



Crl.A.No.261 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated: 02.06.2025

Coram :

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 261 of 2017

Gunasekaran

.. Appellant

Versus

The State

Rep by the Inspector of Police,

Veeranam Police Station,

Crime No. 81 / 2014

.. Respondent

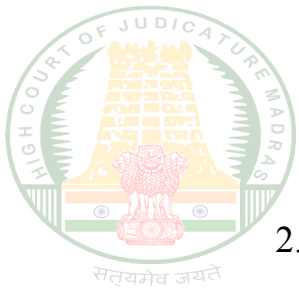
Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, praying to set aside the judgment of conviction and sentence dated 25.04.2017 passed against the Appellant in Sessions Case No.301 of 2015, by the learned III Additional Sessions Judge, Salem.

For Appellant : M/s. R. Srinivas, Senior Counsel
for Mrs. Mythili Srinivas

For Respondent : Mrs. G.V.Kasthuri
Additional Public Prosecutor

J U D G M E N T

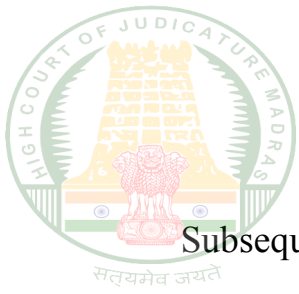
This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure assailing the judgment dated 25.04.2017 passed in Sessions Case No.301 of 2015 on the file of learned III Additional Sessions Judge, Salem.



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

WEB CRI Criminal Appeal, are as follows:-

2.1. On 04.03.2014, around 2.30 p.m., the Appellant was driving the bus bearing Registration No. TN-30-N-1293 belongs to the State Transport Corporation, Salem Division. The bus was driven from Kadathur to Salem with the passengers on-board. According to the passengers in the bus, the Appellant had driven the bus in a rash and negligent manner and therefore, they pleaded him to drive the bus slowly and cautiously. However, the Appellant retorted by saying that *"I drive as I please. Are you scared of death?"* By saying so, the Appellant proceeded to drive the bus in a rash and negligent manner. When the bus was nearing S.R.S. Engineering College, Veeranam, the Appellant drove the bus at a hectic speed and hit the bus against a tamarind tree. In the impact, three passengers by name Vijayalkshmi, Samraj and Mayil have sustained grievous injuries and died on the spot. That apart, several passengers namely Angamuthu, Radha, Sabapathi, Saranya, Karthikeyan and Shajahan have suffered grievous injuries and were hospitalised. Shajahan is the Conductor of the bus who also suffered grievous injury. On hearing the cries and commotion, the villagers rushed to the scene of occurrence and rescued the injured. One Thirupathy, came to the rescue of the injured and he called the ambulance and also informed the Police about the incident.



Crl.A.No.261 of 2017

Subsequently, on the basis of the complaint given by one of the injured victims

Angamuthu, the case in Crime No. 81 of 2014 was registered by the Veeranam Police Station against the Appellant/Accused. Ex.P-15 is the First Information Report which was forwarded to the higher Police officials as well as the Court.

2.2. On receipt of Ex.P-15, P.W-18, Assistant Superintendent of Police, taken up the investigation and proceeded to the place of accident. He drew a rough sketch and an observation mahazar in the presence of witnesses Thirupathi and Xavier. He also collected the broken glass pieces of the bus under Form 95. He caused the arrest of the Appellant near Kuppanur Bus Stand and sent him to remand. He also went to the hospital and obtained the statement of the injured witnesses who were undergoing treatment. He had sent requisition letters under Ex.P-17, Ex.P-18 and Ex.P-20 to the Head of Department, Forensic Science Medicine, Government Mohan Kumaramangalam Medical College and Hospital, Salem to perform the post mortem on the body of the deceased Vijayalakshmi, Mayil and Samraj. P.W-17, Dr. Padmavati, Tutor of Forensic Medicine, Government Mohan Kumaramangalam Medical College and Hospital, Salem had performed autopsy on the body of the deceased Vijayalakshmi, Samraj and Mayil from 11.15 a.m till 2.30 p.m and issued Post-mortem certificates under Ex.P-16, Ex.P-19 and Ex.P-21 respectively. Thereafter, the body of the deceased



Crl.A.No.261 of 2017

Vijayalakshmi was handed over to the Head Constable/P.W-11 Mr. George,
the body of the deceased Mayil was handed over to the Head Constable/P.W-

15 Krishnan and the body of the deceased Samraj was handed over to the
Special Sub Inspector of Police/P.W-12 Subramani with a direction to hand
them over to the respective relatives upon identification.

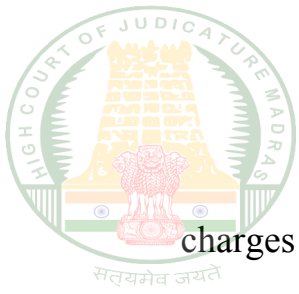
2.3. Upon transfer of P.W-18, the investigation was taken over by
P.W-19, the Sub Inspector of Police, Law and Order, Salem City. He had
issued requisition letter to the Regional Transport Officer to conduct
Inspection of the bus bearing Registration No. TN-30-N-1293 belonging to
State Transport Corporation. On receipt of such letter, the Motor Vehicle
Inspector/P.W-10 Kokila conducted inspection of the bus and issued
Inspection Report under Ex.P-3 wherein she had stated that the accident was
not caused due to mechanical defect. P.W-19 also recorded the statement of
the Conductor of the bus, P.W-7/Shajahan who was also one of the injured
undergoing treatment at Government Mohan Kumaramangalam Medical
College and Hospital, Salem. P.W-19 also received the Accident Register copy
of the injured victims from the Government Mohan Kumaramangalam Medical
College and Hospital, Salem. He had also sent the requisition letter to the
Chief Judicial Magistrate to record the Statement of the victims of accident as
witness under Section 164 Cr.P.C. The learned Chief Judicial Magistrate had



Crl.A.No.261 of 2017

WEB CRI nominated the learned Judicial Magistrate-V, Salem to record the statement of the injured victims of accident under Section 164 of Cr.P.C.

