efficient cause of the deaths was the negligence of the appellant in choosing a pipe of six inches diameter and asking PW 8 to carry out the alterations, and also continuing working at least one oven during the period while the alterations to the chimney were being made. Evven if Gunaji Lad was negligent in actually fixing the pipe on the brick masonry, the proximate and efficient cause of the accident was the negligent acts of the appellant mentioned above.

We agree with the High Court that the appellant is guilty under Section 304-A and Sections 337 and 338 IPC. This leaves only the question of sentence. The High Court, as stated earlier, enhanced the sentence imposed by the learned Sessions Judge. In our opinion, on the facts of this case, the High Court was not justified in enhancing the sentence and imposing the maximum sentence permissible under Section 304-A.”

(ii) In ***Bhalchandra and another v. State of Maharashtra*** reported in

1968 SCC Online SC 11, it was held as follows:

“... It is said that an explosion occurred in that place on May 5, 1962 at about 12 o'clock as a result of which 11 persons died and 7 persons were injured.



Penal Code with a direction that they were to run concurrently.

11. All the above cases show that criminal negligence can be found on varying sets of circumstances. The tests which have been applied appear to be fully applicable to the facts of the present case including the one of direct and efficient cause. The Appellants had, undoubtedly displayed a high degree of negligence by allowing or causing to be used dangerous and prohibited compositions and substances which must be held to have been the efficient cause of the explosion.”

(iii) In **State through PS Lodhi Colony v. Sanjeev Nanda** reported in **(2012) 8 Supreme Court cases 450**, it was held thus:

“Hostile Witnesses

98. We notice, in the instant case, the key prosecution witnesses PW1 – Harishankar, PW2 – Manoj Malik, PW3 – Sunil Kulkarni turned hostile. Even though the above mentioned witnesses turned hostile and Sunil Kulkarni was later examined as court witness, when we read their evidence with the evidence of others as disclosed and expert evidence, the guilt of the Accused had been clearly established. In R.K.Anand, the unholy alliance of Sunil Kulkarni with the defence counsel had been adversely commented upon and this Court also noticed that the damage they had tried to cause was far more serious than any other prosecution witness.

99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law thereby, eroding people’s faith in the system.

100. This court in State of U.P v. Ramesh Mishra and Anr [AIR 1996 SC 2766] held that it is equally settled law that the evidence of hostile witness could not be totally rejected, if spoken in favour of the prosecution or the Accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K.Anbazhagan Superintendent of Police and Anr. [AIR 2004 SC 524], this Court



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held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be credit worthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the Accused guilty.

101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in *Manu Sharma v. State (NCT of Delhi)* [(2010) 6 SCC 1] and in *Zahira Habibullah Shaikh v. State of Gujarat* [AIR 2006 SC 1367] had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 of the IPC imposes punishment for giving false evidence but is seldom invoked.”

(iv) In the case of ***M.S.Grewal and another v. Deepchand sood and others*** reported in **(2001) 8 Supreme Court Cases 151**, it was held as follows:

“24. A profitable re-capitulation of facts depict that the criminal court has already found both the teachers guilty of utter negligence and convicted them under Section 304 A IPC (which provides that whoever causes the death of any person by doing any rash or negligence act not amounting to culpable homicide shall be punished with) We are not inclined to record anything contra, save what stands recorded by the District Court in the criminal proceeding but we are constrained to record our anguish over the conduct of the teachers escorting the students even a simple rule of discipline and safety would have prompted the teachers not only to go to the river where they went but no where near the river ought to have been the guiding factor children are children: fun and frolic stand ingrained in them and it is School/Teachers deputed for escorting ought to be reasonably careful since entrusted with the safety this entrustment ought to have infused a



sense of duty which should have prompted them to act not in the manner as they have so acted.”

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(v) In ***Sushil Ansal v. State through Central Bureau of Investigation*** reported in ***(2014) 6 Supreme Court Cases 173*** it was observed thus:-

“200. At the same time, the Court held that there was enough evidence to prima facie establish that the Accused management had committed an offence under Section 304-A and observed that the evidence assembled by the prosecution suggested that structural and operational defects in the working of the plant was the direct and proximate cause of death.”

