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Crl.A.No.764 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.764 of 2023

Ajaykumar

... Appellant/Accused

vs.

State by :

Inspector of Police,
Traffic Investigation,
Pondy Bazar Police Station,
Chennai.

...Respondent/Complainant

Criminal Appeal filed under Section 374 of the Criminal Procedure Code prayed to call for the records and to set aside the conviction and sentence passed by the Learned V Additional Sessions Judge, Chennai and made in S.C.No.248 of 2015 by Judgment dated 03.07.2023.

For Appellant : Mr.Ganesh Rajan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon him, vide judgment dated 03.07.2023 in



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S.C.No.248 of 2015, on the file of the learned V Additional Sessions Judge,
Chennai.

2(i). The case of the prosecution is that the appellant, on 07.10.2014 at about 9.15 p.m., had driven the vehicle, i.e., the Tata Sumo car bearing Reg.No.TN-01-AD-0384 in a state of intoxication; that knowing that driving in such a state was likely to cause death, he had dashed against a pedestrian who was walking on the platform and thereafter dashed against the two-wheeler bearing Reg.No.TN-02-AR-1455, which was parked on the side of the road and belonged to P.W.1 and thus committed the offences under Sections 279 and 304(ii) of the Indian Penal Code, 1860, and Section 185 of the Motor Vehicles Act, 1988.

(ii) On a complaint given by P.W.4, an FIR [Ex.P8] was registered by P.W.11/Inspector of Police/Investigating Officer, who took up the investigation. After examination of the witnesses and, after completing all the required formalities, filed a Final Report before the learned XVIII Metropolitan Magistrate, Saidapet Chennai, for the offences under Sections 279 and 304(ii) of the Indian Penal Code, 1860, and Section 185 of the Motor Vehicles Act, 1988.



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(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court of Sessions, i.e., learned Principal Sessions Judge, Chennai and was made over to the learned V Additional Sessions Judge, Chennai for trial. The trial Court framed charges for the offences under Sections 279 and 304(ii) of the Indian Penal Code, 1860, and Section 185 of the Motor Vehicles Act, 1988, against the appellant, and when questioned, the appellant pleaded 'not guilty.'

(iv) To prove the case, the prosecution had examined 11 witnesses as P.W.1 to P.W.11 and marked 10 exhibits as Exs.P1 to P10. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witness nor marked any document on his side.

(v) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of the offences under Sections 279 and 304(ii) of the Indian Penal Code, 1860, and Section 185 of the Motor Vehicles Act, 1988, and sentenced him as follows:



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<i>Offence under Section</i>	<i>Sentence imposed</i>
279 of the Indian Penal Code.	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.
304 (ii) of the Indian Penal Code.	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for six months.
185 of the Motor Vehicles Act.	To pay a fine of Rs.2000/-, in default to undergo simple imprisonment for three months.

Challenging the above conviction and sentence, the accused has filed the instant appeal.

3. Heard, Mr.Ganesh Rajan, learned counsel appearing for the appellant and Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the respondent/State.

4. Mr.Ganesh Rajan, the learned counsel for the appellant would submit that the prosecution had failed to establish that the appellant was in the state of intoxication; that the evidence of the doctor that the appellant did not cooperate for taking the blood samples is improbable; that the police and the doctors are empowered to use minimum force to take the blood samples and the urine samples for collecting evidence to prove the offence; that in Ex.P1 issued by Doctor/P.W.3,



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there is an endorsement which reads as “blood sample taken” which was struck off and later written as “blood sample not taken;” that the fact that the prosecution has failed to collect the blood samples and prove the intoxication of the appellant would go to show that the prosecution had suppressed the material facts and the appellant has been erroneously prosecuted for the offence under Section 304 (ii) of IPC; and that the evidence of eye-witnesses also does not inspire confidence to prove the involvement of the appellant in the alleged occurrence and therefore prayed for acquittal of the appellant.

5. Mr.S.Raja Kumar, the learned Additional Public Prosecutor, per contra, submitted that the evidence of P.W.1, P.W.2 and P.W.4 who are the eyewitnesses, clearly established the involvement of the appellant; that all the witnesses would state that the appellant was in a state of intoxication and he was not able to walk properly; that merely because a certificate has not been obtained to prove the intoxication, the offence under Section 304 (ii) of the IPC cannot be said to have not been made out; and that the trial Court was right in convicting the appellant for the aforesaid offences and prayed for dismissal of the appeal.

6. Considered the rival submissions and perused all the relevant records.



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7. As stated earlier, the prosecution had examined 11 witnesses. P.W.1, P.W.2 and P.W.4 are the eye witnesses to the occurrence. P.W.3 is the doctor who had examined the appellant and had issued the Certificate of Drunkenness [Ex.P1], certifying that the breath of the appellant smelt of alcohol. P.W.5 is the Observation Mahazar witness who had signed in Ex.P3. P.W.6 is a constable who had assisted the Investigating Officer/P.W.11. P.W.7 is the Motor Vehicles Inspector who had inspected the two wheeler, which was damaged in the occurrence. P.W.8 is the Motor Vehicles Inspector who had inspected the vehicle of the appellant and given a report that the vehicle did not have any mechanical defect and there was a damage to the vehicle. P.W.9 is the doctor who had sent the deceased for postmortem and had made entries in the Accident Register [Ex.P6]. P.W.10 is the doctor who had conducted the postmortem and issued the postmortem certificate/Ex.P7. P.W.11 is the Investigating Officer who had registered the FIR, conducted the investigation, and filed the Final Report for the offences under Sections 279 and 304(ii) of IPC and Section 185 of the Motor Vehicles Act.