2.4. On transfer of P.W-19, the investigation was taken up by P.W-20/ Mr.Udhaya Kumar, Deputy Superintendent of Police. P.W-20 recorded the statement of the Police Officials viz., Head Constable Mr. George, Special Sub-Inspector of Police Mr. Subramani, Head Constable Mr. Krishnan. After obtaining legal opinion from the Assistant Director of Prosecution, he had laid the final report before the Court of the learned Judicial Magistrate-IV, Salem. The learned Judicial Magistrate-IV, Salem, taken cognizance of the offences under Sections 304 (2) (three counts) and 308 (five counts) of IPC. Since the offences are triable by the Court of Sessions, the case was taken on file as P.R.C. No. 19 of 2015 and summons were issued to the Accused. On appearance of the Accused, copies of the prosecution documents were furnished under Section 207 of Cr.P.C and the case was committed to the Court of the learned Principal Sessions Judge, Salem. The learned Principal Sessions Judge, Salem, on receipt of the records in P.R.C. No. 19 of 2015, had numbered the case as S.C. No.301 of 2015 and made it over to the Court of the learned III Additional Sessions Judge, Salem and bound over the Accused to the said Court. On appearance of the Accused, the learned III Additional Sessions Judge, Salem after hearing the Prosecution and the defence, framed

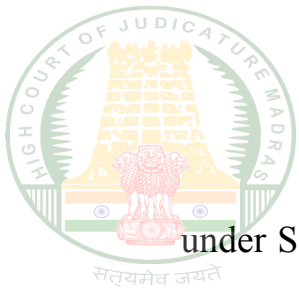


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charges for the offences punishable under Section 304 (2) of IPC (3 counts) and Section 308 IPC (5 counts). The Appellant denied the charges and claimed to be tried. Therefore, trial was ordered. To prove the charges against the Accused, the Prosecution examined 20 witnesses as P.W-1 to P.W-20, marked 26 documents as Ex.P-1 to Ex.P-26 and 2 material objects as M.O-1 and M.O-2.

2.5. On completion of the Prosecution evidence, the Accused was examined regarding the incriminating evidence available against him through the deposition of P.W-1 to P.W-20 and the documents under Ex.P-1 to Ex.P-26 and material Objects M.O-1 and M.O-2. The Accused denied the incriminating evidence recorded against him. The Accused examined one Rajamanickam, Conductor of the TNSTC Bus, who is alleged to have travelled in the same bus on the fateful day, as D.W-1.

2.6. Upon completion of the evidence, after hearing the Prosecution and the learned Counsel for the defence, the learned III Additional Sessions Judge, Salem by judgment dated 25.04.2017 in S.C. No. 301 of 2015 convicted the Accused for offence under Section 304 (2) of IPC (3 counts) and 308 of IPC (5 counts) and sentenced him to undergo rigorous imprisonment of 10 years and fine Rs.1,000/- for each count, in default, to undergo 6 months simple imprisonment for the offence under 304(2) of IPC. For the offence

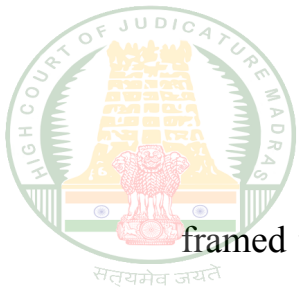


Crl.A.No.261 of 2017

under Section 308 of IPC (5 counts), the Accused was sentenced to undergo 7 years rigorous imprisonment and fine of Rs.500/- for each count, in default, to undergo simple imprisonment of 3 months. The period of detention already undergone in detention was set off under Section 428 of the Cr.P.C.

2.7. Aggrieved by the judgment of conviction recorded by the learned III Additional District and Sessions Judge, the sole Accused had preferred this Criminal Appeal.

3. The learned Senior Counsel for the Appellant submitted that framing of the charges by the learned III Additional Sessions Judge, Salem itself was erroneous. It is a case of simple traffic accident which ought to have been tried by the Court of learned I Class Judicial Magistrate as per Schedule-II of the Cr.P.C which warrant maximum punishment of 2 years. Whereas the charges were framed as though the Driver of the State Transport Corporation Bus had wantonly indulged in the act which will result in death of the passengers of the bus and framed charges as though it attracted the offence under Sections 304(2) and 308 of IPC. There is specific provisions in the Indian Penal Code that traffic accidents attract the offence under Section 304 (a) of IPC and if injuries are caused, it will attract the ingredients of Sections 337 and 338 of IPC. While so, the learned III Additional Sessions Judge, had



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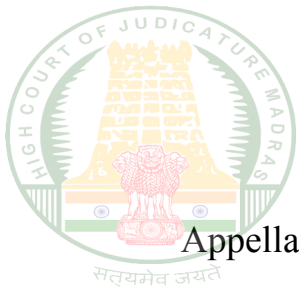
framed the charges as though, the Accused had committed the grave crime in the course of his regular job of driving the vehicle. Based on the charges under Sections 304 (2) and 308 of IPC, the Accused had been convicted and sentenced to undergo the period of imprisonment for 10 years of Rigorous Imprisonment and 7 years of Rigorous Imprisonment respectively which is excessive and harsh.

4. The learned Counsel for the Appellant also submitted that the Appellant is the Driver of the State Transport Corporation Bus bearing Registration No.TN-30-N-1293. As per the case of Prosecution and as per the charge sheet, the Accused drove the bus on the fateful day on Harur-Salem Road. While the bus was proceeding, the passengers in the bus were alleged to have warned him not to drive speedily, for which, he is alleged to have retorted '*I will drive like that only, you be seated*'. When the bus was nearing Veeranam SRS Engineering College, by 2.30 p.m. on 04.03.2014 it crashed on the road side and hit a tamarind tree resulting in accident. In the accident three passengers viz., Vijayalakshmi, Samraj and Mayil died instantaneously and other passengers viz., Angamuthu, Saranya and Radha were injured. Shajahan, the Conductor of the bus was also injured. They were examined as P.W-6, P.W-7, P.W-8 and P.W-9. The injured Angamuthu is alleged to have



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given a complaint orally while he was under treatment immediately after the accident which was recorded by the Trainee Sub Inspector of Police, Veeranam Police Station under Ex.P-14, Complaint. However, the complainant Angamuthu was not examined at all by the prosecution. The Sub Inspector of Police Chinnappan was examined as P.W-16. He had admitted that the handwriting in the FIR was not that of his. He had admitted that the FIR was sent to the Court of the learned Judicial Magistrate and it reached the Court of the learned Judicial Magistrate IV, Salem on 05.03.2014 at 7.30 a.m. The witness Saranya had spoken that she had requested the Driver to drive the vehicle carefully for which he had retorted 'I will drive the vehicle rash and negligently'. But no other witnesses had spoken the same. Based on the evidence of Saranya, it cannot be considered that the Driver drove the vehicle rash and negligently. One other witness Radha had spoken that the Accused while driving the Vehicle was talking on the mobile phone but there is no evidence before the Court regarding such averments. The defence of the Accused was that a sand-laden lorry was coming from the opposite direction and a two wheeler rider overtaken the lorry and came in front of the lorry towards bus. To avoid hitting the two wheeler rider, the Driver of the Bus, steered the vehicle towards left from the middle of the road, thereby he lost control of the vehicle. Thus, the accident had occurred only when the



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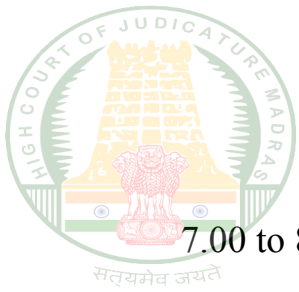
Appellant attempted to avoid an accident. The Appellant has not wantonly caused the accident because of his rash and negligent driving resulting in death of three persons and injuries to the witness P.W-6, P.W-7, P.W-8 and P.W-9.