7. By relying on the above decisions, the learned Government Advocate (Crl. Side) submitted that because of the inaction, carelessness and negligence attributable on the part of the Accused, the fateful occurrence had taken place. The Accused failed and omitted to take reasonable precautions that are necessary while conducting the event of such a scale. The Prosecution also proved that all the tickets have been sold for the event, however, the Accused have not taken adequate care and caution. Therefore, the judgment of acquittal passed by the learned Trial Judge is perverse and it is liable to be interfered with by this Court. Accordingly, the learned Government Advocate (Crl. Side) prayed for allowing this Appeal by setting aside the Judgement of acquittal recorded by the Trial Court.

8. Per contra, Mr. P.R. Raman, learned Senior Counsel for the



Respondents 1 to 4/Accused 1- 4 vehemently objected to the line of arguments of the learned Government Advocate (Crl.side) appearing for the State. The learned Senior Counsel would contend that the principle of *Res Ipsa Loquitur* is not applicable to criminal cases. It is applicable to only under Law of Torts for which he had relied on the reported decision of the Honourble Supreme Court in the case of ***Syed Akbar vs. State of Karnataka*** reported in **(1980) 1 Supreme Court Cases 30** wherein it was observed thus:-

“In criminal cases, because of the rules of burden of proof, presumption of innocence and proof beyond reasonable doubt, res ipsa loquitur can only be an aid in the evaluation of evidence, “an application of the general method of inferring one or more facts in issue from circumstances proceed in evidence.” In this view, the maxim res ipsa loquitur does not require the raising of any presumption of law which must shift the onus on the defendant. It only, when applied appropriately, allows the drawing of a permissive inference of fact, as distinguished from a mandatory presumption, properly so-called, having regard to the totality of the circumstances and probabilities of the case. Res ipsa is only a means of estimating logical probability from the circumstances of the accident. Hence, the maxim can be used only as a convenient ratiocinative aid in assessment of evidence, in drawing permissive inferences under Section 114, Evidence Act, from the circumstances of the particular case, including the constituent circumstances of the accident, established in evidence, with a view to come to a conclusion at the time of judgment, whether or not, in favour of the alleged negligence (among other ingredients of the offence with which the Accused stands charged) such a high degree of probability, as distinguished from a mere possibility has been established which will convince reasonable men with regard to the existence of that fact beyond reasonable doubt.

Even in an action in torts, if the defendant gives no rebutting evidence but a reasonable explanation, equally consistent with the presence as well as with the absence of negligence, the presumptions or inferences based on res ipsa loquitur can no longer be sustained. The burden of proving the affirmative, that the defendant was negligent and the accident occurred by his negligence still remains with the plaintiff;



and in such a situation it will be for the Court to determine at the time of judgment whether the proven or undisputed facts, as a whole, disclose negligence.”

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9. The learned Senior Counsel submitted that it is the duty of the Prosecution to prove the negligence of the Accused in this case. The Prosecution has to prove the overt act attributable on the part of the each of the Accused and their contribution to the culpability of the incident. *Res Ipsa Loquitor* (the things speaks for itself) in reality will apply only under Law of Torts. In the present case, the accident occurred not due to any negligence attributable on the part of the Accused. The Prosecution had not precisely proved the acts, which contributed to the untoward incident. The incident can be considered one as an act of Vis Major as no one predicted it. The learned XVIII Metropolitan Magistrate on over all appreciation of the evidence, had given the benefit of doubt to the Accused. In fact, none of the Prosecution Witness had specifically deposed as to the culpability or negligence on the part of the Accused. When the Trial Court, on appreciation of the evidence, had acquitted the Accused, the Appellate Court must not overturn such a decision without there being any strong evidence suggesting the perversity of the decision of the Trial Court. In the present case, most of the Prosecution Witnesses turned hostile. There is no strong evidence made available suggesting that the Accused have in any manner contributed for the accident.



