



Crl.A(MD)No.101 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.08.2025

CORAM :

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

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Akbar Ali ... Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Thondi Police Station,
Ramanathapuram District
(Crime No.42 of 2014)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the judgmentt of the learned Additional District and Sessions Court, Ramanathapuram, in S.C.No.07 of 2015 dated 08.01.2018.

For Appellant : Mr.R.Gowrishankar
For Respondent : Mr.A.Albert James
Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment dated 08.01.2018 passed by the learned Additional District and Sessions Court, Ramanathapuram, in S.C. No.07 of 2018.



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2. The appellant is the sole accused against whom, the charges have been framed under Sections 279, 304(part II) 3 counts, 337 (2 counts) IPC and under Sections 185 and 192 A of the Motor Vehicles Act. After full-pledged trial, he was found to be guilty for the offences under Sections 279, 304 (Pat II) 3 counts, 337 (1 count). The trial court convicted and sentenced him as under:

Offences u/s	Punishment
279 IPC	Six months(R.I) and a fine of Rs. 1000/- i/d 30 days (S.I.)
304-Part II IPC (3 counts)	Seven years (R.I) for each three counts and a fine of Rs.1000/- for each three counts i/d three months(S.I) for each default
337 IPC (1 count)	Three months (R.I) and a fine of Rs.500/- i/d 15 days (S.I)

3. The case of the prosecution as it appears from the record is that the appellant used to transfer school children from home to school and from the school to home in a Tata Magic Van bearing Reg. No TN-65-Q-9469. On 07.03.2014, when the appellant was on his usual trip of taking school children, he was under the influence of alcohol and drove



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the vehicle in a high speed and in a rash and negligent manner knowing fully well that it might result in death of the passengers, who travelled in the Van. He crossed the centre line of the road and gone to the right side and hit a lorry, which came from the opposite direction and thereby caused the death of three children namely Saravana Kumar (8 years), Priya (11 years) and Aarthya (10 years) and caused simple injuries to the other two children namely, Jeevitha(5 years) and Saravana Priya (15 years). It is alleged that the accused was driving the Van without permit and under the influence of alcohol. In pursuant to the complaint lodged in this regard by the defacto complainant(P.W.1.), investigation was conducted. After completion of investigation, charge sheet has been filed. Charges have been framed against him for the offences punishable under Sections 279, 304-Part II (3 counts), 337 (2 counts) IPC and under Sections 185 and 192 A of the Motor Vehicles Act.

4. When the charges read over and explained, the accused pleaded not guilty and claimed to be tried. After conclusion of the trial, the accused was found guilty for the offences under Sections 279, 304 (Part



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II) 3 counts, 337 (1 count) IPC and he was convicted and sentenced to undergo the punishment as stated supra. Aggrieved over that, the sole accused preferred the present appeal.

5. The learned counsel for the appellant submitted that it was wrong on the part of the trial court to frame the charges against the accused for the offence under Section 304(2) IPC, because the accused did not cause the death of the children with knowledge that it would cause their death; what had happened was an accident and hence, it is not correct to convict the accused for the offence under Section 304(2) IPC; the children travelled in the Van had not stated that the accused was driving the vehicle by consuming alcohol; the accident had occurred without knowledge and there was only negligence on the part of the appellant; the Doctor who had examined the accused and registered the Accident Register (Ex.P.14) was not examined; P.W.1, P.W.2 and P.W.6 gave evidence in unison and their evidence is not alive.



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6. The learned Government Advocate (Crl.side) submitted that the learned trial judge has rightly convicted the accused as the medical examination revealed that the accused had consumed alcohol; the eye witnesses have stated in their evidence that the accused was driving a vehicle in a zig-zag manner and he crossed the centre line of the road and hit against the lorry, which came in the opposite side; the accused is 19 years old and he was driving the vehicle in a rash and negligent manner, that too under the influence of alcohol, which would endanger the life of the passengers and by doing such act, he had caused the death of three school going children and caused injuries to the other two children; as the evidence on record is sufficient to hold that the accused is guilty for the offences for which he has been convicted, the judgment of the trial court has to be upheld.

7. This Court gave anxious consideration to the submissions made on either side and carefully perused the materials available on record.



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8. The fact that the accused, who was driving the Tata Magic Van bearing Reg. No TN-65-Q-9469 on the alleged day of occurrence i.e on 07.03.2014 at 5.30 p.m is not denied. On the date of occurrence also, he was taking the school children from Thondi school in order to leave them at their homes at Nambuthalai.