5. The learned Senior Counsel for the Appellant submitted that the definition of Accident is mentioned under Sections 337, 338 and 304(a) of IPC. For all offences attracting Sections 337, 338 and 304(a) of IPC, charges have to be framed as though, the Driver of the vehicle had knowledge that the passengers of the bus had risk of death when driving the vehicle attracting Section 304 (2) and Section 338 of IPC which is erroneous. The learned III Additional Sessions Judge failed to consider the evidence in its proper perspective. The investigation was carried out by three Officers, P.W-18-Saroj Kumar, the then Assistant Superintendent of Police (Trainee), Salem Rural Sub Division as well as P.W-19-Murugasamy, the then Sub Inspector of Police, Salem Rural and his successor P.W-20 Udhaya Kumar, the then Deputy Superintendent of Police. They had not examined the person who had given the complaint based on which the FIR under Ex.P-15 was registered. The learned III Additional Sessions Judge failed to consider the evidence of Conductor of the bus who had travelled in the same bus as a passenger D.W-1 and rejected the evidence thereby the vital piece of evidence in favour of the



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Accused was lost. D.W-1 withstood his testimony in the cross examination by stating that there was a sand-laden lorry coming from opposite towards the bus and a two wheeler rider was over taking the lorry and came in front of the lorry towards the bus. In order to avoid hitting the two wheeler, the Driver of the bus steered towards left which resulted in the accident. At the time of accident, how many passengers were in the bus, out of which how many of them were injured, the correct figures were not placed before the learned III Additional Sessions Judge by the Investigation Officers. There are evidence before the trial Court through P.W-6, P.W-7, P.W-8 and P.W-9 that the Police reached the place of accident immediately and shifted the injured through the bus belonging to SRS Engineering College to Government Mohan Kumaramangalam Medical College and Hospital, Salem. While so, they had deliberately suppressed the material facts thereby not showing the number of passengers at the time of accident. As per the Prosecution case, the bus hit on the road side tamarind tree and stopped. Whereas P.W-6 Saranya in her deposition stated that bus hit two tamarind trees. Ex.P-1 Observation Mahazar claims that the bus hit two trees. However, the rough sketch under Ex.P-22 shows only one tamarind tree. P.W-18, the then Assistant Superintendent of Police, Salem Rural in his evidence had deposed that he prepared Ex.P-1 and Ex.P-2 in the presence of P.W-1 and P.W-2 and prepared the sketch between



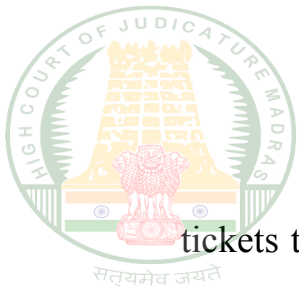
7.00 to 8.30 p.m.

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6. A bare perusal of Ex.P-1 and Ex.P-2 would show the signature on the blank paper and contents were obtained and in the space available it was filled up later. Ex.P-1 and Ex.P-2 were prepared on 04.03.2014, but it reached the Court only on 27.07.2015. Ex.P-2 does not speak about any seizure of blood stained cloth. Whereas P.W-18 Investigation Officer claims he had seized blood stained cloth, which creates doubt in the minds of the Court that the records are fabricated.

7. The Accused had examined the Conductor who travelled in the same bus as a passenger. His evidence was rejected by the learned III Additional Sessions Judge that he had not produced any ticket. It is to be noted that the Conductor and Driver of the State Transport Corporation Bus are furnished with Passes so they can travel without ticket. Therefore, the observations that D.W-1 did not furnish ticket for his travel cannot be sustained.

8. It is the contention of the learned Senior Counsel for the Appellant that none of the witnesses P.W-6, P.W-8 and P.W-9 furnished



Crl.A.No.261 of 2017

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tickets to show that they were passengers in the bus. For a case under Section

304 (a) of IPC, it is not sufficient to prove the negligence is the cause of accident. Prosecution has to prove guilt of the Accused beyond reasonable doubt. The principle of *res ipsa loquitur* cannot be pressed in service to prove the guilt of the Accused in a criminal case. In support of his contention regarding the principle of *res ipso loquitur*, the learned Counsel for the Appellant relied on the unreported decision of this Court dated 23.09.2015 in Crl.A.No.371 of 2010 in the case of **C.Nagaraj vs. The State of Tamil Nadu represented by the Inspector of Police, Watrap Police Station, Virudhunagar District** wherein this Court had observed as under:

“11. Not only on the ground of delay in despatching the FIR to the Court but also on the admission made by PW1, the doubt regarding the FIR becomes very strong. PW1 has categorically stated in her cross examination that within a short while of the occurrence, the Inspector of Police and the Sub Inspector of Police came to the place of occurrence and she narrated the entire occurrence to the Police at her house and the same was reduced to writing, in which she put her signature and then, she went to the Police Station and they enquired her. Whereas PW13 in his cross examination has categorically denied the same and has stated that PW1 gave the complaint only at the Police Station. Thus, the earliest information given to the Police has been suppressed by the prosecution. Thus, the defence has established that the original complaint in this case has been suppressed and in its place, Ex.P1 has been substituted and that is the reason why there had occurred 9 hours delay in the FIR reaching the hands of the learned Magistrate. In our considered view, this is fatal to the case of the prosecution.

