



Crl.A.No.701 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 29.01.2026

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.701 of 2016

Suresh

... Appellant/Accused

Versus

State Rep. by,
The Inspector of Police,
V.5 Thirumangalam Traffic Investigation,
Villivakkam, Chennai – 600 049.
(Crime No.182/TM/.1/12)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment of the learned XVIII Additional District and Sessions Judge, Chennai in S.C.No.163/2014 dated 26.07.2016, convicting the appellant/accused herein for the offences under Sections 304[ii] IPC and sentenced him to undergo three years rigorous imprisonment and fine of Rs.5,000/- in default to undergo two months rigorous imprisonment for the offence under Section 304[ii] of IPC, he was convicted for the offence under section 337 IPC [two counts] and fined of Rs.5000/- and in default to undergo two weeks simple imprisonment, he was further convicted for the offence under section 338 IPC and fined Rs.1000/- and in default to undergo simple imprisonment of two weeks and he was further convicted for the offence under section 185 M.V.Act and fined 2000/- and in default to undergo SI for two weeks and he was further convicted for the office under section 411 read with 177 MV Act and fined Rs.1000/- and in default undergo one week simple imprisonment.

For Appellant : Mr.S.I.Sharukumar
for Mr.K.Elangovan

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl. Side)



Crl.A.No.701 of 2016

J U D G M E N T

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The appellant/accused in S.C.No.163/20184 was convicted by the trial Court by the judgment dated 26.07.2016 for the offence under Section 304[ii] IPC and sentenced him to undergo three years rigorous imprisonment and fine of Rs.5,000/- in default to undergo two months rigorous imprisonment for the offence under Section 304[ii] of IPC, he was convicted for the offence under section 337 IPC [two counts] and fined Rs.5000/- and in default to undergo two weeks simple imprisonment, he was further convicted for the offence under section 338 IPC and fined Rs.1000/- and in default to undergo simple imprisonment for two weeks and he was further convicted for the offence under section 185 M.V.Act and fined 2000/- and in default to undergo simple imprisonment for two weeks and he was further convicted for the offence under section 411 read with 177 MV Act and fined Rs.1000/- and in default undergo one week simple imprisonment. Aggrieved against the said conviction, the appellant/accused filed this appeal.

2.(i) The case of the prosecution is that on 05.06.2012, the petitioner was found driving a Tata Sumo Car bearing registration No.TN20 BF 8014 at about 5 p.m. in a rash and negligent manner on the wrong side of the road near Singaram Pillai Girls Matriculation Higher Secondary School towards



Crl.A.No.701 of 2016

East and dashed against the deceased who was walking on the eastern side and thereafter, dashed against three persons, Jeyan, Arunpandi and Thiagarajan sitting on a culvert and one of the injured Arunpandi got stuck under the vehicle and he was dragged to 60 ft. and thereafter, vehicle stopped. The public caught hold of the driver and sent Arunpandi and Jeyan to Kilpauk Medical College Hospital for treatment. The other two injured, viz., P.W.1 Thiagarajan and the deceased taken to Rajiv Gandhi Government Hospital. P.W.9 examined Kuppusamy and declared that he was brought dead.

(ii) P.W.2 lodged a complaint to P.W.13 who received the complaint and registered the First Information Report on the same day. The accused and the vehicle produced and handed over to the police and P.W.11 examined the accused and his blood and urine samples collected and sent for chemical examination and report received, based on the report Ex.P.10, P.W.11 doctor confirmed his blood contained 92 ms % Ethel Alcohol and the urine contained 115 ms % Ethel alcohol. Thereafter, P.W.13, Inspector of Police, continued investigation, proceeded to the scene of occurrence and prepared Ex.P.2 Observation Mahazar in the presence of P.W.5 Venkatesan and one Vadivel and drew Ex.P.13 rough sketch. P.W.10 doctor conducted



Crl.A.No.701 of 2016

postmortem on the body of the deceased and gave opinion that the deceased died due to shock and haemorrhage and due to multiple injuries sustained by him. The vehicle driven by the accused was produced to Motor Vehicle Inspector P.W.7, who inspected the vehicle and gave his Report Ex.P.3 stating that the accident was not due to any mechanical defect. After collecting accident registers of the injured witnesses and on conclusion of investigation, P.W.13 filed charge sheet in this case.