9. P.W.1, who set the law in motion by giving a complaint, has stated in his complaint (Ex.P.1) that he is panchayat union president and the children from the villages would come to the school near Thondi Bus stand through Bus or through Van. He has further stated that the accused is the owner of the Van bearing Reg. No.TN-65-Q-9469 and he was transporting the children from the school to home and back. P.W.1 had stated that the accused was in a habit of drinking liquor and he was in the habit of driving the Van by consuming alcohol. P.W.1 had taken the matter to the school management but they ignored the same. It is stated that on 07.03.2014, he was conversing by standing near the ice plant. He further stated in the complaint that the accused was driving the vehicle in a rash and negligent manner knowing well that the said act would cause



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death of the passengers and hit against the lorry bearing Reg.No.TN-V-2228 and caused the accident. The three children by names, Saravana Kumar, Priya and Aarthy had died due to the accident and two children by names, Jeevitha and Saravana Priya got injured. The complaint of P.W.1 is very exhaustive and in fact, the complaint has averments as to the knowledge of the accused also that he was knowing fully well that it would cause the death of the passengers, who are travelling in the Van. P.W.1 might have known the accused as they belong to the same village but it is difficult to believe that even while lodging the complaint P.W.1 had stated about the knowledge of the accused that it would cause accident also, which is surprising.

10. P.W.1 has stated in his evidence that the accused was in a habit of drinking alcohol and in an earlier occasion, he was driving the vehicle in a drunken mood. On 07.03.2014 at about 5.p.m, he was working in the ice plant. At that time, he incidentally met P.W.2 Arumugam, who was also working there. While they were conversing by standing in the place of occurrence, they saw the vehicle driven by the accused coming in a



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zig-zag manner and the van hit against the lorry, which came in the opposite side. On seeing this, P.W.1 got perturbed. But immediately, he realized that an accident had occurred as the Van hit against the Lorry.

11. It is further stated by P.W.1 that after the accident, the accused did not leave the place and he was standing there. During the cross-examination, P.W.1 stated that he had also warned the parents of the children that they should not send their children in the Van of the accused. The above evidence of P.W.1 is an exaggerated version. Because, no parent would have taken the risk of sending the children in the Van driven by a driver who was a known drunkard. He further stated that he studied upto 3rd standard and the contents of the complaint has been written by the Head Constable as how it was dictated by the Inspector. So it causes a doubt on the veracity of the evidence of P.W.1 with regard to the the alleged drunken nature of the accused.

12. P.W.2, who had also attested the complaint given by P.W.1, stated in his evidence that some other person has written the complaint



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and he had attested the same. He is also known to P.W.1. Both P.W.1 and P.W.2 in their evidence had stated that they informed the school authorities about the alcoholic habit of the accused but the school authorities did not listen. It is true that the van has not been arranged by the school and hence, the school authorities could not have any control over the private van arranged by the parents of the children.

13. P.W.3 is the mother of the deceased child by name, Saravana Kumar and she had stated in her evidence that the accused used to drive the vehicle after consuming alcohol and she was sending his son in the van as she had no other alternate. It is difficult to believe that a parent like P.W.3 had taken the risk of sending her son in the same vehicle though she knew that the accused would drink alcohol daily and then only drive the vehicle. P.W.3 being the victim would have been easily influenced by what was said by other witnesses.

14. P.W.4, the father of the deceased child namely, Priya, had stated only the limited fact that he would be present in the place of



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occurrence and he had gone to the place after hearing about the accident.

15. P.W.5 is the mother of yet another deceased child by name, Aarthi and she had also given evidence and stated the facts similar to P.W.3. She had also stated that the accused would drink alcohol daily. As already stated, her evidence on this aspect should have been a tutored type, as she was one of the victims of the occurrence. P.W.5 had stated in the cross-examination that apart from the van, there are other autos available to send the children to school and take them from the school. When alternate transportation facility like autos are available, no parent would compromise the safety of their children knowing well that the driver of the van is a drunkard.

16. P.W.6 is an employee of the ice plant nearby to the place of occurrence. He had stated in his evidence that when he was loading ice on his bike, he heard the noise of a sudden break and noticed that the van driven by the accused swayed away from its track and hit against the lorry, which came in the opposite side. He had heard the children



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shouting from the Van and thereafter the accused got out of the vehicle.

The cross-examination of P.W.6 did not defeat his chief examination and he could be the natural witness, who had seen the occurrence.