12. As we have already pointed out, the presence of PWs.1 to 3 outside the house at the crucial point of time is doubtful. The learned counsel for the Appellant would submit that only in the morning, the dead body would have been noticed and thereafter only Ex.P1 would



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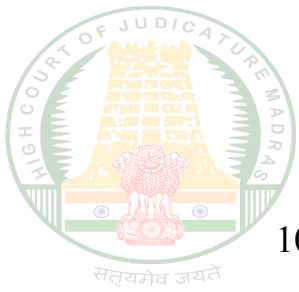
have been drafted and that is the reason why, it has reached the hands of the Court at 12.10 p.m. We find some force in the said argument of the learned counsel. These doubts are very vital in the case. Of-course, the prosecution has proved the motive. Admittedly, there was enmity between the deceased and the accused on account of the fact that the deceased had developed illicit intimacy with the wife of the accused, but, the motive is always a double edged weapon. Simply because the motive has been established by the prosecution, one cannot rush to the conclusion that actuated by the said motive, the accused had committed the murder of the deceased. It is possible to infer that because of the said motive, out of suspicion, the accused has been implicated in the case. This possibility also cannot be ruled out by the prosecution.

13. Apart from that, the learned counsel for the Appellant pointed out that PW11 - photographer has stated that he took photographs inside the house, when the whole occurrence was outside the house. It is not explained to the Court as to why the photographs were taken inside the house. Going by the nature of the evidence available, we have our own doubts in the prosecution case. The doubts are reasonable and they have not been obviated by the prosecution. For these reasons, the Appellant is entitled for the benefits arising out of the said doubts. Accordingly, the Appellant is entitled for acquittal.'

9. The learned Senior Counsel for the Appellant relied on another ruling reported in **(1998) 8 SCC 493** in the case of ***State of Karnataka vs. Satish*** wherein the Hon'ble Supreme Court had held as follows:

"4. ".....Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur....."

5. " There being no evidence on the record to establish "negligence" or "rashness" in driving the truck on the part of the respondent, it cannot be said that the view taken by High Court in acquitting the respondent is a perverse view"....."



10. He further submitted that P.W-6, P.W-7, P.W-8 and P.W-9 were eye witnesses. They only speak about vehicle driven in speed. For argument sake, even if the case is accepted, merely driving the bus in a fast or with required speed alone will not result in accident. Driving the vehicle in high speed also will not result in accident. It must be proved that the vehicle was driven in a rash and negligent manner endangering the public safety, which was not taken note of by the trial Judge. In this context, the learned Senior Counsel for the Appellant relied on the decision of the Hon'ble Supreme Court reported in **(1998) 8 SCC 493** in the case of **State of Karnatak vs. Satish** wherein it is held as follows:

“Merely because the truck was being driven at a high speed does not speak of either “negligence” or “rashness” by itself. None of the witnesses examined by the Prosecution could give any indication, even approximately, as to what they meant by “high speed”. “High Speed” is a relative term. It was for the Prosecution to bring on record material to establish as to what it meant by “high speed” in the facts and circumstances of the case. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception plead in the present case. In the absence of any material on the record, no presumption of “rashness” or “negligence” could be drawn by invoking the maxim “res ipsa loquitur”. There being no evidence on the record to establish “negligence” or “rashness” in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view. Hence, the same calls for no interference.”

11. It was stated that the evidence of the Prosecution does not establish the guilt of the Accused beyond reasonable doubt. The learned Senior Counsel for the Appellant relied on the reported ruling of this Court in



MANU/TN/5243/2022 in the case of **B.Karthik vs. State** wherein this Court
WEB CON relied on the decision of the Hon'ble Supreme Court and held as under:

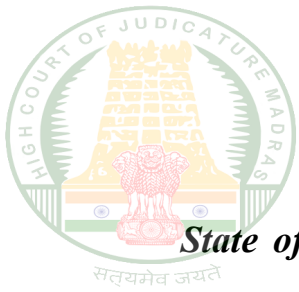
“8. The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrong doer.

9. A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the Driver of a vehicle to adopt such reasonable and proper care and precaution.”

12. The learned Senior Counsel for the Appellant also relied on the decision of the Hon'ble Supreme Court of India in ***Prabhakaran vs. State of Kerala in Appeal (Crl) No. 775 of 2005 dated 21.06.2007*** wherein it has been observed as follows:

“19. When the factual scenario of the present case is analysed, it is crystal clear that the appropriate conviction would be under **Section 304 A IPC** and not **Section 304 Part II IPC**. Conviction is accordingly altered. The maximum sentence which can be imposed for offence punishable under **Section 304A** is two years with fine or with both. The custodial sentence, therefore, is reduced to the maximum i.e. two years.”

13. The learned Senior Counsel for the Appellant further relied on the decision of the Hon'ble Supreme Court of India in the case of ***Abdul Ansar vs.***



Crl.A.No.261 of 2017

State of Kerala reported in **2023 SCC OnLine SC 775** wherein it has been

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“16. In the circumstances, we are of the view that the Appellant is guilty of the commission of an offence punishable under Section 338 of IPC. There will not be any prejudice caused to him as the Appellant had sufficient notice of allegations of negligence against him during the trial. Hence, omission to frame charge under Section 338 of IPC will not be fatal. For the offence punishable under Section 338 of IPC, the period of imprisonment can extend to two years. As noted earlier, the incident is of 2005. So far, the Appellant has undergone the sentence for only 36 days. In our view, considering the fact that the incident is of the year 2005 and other factual aspects, a sentence of simple imprisonment for six months will be an appropriate punishment in the facts of the case. As per the directions of the High Court, a sum of Rs.50,000/- had been deposited by the Appellant. Looking at the serious injuries sustained by PW-1 at the young age of 13 years, she must be adequately compensated. The High Court had imposed a fine of Rs. 50,000/- which amount has been deposited. In addition to the sum of Rs.50,000/- already deposited, we propose to direct the Appellant to deposit an additional amount of Rs.25,000/-.

17. Hence, impugned judgments are modified insofar as the Appellant–accused No.2 is concerned. Instead of Section 338 of IPC, he is held guilty of an offence punishable under Section 338 of the IPC. The Appellant shall undergo simple imprisonment for a period of six months. He is entitled to claim a set-off for the period of incarceration already undergone.”