Crl.A.No.534 of 2014

The Prosecution had miserably failed to prove beyond doubt that the material used for erecting the wooden stage was either inferior in quality or that the stage was lacking any degree of standard. The learned Senior Counsel for the Respondents invited the attention of this Court to the judgment of the trial Court in Page 8,9, 10 and 11 and submitted that the observations of the learned Judge are well reasoned and it does not warrant any interference by this Court. Therefore, he sought to confirm the judgment of the learned XVIII Metropolitan Magistrate and to dismiss this Appeal as having no merits.

Point for consideration:

Whether the judgment of acquittal dated 13.08.2013 passed by the XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C. No.7323 of 2010 is to be set aside as perverse warranting interference by this Court?

10. Heard Mr. Vinoth Kumar, learned Government Advocate (Crl. Side), Mr. P.R.Raman, learned Senior Counsel for the Respondents 1 to 4/Accused 1-4 and Mr.Praveen Alexander, learned Counsel for the Respondents 5 and 6/Accused 5 and 6. Perused the evidence of P.W-1 to P.W-43, Ex.P-1 to Ex.P-30 and the judgment of the learned XVIII Metropolitan



Magistrate in C.C.No.7323 of 2010, dated 13.08.2013.

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11. In order to prove the accusations against the Accused 1 to 6, the Prosecution had examined 43 witnesses. P.W-1 is a retired IAS Officer. He in his evidence stated that the deceased Sumeet Agnihotri is the sister's son of his batchmate and he belonged to Kanpur, Uttar Pradesh. On the fateful day, he advised Sumeet Agnihotri not to participate in such programme as intoxicated drinks will be served and during revelry there may even be clashes. Notwithstanding his plea, Sumeet Agnihotri participated in the programme. On information about the untoward incident, he rushed to Savera Hotel and later went to the Hospital and came to know that Sumeeth Agnihotri died due to drowning. Thereafter, he had accompanied Shrine Ramakrishnan/*De facto Complainant*-PW3 to Royapettah Police Station. Since Shrine Ramakrishnan was not familiar with Tamil, P.W-3 had interpreted what he had stated in English to the Police Officials into Tamil, based on which Ex.P-13 was registered. P.W-1 in his deposition had clearly stated that “In the midnight we heard lot of noise. I saw people running outside. Then I came outside and I saw some people taking two persons to hospital. Since I was with my wife I didn't accompany any other person. When I was standing outside the hotel, my colleague called me over phone and informed me that Sumeeth Agnihotri was



dead and a complaint has to be registered.” Thus, it is evident that both P.W-1 as well as P.W-3 did not witness the incident. P.W-3 was treated as hostile by the prosecution.

12. P.W-4 Deepak Raavat is one of the participants in the revelry on the date of accident. He had stated that he was a colleague to Sumeeth Agnihotri, as a Telecom Engineer and subsequently he shifted to Dehradun, Uttaranchal State and working as Associate Network Services, Conbergys Company. In 2007 he was staying in Tamil Nadu as a Telecom Engineer in Slash Support Company, Chennai where P.W-3 and the deceased were working together. As regards the incident, he had stated that he was not aware of the cause of the accident. Therefore, he was treated as a hostile witness.

13. P.W-20 Lakshman Raj in his deposition has stated that he along with his friend went to celebrate New Year at Savera Hotel. When they reached the Hotel, the Police informed them to leave the place. They did not know what had happened. Therefore, he was treated as hostile before the trial Court.

14. P.W-21 Chandrababu had stated that on 31.12.2007, he along



with his friends went to Savera Hotel. On reaching the hotel, the Police Men told them that some untoward incident had happened and asked them to leave the place immediately. After two days, they came to know about the occurrence through newspaper. He was also treated as hostile.

15. P.W-22 is an employee working in Savera Hotel. He had claimed that on 31.12.2007 at 11.30 p.m. while he was attending to his duty, he heard some commotion near the swimming pool. He went near the Swimming pool and observed that some untoward incident had happened and within a few minutes, he left the place to attend to his duty. He was also treated as hostile.

16. P.W-23 is another staff of Savera Hotel at the relevant point of time. He also deposed that on hearing some commotion near the swimming pool, he went there and within few minutes left the place to attend to his duty. He feigned ignorance as to how the accident had happened. He came to know about the untoward incident the next day. He was also treated as hostile before the Trial Court.