17. P.W.7 one of the student passenger, who was travelling in the van, stated in her evidence that when they were travelling in the van along with other children and when the van was coming near the ice plant, she heard a sudden noise. She had stated that the accused hit the van against the lorry and in which some children died and some children got injured. She had also stated that the accused had consumed alcohol at the time when he was driving the vehicle. Except the fact that P.W.7 knew that the accused had consumed alcohol on that day, rest of her evidence appears to be cogent and natural. Since P.W.7 was a 11th standard student at the time of the accident, she would have been a matured girl to stop the accused from taking the van by informing to the parents that the accused had consumed alcohol. In the cross-examination, P.W.7 had stated that she had been travelling in a van for one year. At that time, the accused was driving the vehicle properly.



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18. P.W.8 is an eye witness, who was injured in the accident. She had injuries on her head, face and eyes and had been taken to the hospital. She stated how the accident had occurred. In the chief examination, she had stated that the accused had consumed alcohol. In the cross examination, she has stated that the accused used to drive well.

19. P.W.9 is the driver of the lorry, which involved in the accident. It is quite natural for him that he would not take blame upon himself and he would say that the accident is occurred only due to the negligence of the accused. P.W.10 has stated in his evidence that he had taken the accused on a medical memo to the hospital and examined the accused and issued drunkenness certificate.

20. P.W.12 had also got injuries in the accident. Though she has stated that the accused had consumed alcohol, she had stated in her evidence that she did not know how the accident had occurred and she had seen after the van hit against the lorry. She had further stated that the



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lorry had moved out of that place and she was travelling in the very same vehicle for nearly 1 year.

21. P.W.13 had stated that the vehicle driven by the accused was going in a zig-zag manner and after the van hit against the lorry, the rods fixed in the side of the lorry caused blood injuries to the children and they informed about the same to the driver and thereafter only, the accused stopped the vehicle. In the cross-examination, she had stated that the van has crossed the white line on the road and she had seen only after she heard the noise.

22. The Motor Vehicle Inspector, who had conducted the inspection on the vehicles has given a Motor Vehicle Report stating that the left side of the van and driver side got damaged and the damages on the lorry was found on its right side. So the above evidence would also corroborate the evidence that the accused had hit the lorry on its right side by moving from the left.



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23. P.W.17 had stated that the accused consumed alcohol. All the student witnesses have deposed evidence saying that the accused had consumed alcohol. In their cross-examination they stated that they had seen the accident after hearing the noise. The doctor, who had examined the accused had given the drunkenness certificate stating that the accused breathed alcohol but the accused was not willing to subject himself to undergo urine or blood test. The doctor has not stated that the accused was under the influence of alcohol. But the doctor who had examined the accused has not been examined as a witness. The certificate given by the doctor has been examined as Ex.P.14.

24. P.W.19, the Investigating Officer in his evidence stated that the doctor had certified that the accused consumed alcohol, but he was not under the influence of alcohol. The accused was examined by the doctor on 07.03.2014 at 9.30 p.m . After the accident he would have been terrified and stressful. It is not known whether the accused could have consumed alcohol at the time when he had taken to the hospital and in the absence of the examination of the doctor, who had examined the



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accused, it cannot be concluded that the accused smelt alcohol only because of consuming alcohol or due to some other reason like consuming tonic mixed with alcohol etc.

25. From Ex.P.14 certificate it is clear that though the accused smelt alcohol, he was not under the influence of alcohol. So it is not correct to conclude that the accused had driven the vehicle under the influence of alcohol. Even the learned trial Judge has not rendered any findings that the accused had been under the influence of alcohol at the time when the accident had occurred.

26. It is a case of accident due to negligence that the learned trial Judge had proceeded to find the accused guilty for the offence under Section 304(ii) IPC by making an observation that the accused had knowledge that he had driven the vehicle in a zig-zag manner and that it will cause the accident. None of the witnesses except one had stated that the vehicle was driven by the accused in a zig-zag manner. Though the children had stated that the accused had consumed alcohol, they had also



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stated in their cross examination that the accused used to drive well and they have been travelling in his van for more than a year.

27. As already stated, the complaint itself has been written by the Head Constable on the instruction of the Inspector of the Police. Hence, the content in the complaint that the accused had driven the vehicle while he was under the influence of alcohol could have been an addition suiting to the charges.

28. If it is proved that the accused had driven the vehicle under the influence of alcohol, it could be presumed that he had knowledge that his act would endanger the life of the children who travelled in the van. The learned trial Judge has observed that the accused had the knowledge that he had driven the vehicle in a shaky zig-zag manner which would result in an accident. None of the eye witnesses or the children, who had travelled in the van had stated that the vehicle was driven in zig-zag manner except P.W.13, who was also travelling in the vehicle.