14. The learned Senior Counsel for the Appellant further submitted that P.W-7 Conductor of the bus had clearly stated that the width of the road is 25 feet only near the scene of the accident and there were tamarind trees on both sides and vehicles also came from the opposite side. Ex.P-1 observation mahazar indicates the width of the road as 25 feet. The breadth of the bus would be 8 feet minimum. When the vehicle approaches from the opposite side, the Driver has to maintain a minimum distance of 3 feet to avoid



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collision. The injured witnesses had deliberately come to Court with a parrot-

like fashion that the vehicle was running in a high speed. It is impossible for any Driver to drive the vehicle in a very slow manner, as claimed by the witness. Also the witness in their cross examination admitted that near the accident spot, there was barricade put by the Forest Department and in which case, the vehicle could not have been driven with greater speed, as alleged. The Prosecution had not produced sufficient evidence to attract the provision of Sections 304 (2) and 308 IPC. Even necessary proof for offence under Sections 304(a), 379, and 338 IPC was not produced by the Prosecution. The evidence of the injured witnesses P.W-6, P.W-7, P.W-8 and P.W-9 are totally unreliable in the absence of neutral witness. The Ambulance Driver who took the injured to the Hospital had not been examined. The Police Officers who were present in the scene of occurrence immediately after the occurrence had not been examined. The delay in FIR reaching the Court creates suspicion of the original version as to the manner in which the accident occurred. Further, the Complainant had signed in a blank paper and the minute details of the injuries of the witnesses had been artificially incorporated. The person who had given the complaint was not examined by the prosecution. Ex.P-1 Ex.P-22 had been prepared between 7 and 8 p.m. on the date of the occurrence on 04.03.2014 whereas it reached the Court on 27.07.2015 and it creates



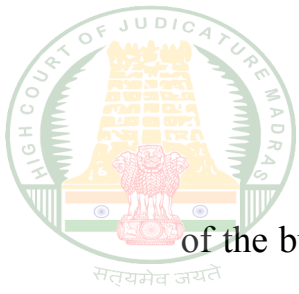
Crl.A.No.261 of 2017

suspicion.

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15. The defense witness D.W-1 had probabilized the case of the Accused which had been rejected on the ground that he is known to the Accused and he had not produced any bus ticket to prove the case. The Prosecution has to prove the case beyond reasonable doubt. The Accused can succeed if he probabalises his defence on the test of preponderance of probabilities. Therefore, the learned Senior Counsel for the Appellant seeks to set aside the judgment of conviction and sentence of imprisonment recorded by the learned III Additional Sessions Judge, Salem in S.C.No. 301 of 2015, dated 25.04.2017.

16. Per contra, Mrs. G.V. Kasthuri, the learned Additional Public Prosecutor vehemently objected to the line of arguments of the learned Senior Counsel for the Appellant stating that it is not a simple accident as that of other accidents on the road. There are evidence through the injured witnesses about the Appellant driving the vehicle in a rash and negligent manner inspite of requests made by the passengers of the bus to drive the vehicle normally. The passengers in the bus felt uncomfortable with the manner in which the vehicle was driven at an abnormal speed. Therefore, they requested the Driver



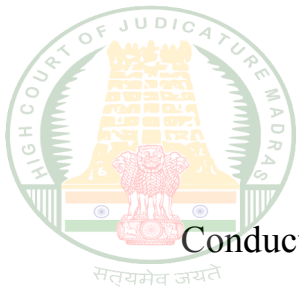
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of the bus to drive the vehicle carefully, for which he retorted, *'I will drive the vehicle as I please, Are you scared of death, you go and sit'*. As apprehended by the passengers of the bus, three persons died on the spot and others suffered injuries. The factum of accident is not denied by the Appellant. It was the Appellant who was on the wheels when the accident occurred. The defence of the Appellant is that in order to avoid hitting a two wheeler, he swerved the vehicle to the extreme left. While attempting to avoid an accident, the Appellant has caused the death of three passengers and several others crippled with various range of injuries. Taking note of such admission on the part of the Appellant, the trial Court rightly convicted him. Also there is evidence that the Driver, while driving the vehicle, was speaking on mobile phone unmindful of the safety of the passengers. Thus, the Appellant did not exercise caution and was not attentive while driving the bus. Due to his reckless driving, the bus had hit a tamarind tree on the left side of the road. The impact of the accident was such that Samraj, aged 22 years, a passenger who travelled in the bus, suffered grave injury and died instantaneously as his head was detached from his body. The post mortem report of Samraj produced under Ex.P-21 also indicates that there was decapitation of head at the level of C4 to C6 cervical vertebra, the decapitated head was attached with the trunk with the tag of skin.



WEB COPY17. Referring to the statement under Section 164 Cr.P.C recorded from the injured witnesses, the learned Additional Public Prosecutor contended that during trial the witnesses have clearly spoken about the Driver of the vehicle driving carelessly and negligently. The passengers inside the bus felt that they were uncomfortable, they were scared of the way the Driver drove the bus risking their life and limb. That much is available from the evidence of P.W-6 to P.W-9. Apart from the above, P.W-7, Conductor of the very same bus, who was in charge of the journey himself suffered fracture. He claims that after the accident, he lost consciousness and when he woke up he was in the Hospital bed. He suffered fracture in his hands. The evidence of the Conductor of the bus on duty is available through P.W-7 Shajahan. He had not stated about the vehicle coming from the front or two wheeler rider as portrayed as defence by the Appellant. None of the passengers had spoken about the two wheeler rider or sand-laden lorry approaching from the opposite side as claimed by D.W-1. D.W-1 was an introduced witness who is a friend of the Accused.

18. The learned Additional Public Prosecutor invited the attention of this Court to the evidence of P.W-6 Saranya, P.W-7 Shajahan, the duty

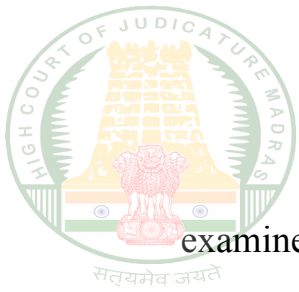


Conductor who travelled in the bus, P.W-8 Radha and P.W-9 Sabapathy.

WEB COPY P.W-9 is the grandson of P.W-8 Radha. P.W-8 Radha had also spoken about the rash and negligent driving. P.W-6 Saranya had spoken that she was seated on the left side of the bus, second seat from the front foot board. Therefore, she could see the road. She could also see the way the Driver drove the vehicle. She requested him to drive the vehicle carefully for which he retorted, *'I'll drive the vehicle as I please. You be seated'*. P.W-8 had stated that she suffered fracture in the neck and injuries on her head and left hand.

19. P.W-7 Conductor of the bus had clearly stated in his deposition that he too suffered fracture. He also stated that passengers complained him that the Driver was driving the vehicle in a rash and negligent manner. He also requested the Appellant to drive the vehicle carefully. He suffered fracture in his left hand and clavicle bone fracture and also fracture on the face. He had withstood the cross examination.

20. P.W-13 Dr.Arun in the Casualty Ward stated that he could not give wound certificate as all the injured passengers were discharged from the hospital against medical advice. He had clearly stated that after this accident he had not joined the duty. The accident took place on 04.03.2014. He was



examined as witness on 28.09.2016. Therefore, the charge framed by the Court

cannot be found fault. It is a serious case where the Driver knowing fully well of the consequences, ignoring the request of the passengers, had driven the vehicle wantonly in a rash and negligent manner. There is no specified definition for rash and negligent driving.