8. The prosecution case is that since the appellant was in a state of intoxication and had driven the car rashly, his knowledge that his act was likely to



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cause death has to be inferred, and therefore the prosecution under Section 304 (ii) of the IPC is justified. P.W.3 is the doctor who had examined the appellant. He had issued Ex.P1 certificate, which is a certificate of drunkenness. In the said certificate he had observed as follows:

*“Alleged history of consumption of beer around
8.00 p.m., on 07.10.2014 breath smelt alcohol”*

However, in the said certificate, there is an entry that reads “blood sample taken.” This was struck off. But there are entries that read (i.e.,) “blood sample not taken” and “not willing.” There is no explanation by P.W.3 as to why an entry that reads “blood sample taken” was struck off.

9. Section 53 of the Criminal Procedure Code, 1973, makes it very clear that examination of the accused by a medical practitioner at the request of the police officer can be made if it affords evidence as to the commission of offence and the medical officer at the instance of the police can use such force as is reasonably necessary for that purpose. The explanation to the said provision clarifies that the examination includes examination of blood samples. Therefore, it is very strange



that neither the police nor the medical practitioner concerned had not chosen to conduct the required examination to prove the alleged intoxication of the appellant at the time of occurrence.

10. From the conduct of the police as well as the medical practitioner, an adverse inference has to be drawn against the prosecution for not drawing the blood samples, especially since in Ex.P1, there is an entry suggesting the drawing of blood sample which has struck off later. Hence, this Court is of the view that though there is a vague reference to the appellant's breath smelling of alcohol, the prosecution had failed to establish that the appellant was under the influence of alcohol and the alleged occurrence took place only because of his alleged intoxication. In fact, the doctor/P.W.3 had deposed that though the petitioner smelt of alcohol, he was not under the influence of alcohol, there was a clarity in his speech, and he was able to walk properly. The relevant portion of P.W.3's evidence is extracted hereunder for better understanding:

“அவருக்கு 2வது column படி மது அருந்தி இருந்தார்.

ஆனால் அதன் ஆதிக்கத்தில் இல்லை என்று சான்று

அளித்தேன். அவரை பேச சொல்லி கேட்ட போது நாக்ரு



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குழறாமல் பேசினார். நேர்கோட்டில் நடக்க சொன்ன போது

தடுமாறாமல் நடந்தார்.”

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That apart, though the witness said that the appellant was inebriated, the prosecution had not even conducted a breath analysis test. This Court is of the view that the prosecution has failed to prove that the appellant caused the accident only under the influence of alcohol. Therefore, knowledge that his act was likely to cause death cannot be attributed to the appellant and hence the offence under Section 304(ii) of the IPC would not be made out.

11. However, this Court, on the basis of the evidence of eyewitnesses P.W.1, P.W.2 and P.W.4 is of the view that the appellant was guilty of rash and negligent driving, which had caused the occurrence. In fact, the appellant had not chosen to cross-examine P.W.4, who is the complainant. P.W.4 had stated that on 07.10.2024 at about 9.15 p.m., he was riding his motorbike and saw the appellant driving his car in a rash and negligent manner and had dashed against the victim, who was walking on the side walk.



12. Similarly, P.W.1 and P.W.2 have both spoken about the occurrence and the manner in which the car was driven by the appellant. Though P.W.1 and P.W.2 have been cross-examined, they have not been discredited to discard their evidence. The Motor Vehicle Inspectors have proved the damage caused to the appellant's vehicle and the two-wheeler, which were damaged in the occurrence. Therefore, this Court is of the view that the prosecution had established that the appellant due to his rash and negligent act caused the death of the victim. The appellant was not charged for the offence 304-A of IPC. In the facts of this case, the offence proved, namely the offence under Section 304-A of IPC, is included in the offence charged under Section 304 (ii) of IPC. Hence, this Court is of the view that the appellant is guilty of the offence under Section 304 – A of IPC and is liable to be convicted for the said offence.

13. Considering the nature of the averments let in by the prosecution, the age of the appellant, and the surrounding circumstances, this Court is of the view that it is just and reasonable to impose a sentence of One year rigorous imprisonment for the offence under Section 304-A of IPC with a fine of Rs.1,00,000/- (Rupees One Lakh only) and in default to undergo three months simple imprisonment. This Court confirms the conviction and sentence imposed on the



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appellant for the other offences under Section 279 of the Indian Penal Code, 1860, and Section 185 of the Motor Vehicles Act, 1988, by the learned V Additional Sessions Judge, Chennai, in S.C.No.248 of 2015, dated 03.07.2023.

14. It is further directed that out of the fine amount of Rs.1,00,000/- (Rupees One Lakh only), Rs.90,000/- (Rupees Ninety Thousand Only) shall be paid as compensation to the legal heirs of the victim. The respondent shall take steps to ascertain the legal heirs of the deceased and file a memo to that effect before the learned Magistrate to ensure that the compensation is disbursed.

15. As a result, this Criminal Appeal is partly allowed.

Index : yes/no

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Speaking /Non-speaking order

Neutral citation : yes/no

dk



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To

1. The V Additional Sessions Judge,
Chennai.

2. The Inspector of Police,
Traffic Investigation,
Pondy Bazar Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras.



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