17. P.W-27 Neena Reddy, also a staff of the Savera Hotel. She, in her



deposition, had stated that on the date of the incident, she left by 9 p.m itself and she was not in the hotel at the time of incident. Subsequently, she came to know about the unfortunate incident through telephonic message. She had requested the responsible staff to refund the amount to the participants as there was demand from the participants for refund of the amount after the unfortunate incident. She was also treated as hostile.

18. P.W-28 Rajarathinam is a retired Income Tax official who is also employed in the Savera Hotel. He in his deposition had stated that he came to know about the unfortunate incident, the next day.

19. P.W-29 Chakaravarthy was also a staff of the Hotel on the date of incident. He deposed that he was also one of the Members of Andhra Club and he was in Andhra Club on 31.12.2007 to celebrate the new year. He further deposed that he came to know about the death of the persons on the next day.

20. P.W-31 Balasubramanian is the Station Officer of the Fire and Rescue Services. He in his deposition had stated that on 31.12.2007 at around 23.41 hours, he received a message regarding the accident at Savera Hotel. He



heard that the wooden platform erected atop the swimming pool had broken due to which, the revelers drowned in the swimming pool. He along with his staff rushed to Savera Hotel and on reaching there, he saw some people struggling to come out of the swimming pool. He had deposed that he came to know that the wooden stage erected above the swimming pool had collapsed which resulted in the accident.

21. P.W-41 was the Sub Inspector of Police, Royapettah Police Station. He was on Bandopast duty on 31.12.2007 at Savera Hotel. He in his evidence stated that there was commotion near the swimming pool. At that time, he was standing outside the hotel and he was informed that the wooden platform erected atop the swimming pool had broken and few persons have fallen into the swimming pool. Thus, P.W-41 also did not witness the incident and his evidence can be considered as hearsay.

22. Thus, none of the Prosecution Witness even suggested that because of the carelessness or negligence attributable on the part of the Accused, the accident had occurred. It must be stated that for invoking Section 304A of IPC, it must be demonstrated that the death had occurred due to an action directly attributable towards rash or negligence of the Accused or such



act was the proximate and efficient cause for the death. Section 304 Part-I requires proof of intention to cause death or bodily injury or harm which may tend to cause death. The second part requires proof that the Accused had the knowledge that such injury would result in death or grievous injury likely to result in death. On an overall conspectus of the facts retrieved from the Prosecution case, none of the Prosecution evidence have deposed that the act of the Accused was the direct cause for the death of the deceased in this case.

23. On perusal of the judgment, it is found that the learned XVIII Metropolitan Magistrate had assessed the evidence properly. It is true that three people died in the intervening night of 31.12.2007 and 01.01.2008. It is true that Ramya and Anand were brought to Apollo Hospital and treated by P.W-36 Dr. Ramesh Venkatraman, P.W-37 Dr. Babu Abraham, however, they died after a few days. The deceased Sumeeth Agnihotri was brought to Trinity Hospital and given first aid by P.W-35 Dr. Jayachandran, but he was declared brought dead. Similarly, P.W-39 Dr. Rajamani Bheem Rao, the Tutor of Forensic Medicine who issued post-mortem certificate opined that the death appeared to have been caused due to drowning. Therefore, his deposition is not of any use to conclude that the Accused are directly responsible and/or negligent in discharge of their duty which resulted in the death of three



persons.

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24. As pointed out by the learned Senior Counsel for the Respondents 1 to 4/Accused 1 to 4, the principle *res ipsa loquitur* (Things speak for itself) is a principle used in law of Torts and that cannot be invoked in criminal law. In criminal law, the accepted principle is that the Accused is presumed innocent till his guilt is proved beyond reasonable time. The theory of probability will not be acceptable in criminal law. It is true that three people have died. For the death of the three individuals, the management of the Hotel was alleged to be responsible. The Accused also cannot claim that they are not liable. As per the law of Torts, they are liable. *Res ipsa loquitur* applies to the management of Savera Hotel for death of the three individuals. But the culpability of the individuals regarding criminal liability was not established through the evidence of P.W-1 to P.W-43.