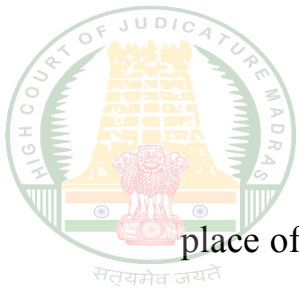
21. The learned Additional Public Prosecutor contends that if any untoward incident takes place after exercise of caution or if the vehicle met with an unfortunate incident or the accident is caused due to mechanical defects in the vehicle, it will be beyond the control of the Driver of the vehicle. In such event, the Driver of the vehicle can be prosecuted for having committed the offence under Sections 304 (a) or 337 or 338 of IPC. Here it is not the case. The passengers on board the bus found out that the Driver was not driving the bus carefully considering the safety of the passengers. The Appellant ignored the requests made by the passengers of the bus to drive it slowly. That much is available in the statement of the victims of the accident who suffered at the hands of the Accused. The Accused himself is responsible for the death of an youth aged 22 years whose head was severed from his body due to the sudden impact of the accident. Therefore, the framing of charge under Sections 304(2) and 308 of IPC is found proper.



Crl.A.No.261 of 2017

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22. The learned Additional Public Prosecutor further submitted that the reported ruling cited by the learned Counsel for the Appellant will not help the case of the Accused. Those are cases where there was negligence beyond control of the Driver as well as the Conductor. Here the Conductor is in charge of the journey and he is also responsible. Based on the request of the passengers, he had requested the Driver to drive the vehicle carefully. Still the Appellant proceeded as per his own whims and fancies resulting in the accident. There is evidence through the injured witnesses who claimed that the accident was caused by the rash and negligent behaviour of the Driver. There is evidence through the medical evidence, evidence of the post mortem Doctor, evidence through the witness in the inquest under Ex. P-23, Ex. P-24 and Ex.P-25. They had opined that the death was due to accident caused by the Appellant by driving the vehicle negligently. The impact of the accident resulted in detachment of head from the body of an young 22 year old Samraj itself would stand testimony to the speed at which the Appellant drove the vehicle. Therefore, the submission of the learned Senior Counsel for the Appellant that it is a simple case of accident which have the ingredients of Section 337, 338 and 304(a) of IPC is not acceptable in the peculiar facts of this case. It is to be noted that the passengers in the bus will not be giving their

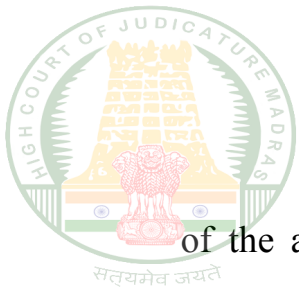


Crl.A.No.261 of 2017

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place of residence and address to the Conductor in the trip sheet. The argument of the learned Counsel for the Appellant that the trip sheet was not produced before the trial Judge to appreciate the facts fairly will not hold good. The statement of those who were injured and admitted in the hospital, were recorded by the Investigation Officers and those details were available. Those witnesses had spoken to about the rash and negligent driving of the Driver. The Investigation Officer had taken care to record the 164 Cr.P.C statement before the learned Judicial Magistrate as it was a grave accident caused only due to rash and negligent driving which is different from other cases.

23. The learned Additional Public Prosecutor submitted that in the cross examination of the witnesses they had admitted they had not sought help from Police Officials by contacting the emergency numbers to prevent the Driver from driving the vehicle rash and negligently. That will not help the Appellant to wriggle out of this case. The Appellant is not a trainee Driver. The Appellant is given training to drive bus by the State Transport Corporation. Ignoring those training and the responsibility vested in him, he had driven the vehicle as though he is driving the two wheeler. The injured passengers came forward to let in evidence. The witnesses P.W-1, P.W-2, P.W-3 and P.W-4 are from the nearby place of accident who came to the scene



Crl.A.No.261 of 2017

of the accident to assist the passengers and the Investigation Officers. The claim of the Appellant that the Ambulance Driver was not examined cannot be accepted or it will not in any manner weaken the case of the prosecution. The statement of the witnesses recorded under 164 Cr.P.C is only to inspire confidence of the Investigation Officer that the investigation is proceeded on the right track. Considering the grave offences, the investigation was carried out by Assistant Superintendent of Police (Trainee) and continued by the Deputy Superintendent of Police, Salem Rural culminating and laying of final report under Section 304(2) of IPC. Therefore, the claim of the learned Senior Counsel for the Appellant will not hold good. The Appeal lacks merit and is to be dismissed.

24. In support of her contention, learned Additional Public Prosecutor relied on the ruling of the Hon'ble Supreme Court reported in **(2020) 14 SCC 184** in the case of ***Bhagwan Singh vs. State of Uttarakhand*** wherein the Hon'ble Supreme Court had observed as follows:

“13. ... These provisions also deal with cases where there is no intention of either causing death or a bodily injury which is ordinarily sufficient to cause death. The absence of intention to cause death or bodily injury which is in the ordinary course of nature likely to cause death is, therefore, not conclusive. What is required to be seen is whether the act is one where the offender must be deemed to have had the knowledge that he was likely, by such act, to cause death.

18. Resultantly, we hold that the Appellant had the requisite knowledge essential for constituting the offence of ‘culpable homicide’



under Section 299 and punishable under Section 304 Part-2 of IPC. He is thus held guilty under Section 304 Part-2 and not under Section 302 of IPC. On the same analogy, the Appellant is liable to be punished for 'attempt to commit culpable homicide' not amounting to murder under Section 308, in place of Section 307 of IPC for the injuries caused to the other three victims. To this extent, the Appellant's contentions merit acceptance."

Point for consideration:

Whether the judgment of conviction and sentence dated 25.04.2017 passed in Sessions Case No.301 of 2015, by the learned III Additional Sessions Judge, Salem is to be set aside as perverse?

25. Heard Mr. R.Srinivas, the learned Senior Counsel for the Appellant for Mrs. Mythili Srinivas and the Mrs. G. V. Kasthuri, learned Additional Public Prosecutor for the Respondent/State. Perused the evidence of the prosecution P.W-1 to P.W-20, the documents marked on the side of the Prosecution as Ex.P-1 to Ex.P-26, the evidence of D.W-1 and the judgment of the learned III Additional Sessions Judge, Salem in S.C.No.301 of 2015, dated 25.04.2017.