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29. As observed already, since P.W.13, a student who was studying in 11th standard at the time of occurrence, she could have told to the school authorities or to her parents that the accused had consumed alcohol and he was about to take the vehicle only in such a condition.

30. The evidence of eye witnesses would confirm the fact that the accused had driven the vehicle in a negligent manner and he had swayed away from the centre meridian and was flying on the wrong side of the road and dashed against the lorry, which came in the opposite side. There is a difference between an accident caused due to negligence and due to which, death has occurred, than, an act, which was done with the knowledge that it would cause death or grievous injuries to any person.

31. As discussed above, the materials on record did not prove that the accused had driven the vehicle under the influence of alcohol. Even the doctor has given the drunkenness certificate stating that he consumed alcohol but not under its influence. The doctor had examined the accused at 9.15 p.m and the accident occurred at about 5.30 p.m. So, the accused,



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who was terrified and tensed due to the accident, could have either consumed alcohol to soothe him or there could be some other reason for him to smell alcohol. The doctor's opinion would only say certificate would only say that the accused was not under the influence of alcohol. Though the children had stated that the accused had consumed alcohol, it appears that they have been tutored on that particular aspect suiting to the complaint written by the police. The observation mahazar, the Motor Vehicle Inspector's report and the eye witnesses, who had seen the accident would confirm the fact that the accused had swayed away from centre meridian and that would show how negligently he had handled the vehicle with rashness, without noticing the vehicle coming on the opposite side. Hence, the accused had driven the vehicle in rash and negligent manner and caused the accident by dashing against the lorry and that had resulted in death of three children and injuries to two other children travelled in the van.

32. To convict the accused for the offence under Section, 304(part-II) IPC, the prosecution has to prove that the accused knew such act is



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likely to cause death. In this regard, it is useful to refer the judgment of the Supreme Court in **State Tr. P.S. Lodhi Colony New Delhi vs. Sanjeev Nanda** (03.08.2012 - SC) : **MANU/SC/0621/2012**

"94. Section 299 of the Indian Penal Code defines culpable homicide as an act of causing death (i) with the intention of causing death; (ii) with the intention of causing some bodily injury as is likely to cause death; and (iii) with the knowledge that such act is likely to cause death. The first and second clauses of the section refer to intention apart from knowledge and the third clause refers to knowledge apart from intention. "Intention" and "knowledge" postulate the existence of positive mental attitude. The expression 'knowledge' referred to in Section 299 and Section 300 is the personal knowledge of the person who does the act. To make out an offence punishable under Section 304(II) of the Indian Penal Code, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew such act of his is likely to cause death.

95. Section 304A, as already indicated, carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide not amounting to murder under Section 299 or murder under Section 300. The scope of the above mentioned provisions came up for consideration before this Court in the judgment of Naresh Giri v. State of M.P. (MANU/SC/4297/2007 : 2008) 1 SCC 791; wherein this Court



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Section 304A Indian Penal Code applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 Indian Penal Code. Section 304A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304A."

33. In the instant case, the accident occurred due to the negligence of the accused. Hence, this Court is of the view that the trial Judge ought to have found the accused guilty for the offences under Sections 279, 304(A) (3 counts) and 337(1 count). The fact that the deceased children were the passengers in the van had also been proved by the evidence of eye witnesses and the doctor had certified that the death could have caused due to the injuries sustained in the accident. So, the accused ought to have convicted under Sections 279, 304(A) (3 counts) and 337 (1 count) IPC.



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Offences u/s	Punishment by trial court	Modified by this Court
279 IPC	Six months(R.I) and a fine of Rs.1000/- i/d 30 days (S.I.)	Confirmed.
304-Part-II IPC (3 counts)	Seven years (R.I) for each three counts and a fine of Rs.1000/- for each three counts i/d three months(S.I) for each default	Modified to 304(A) IPC (3 counts) Two years (R.I) for each three counts and a fine of Rs.1000/- for each 3 counts i/d 3 months(S.I) for each default
337 IPC	3 months (R.I) and fine of Rs. 500/- i/d 15 days (S.I)	Confirmed

The sentences shall run concurrently. The period of imprisonment already undergone by the accused is set off under Section 428 Cr.P.C. The trial court shall take steps to secure the accused to undergo the remaining period of imprisonment.

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- To,
- 1.The Additional District and Sessions Court,
Ramanathapuram
 - 2.The Inspector of Police,
Thondi Police Station,
Ramanathapuram District
(Crime No.42 of 2014)
 - 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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CM

Judgment made in
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