25. As per the Criminal Law, the guilt of the Accused had to be proved by the Prosecution beyond reasonable doubt. In this case, the Prosecution is expected to prove that the Accused had knowledge that allowing the participants to dance over-board the wooden plank erected atop the swimming pool will endanger their life. The Accused did not expect it and



Crl.A.No.534 of 2014

it is suggested that several persons, at the same time, have boarded the wooden plank and due to overloading, the wooden plank has caved in, which is beyond the control of the Accused especially during the new year celebration in the midnight.

26. The reliance placed by the learned Government Advocate (Crl. Side) in the case of *State vs. Sanjeev Nanda* reported in (2012) 8 *Supreme Court Cases* 450 cannot be made applicable to this case. In that case, the driver of the vehicle hit the victim and fled the scene of occurrence. In that case, the State Appeal was accepted by holding that the Respondent-Driver was having full knowledge of the consequences of his dangerous driving especially after consuming alcohol. Therefore, the Honourable Supreme Court observed that the Respondent-Driver is having requisite knowledge of his consequences in driving the vehicle after consuming alcohol. In this case, the wooden plank erected atop the swimming pool broken purportedly due to over crowding. The Accused might not have perceived the untoward incident and there was no intention to cause the death of the deceased. The act of the Accused cannot be directly attributable to the death and it was due to several other reasons which are beyond the control of the Accused. The Prosecution, through its evidence, had not proved that the Accused-1 to Accused-6 were



solely responsible for erecting the wooden platform over the swimming pool and their carelessness or negligence had resulted in the death. In any event, the evidence suggests that an unfortunate accident had taken place in the swimming pool due to breaking of wooden platform put up over the swimming pool. The principle *res ipsa liquotor* if applied Accused-1 to Accused-6 are jointly and severally liable but they are liability lie only under torts law and not under Criminal Law. There is no evidence that each one of the Accused-1 to Accused-6 was responsible in some way or the other for putting up wooden platform over the swimming pool. There is no direct evidence through the witnesses P.W-1 to P.W-43 to suggest the involvement or *mensrea* on their part in erecting the wooden platform. Therefore, the submission of the learned Government Advocate (Crl. Side) that the evidence of P.W-43 Investigation Officer alone is sufficient to convict the Accused cannot be countenanced.

27. The reported decision in the case of ***M.S. Grewal and another v. Deepchand sood and others*** reported in ***(2001) 8 Supreme Court Cases*** deals with Tortuous liability and not criminal liability. The ruling relates to Tortuous liability of the School authorities for the death of the School student who drowned in a water body during a picnic. Therefore, the responsibility of the teachers was fixed by the Court and its Administration were held responsible.



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28. It is well settled that when the Accused in a criminal Trial are acquitted of the charges, the Appellate Court must be slow and cautious while interfering with such decision. Even when there are two views possible, the one pointing to the guilt of Accused and other to the innocence, whichever is favourable to the Accused had to be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is thwarted. In the present case, the Prosecution failed to prove the ingredients of acts of negligence or the individual acts of the Accused in acting negligently which caused the untoward incident. However, this Court makes it clear that the Savera Hotel Management is tortuously liable and responsible for the death of the three individuals who died when they participated in the New Year revelry. However, they are not responsible criminally warranting interference with the Judgment of acquittal passed by the Trial Court.

29. In the light of the above discussion, the point for consideration is answered against the Appellant State and in favour of the Respondents/ Accused 1 to 6. The judgment of acquittal dated 13.08.2013 passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C. No.7323 of 2010 is found proper which does not warrant any interference by this Court.



Crl.A.No.534 of 2014

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18.03.2025

shl

Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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Crl.A.No.534 of 2014

To

- 1.The XVIII Metropolitan Magistrate
Saidapet, Chennai.
- 2.The Assistant Commissioner of Police
Royapettah Range,
Chennai – 600014.
- 3.The Section Officer,
Criminal Section,
High Court Madras.



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Crl.A.No.534 of 2014

SATHI KUMAR SUKUMARA KURUP, J

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Judgment in
Crl.A.No.534 of 2014

18.03.2025