26. On perusal of the ruling relied by the learned Additional Public Prosecutor reported in ***(2020) 14 SCC 184*** in the case of ***Bhagwan Singh vs. State of Uttarakhand***, it was a case where the father of the bride groom on the previous date of marriage is alleged to have indulged in a quarrel when the



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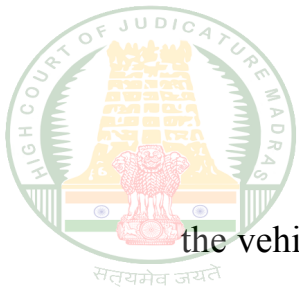
marriage procession reached the house of the bride groom. The father of the bridegroom suddenly fired celebratory gunshots from licensed gun pointing towards roof and pellets hit five persons standing in the courtyard and the Injured were taken to hospital where two of them succumbed to their injuries. The Trial Court convicted the father of the bridegroom for offences under Sections 302 and 307 of IPC based on testimonies of eye witnesses and injured witnesses which was upheld by the High Court holding that the deceased victims were present there in order to participate in marriage celebrations, which suggests that neither they nor their families had any animosity with the Appellant (father of the bridegroom). Similarly P.W-3 (Complainant), too had no axe to grind against Appellant. Eyewitness account further reveals that shots were fired towards roof and not aiming at any of the victims. It is thus difficult to accept that Appellant had any intention to kill deceased persons. Further, version of eyewitnesses completely belies defence story, that Appellant was only holding licensed gun, an a ball thrown by children, who were playing with it, struck gun, causing accidental firing – Otherwise also, it does not appeal to common sense, that a ball would strike gun in Appellant's hand resulting in an undesigned firing – Unless safety lock of gun was moved forward, gun would not go off automatically. Even if its but was hit by a play-ball – Hence, Appellant's attempt to shelter behind Section 304-A IPC is thus



Crl.A.No.261 of 2017

exercise of futility and is liable to be rejected. The conviction under Section 302 of IPC was modified by the Hon'ble Supreme Court invoking Section 304 Part-2 of IPC and Section 307 of IPC altered to Section 308 of IPC. Sentence of life imprisonment awarded to Appellant under Section 307 of IPC is reduced to 10 years Rigorous Imprisonment and sentence awarded to him under Section 307 of IPC is substituted with Section 308 of IPC, without any alteration in fine of Rs.20,000/- imposed by trial Court.

27. As per the submission of the learned Additional Public Prosecutor, here is a case where the Accused/Appellant as Driver of the Tamil Nadu State Transport Corporation Bus had to drive the vehicle considering the safety of the passengers who were seated inside the bus. The victims of this accident are none other than the passengers of the bus. There is no specific explanation for rash and negligent driving. Here the way the Driver drove the vehicle caused scare, fear, apprehension in the minds of the passengers. Therefore, they requested the Driver to drive the vehicle carefully. Instead of heading their advice, he had retorted that "I will drive the vehicle as I like. You be seated in your seats". This shows that the Appellant had scant regards for the safety of the passengers. This accident is very different from normal accidents that we come across on the road. The way the Driver drove



the vehicle itself caused fear in the minds of the passengers prompting them to request him to drive the bus carefully. They apprehended that he will cause accident by the way he drives the bus.

28. The defence Counsel before the trial Court had in the cross-examination of the witnesses P.W-6, P.W-7, P.W-8, P.W-9 had put a suggestion, whether any of the passengers had given emergency message to any authorities to stop the bus from being driven in a rash and negligent manner by the Driver. The witnesses had answered that they had not informed any one. At the same time, it is to be noted that they had reported this to the Conductor of the bus who is responsible for the safe transport of the passengers. He too as a witness P.W-7 had in his evidence stated that based on the complaints of the passengers in the bus, he also advised the Driver to drive carefully. The Conductor of the bus clearly stated that after this accident, he had not at all attended his job for two years as he had suffered fracture in his hands. He was a Conductor for twenty years. After two years of the accident only he was examined as a witness before the Court. As stated by the defence witness, another Conductor who claims to have travelled in the bus on the fateful day deposed in support of the defence of the Accused that the two wheeler rider came in front overtaking a sand laden lorry approaching



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from the opposite side near the place of the accident where the width of the road is 25 feet. Therefore, to avoid hitting the two wheeler rider the Driver swerved to the left resulting in this accident is unbelievable. He is an introduced witness and his evidence cannot be believed. None of the passengers injured in the accident specifically P.W-6 Saranya claims that she was seated in the second seat near the foot board on the left side behind the Driver seat and she has not witnessed any two wheeler or sand laden lorry coming opposite to the bus at the relevant point of time. If that be the case, she could have seen such occurrence through the windscreen of the bus or P.W-1 and P.W-2 who came rushing to the site of the accident from the vicinity of the accident hearing the cries of the victim could have stated so. They too had not spoken about the Driver of the bus swerving left to avoid hitting the two wheeler rider.

29. For the sake of argument, the two wheeler rider had driven overtaking the sand laden lorry approaching from the opposite side towards the Tamil Nadu Transport Corporation bus, had the Appellant driven the bus carefully and cautiously observing safety rules to protect the passengers of the bus, he would have stopped the vehicle or slowed down the vehicle in which case the resultant loss will be minimal. Here the left side of the bus was

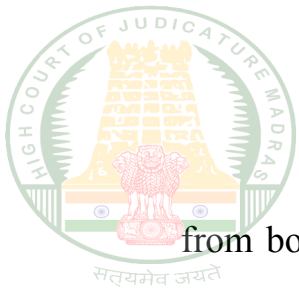


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damaged after hitting the tree. The impact was such that the head of a passenger aged 22 years Samraj was severed from the body. That shows the extent of rash and negligent driving with which the Appellant drove the bus.

30. The ruling cited by the learned Counsel for the Appellant in **2023 SCC OnLine SC 775** in the case of *Abdul Ansar vs state of Kerala*, cannot be applied to this case as the facts are different. That was the case where the Conductor of the Bus was negligent in giving signal to the Driver of the bus to proceed, when a student was boarding the bus. Her one leg was in the footboard and another leg was hanging. She lost balance and fell down on the road. The left rear wheel of the bus crashed her leg resulting in her death. The facts of the case will not be applicable to the facts of that case on the simple ground that the statement of the passengers inside the bus P.W-6, P.W-8 and P.W-9 is confirmed or corroborated by the conductor of the bus, P.W-7 Shajahan.

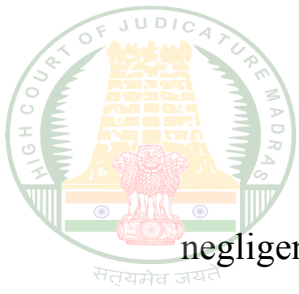
31. In the ruling in *Prabhakaran vs. State of Kerala* a boy aged 10 residing in a hostel of Tribal Welfare Department was run over by bus driven by the Appellant in the middle of the road. The School children crossing the road in a queue, they raised their both hands indicating to the vehicles coming



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from both side of the road to stop and to permit them to cross the road. The Driver of the bus ignoring the raising of hands by the children without stopping the bus proceeded thereby the student was crushed under the wheels of the bus. Inspite of passengers in the bus crying aloud to stop the bus, the bus was driven in a high speed resulting in the death of children. The Driver was charged for the offence under Section 302 IPC. The trial Court found that there was no intention to kill the boy. Therefore after trial, the Court convicted the Accused for the offence 304(2) and fine of Rs.50,000/- was imposed. When the case reached the high Court, the High Court confirmed the conviction by trial Court. When the Accused filed further Appeal before the Supreme Court, the Supreme Court confirmed the conviction and reduced the sentence of imprisonment to 5 years.

32. Here, the facts are different. The Driver of the bus due to rash and negligent driving, inspite of warning from the passengers of the bus to reduce the speed, due to rash and negligent driving, dashed the bus against the road side tree, due to which the left side of the bus was damaged. The report of the Motor vehicle Inspector confirms this and it was also corroborated by the evidence of the injured passengers. The injured victims had given evidence right from the time they boarded the bus and they observed the rash and



negligent driving of the Driver particularly P.W-6 who was seated on the 2nd seat on the left side behind the Driver. The Conductor examined on behalf of the defence, claims to have travelled in the same bus, is true, P.W-6 has stated that she had not seen any vehicle from the opposite. Therefore the request of the passengers in the bus as also the request of the Conductor of the bus was not heeded by the Driver, resulting in the accident. Therefore, the conviction under 304(2) and 308 is found proper.

33. On consideration of the ruling cited by both parties, the ruling of the Hon'ble Supreme Court cited by the learned Additional Public Prosecutor in *(2020) 14 SCC 184* in the case of *Bhagwan Singh vs. State of Uttarakhand* is found more proper. The rulings cited by the learned Senior Counsel for the Appellant in (i) **Crl.A.No.371 of 2010, dated 23.09.2015** in the case of **C.Nagaraj vs. The State of Tamil Nadu represented by the Inspector of Police, Watrap Police Station, Virudhunagar District;** (ii) *(1998) 8 SCC 493* in the case of *State of Karnataka vs. Satish;* (iii) *MANU/TN/5243/2022* in the case of *B.Karthik vs. State;* (iv) *Prabhakaran vs. State of Kerala in Appeal (Crl) No. 775 of 2005 dated 21.06.2007* and (v) *Abdul Ansar vs. State of Kerala* reported in *2023 SCC OnLine SC 775* are not applicable to this case and they are rejected.



WEB COPY34. Even though FIR was registered under Sections 279, 337, 338 and 304 of IPC, P.W-20 Investigation Officer filed final report for the offence under Section 304 (ii) of IPC (3 counts) and 308 of IPC (5 counts). As rightly contended by the learned Counsel for the Appellant there is delay in registration of FIR. However, for such delay, the victim of the Accident cannot be held responsible. They had no control over the investigation agencies for the lapses on their. The victims of the accident spoken cogently, without any ill-will towards the Accused. There is no axe to grind against the Accused. What they expressed as passengers inside the bus was taken note of by the trial Court. Above all, the evidence of injured witness gains more weightage before the trial Court. It is true that the injured victims were discharged from the hospital as was deposed by the Doctor who treated them. The Doctor noticed injury at the first instance and admitted them and gave them first-aid. After first aid, they discharged only to seek better treatment in a private hospital. That does not mean that their evidence is not acceptable or their evidence is not of sterling quality.

35. In the light of the above discussion, the point for consideration is answered against the Accused and in favour of the Prosecution. The judgment



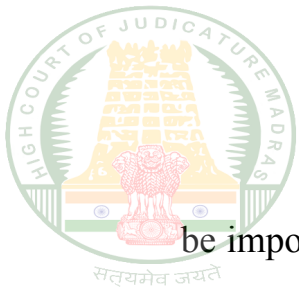
Crl.A.No.261 of 2017

of conviction and sentence dated 25.04.2017 passed in Sessions Case No.301 of 2015, by the learned III Additional Sessions Judge, Salem, is found proper.

However, this Appeal is to be partly allowed with modification in sentence alone.

36. During the course of arguments in this Appeal, it is stated that the victims have filed claim petition before the Motor Accident Claims Tribunal for the death as well as injuries suffered. If it is so, it is for the appropriate Court to award compensation as per the law. In this appeal, this Court is not awarding any compensation to the victims.

In the result, **this Criminal Appeal is partly allowed.** The judgment of conviction dated 25.04.2017 passed in Sessions Case No.301 of 2015, by the learned III Additional Sessions Judge, Salem, is confirmed. However, the sentence of imprisonment alone is modified. As against the sentence of ten years for the offence under Sections 304 (ii) (3 Counts) is modified as three years rigorous imprisonment and seven years for the offence under Section 308 (5 counts) the Accused shall undergo a period of three years of rigorous imprisonment. For each count there cannot be separate sentence of imprisonment as the incident took place in the same transaction. Only fine can



Crl.A.No.261 of 2017

be imposed for each count and the sentence is the same irrespective of number of persons died or injured. The sentence of imprisonment is for the same offence for the same period. The sentences shall run concurrently. The fine amount imposed on the accused for both the offence under Section 304 (ii) (3 counts) and 308 (5 counts) are confirmed. The period of sentence already undergone by the Accused is set off under Section 428 of The Code of Criminal Procedure. The learned III Additional Sessions Judge, Salem is directed to issue warrant to the Accused so as to undergo the remaining period of sentence ordered by this Court. The Inspector of Police, Veeranam Police Station is directed to secure the Accused and produce him before the learned III Additional Sessions Judge, Salem.

02.06.2025

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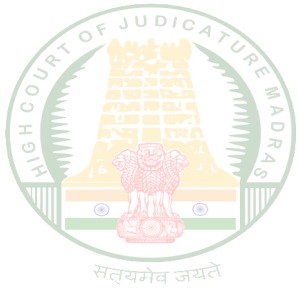
Speaking Order/Non-speaking Order

To:

1.The III Additional Sessions Judge, Salem.

2.The Inspector of Police,
Veeranam Police Station, Salem.

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



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Crl.A.No.261 of 2017

SATHI KUMAR SUKUMARA KURUP, J

Shl/srm

Judgment made in
Crl.A.No.261 of 2017

02.06.2025