3. During trial, on the side of the prosecution PW1 to PW13 examined, Exs.P1 to P14 marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

4. The learned counsel for appellant submitted that in this case, though three persons have been projected as injured eye witnesses, P.W.1 injured eye witness confirmed that he had not seen the driver of the vehicle. P.W.2, defacto complainant, who a projected eye witness, had stated about the accident and sending the injured to the hospital through 108 ambulance. He had specifically stated that he had not seen the driver of the vehicle. He further submitted that the complaint has been written in the police station and he signed in E.x.P.1. P.W.3 is the neighbour of the deceased Kuppusamy and



Crl.A.No.701 of 2016

she along with Kuppusamy's wife are members of self help group and they are closely associated with each other. Though P.W.3 projected as eye witness, she has not seen the driver of the vehicle and she saw the appellant only in the police lock up and thereafter in the Court. P.W.4, the other injured witness, who is said to be gone under the vehicle, dragged for 60 feet and sustained serious injuries. Though states he had seen the accused driving the vehicle and public caught hold of the accused and beaten him, it cannot be so, since it is the case of the prosecution that P.W.4 was under vehicle and he was dragged to 60 ft. and in such circumstances, he could not have seen the accused driving the car.

5. It is his further contention that P.W.5 who is the witness to observation mahazar had stated that photographs were taken in the accident spot and no such photographs produced and he admits that on the request of police, he signed the observation mahazar. P.W.6 is the employer of the accused. P.W.7 Motor Vehicle Inspector. P.W.8 and P.W.9 are doctors attached to Rajiv Gandhi Hospital, who treated P.W.1 and P.W.4 and gave accident registers. P.W.10 is the Postmortem doctor. P.W.11 also treated P.W.1 and gave accident registers.



Crl.A.No.701 of 2016

6. He further submitted that P.W.11 through whom Ex.P.10 and Ex.P.11 chemical analysis report and the certificate of drunkenness marked.

In this case, non examination of the scientific officer of the Forensic Department who issued Ex.P.10 is fatal. Further, P.W.11 who issued drunkenness certificate state that on 05.06.2012, blood and urine sample of the accused taken for analysis and no opinion given in the report with regard to the percentage of alcohol present in blood and urine. From the scientific officer opinion, percentage of alcohol later recorded. Hence, submitted that there is nothing to show appellant admitted drunkenness and given consent to take blood and urine sample. Except E.xP.10, there is no other material to show that the appellant was under the influence of alcohol at the time of the accident. He further submitted that P.W.13, investigation officer admits he visited the accident spot at about 10 p.m. and there he examined the complainant P.W.2 who identified the appellant and handed him to P.W.13. In the drunkenness certificate issued by P.W.11, it is recorded that the appellant was seen by him at 9.05 p.m. In this case all the documents reached the Court belatedly. In view of contradiction and disparity in the documents, it cannot be said that the appellant was under the influence of alcohol at the time of the accident and he had driven the vehicle in a rash and negligent manner. Hence, it is his submission that these facts have not been considered



Crl.A.No.701 of 2016

by the trial Court and prayed for setting aside the sentence and conviction.

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7. The learned Government Advocate (Crl. Side) submitted that in this case, there are four eye witnesses, P.W.1 to P.W.4 and out of them, two are injured eye witnesses and their evidence cannot be brushed aside. Their presence in the scene of occurrence and they sustaining injury due to rash and negligent act of the accused, three persons sustained injuries and one run over and died on the spot proved by the prosecution. The deceased and P.W.4 were taken in 108 ambulance to Rajiv Gandhi Government Hospital and P.W.1 and Jeyan were sent in a vehicle to Kilpauk Medical College Hospital. P.W.11 examined the accused and given drunkenness certificate. When P.W.11 examined the appellant, he admitted consuming alcohol and eyes found with reddishness. The blood and urine samples collected and the same sent for chemical examination. P.W.11 casualty doctor examined the accused confirmed presence of alcohol in the samples, the appellant under the influence of alcohol driven the vehicle in a rash and negligent manner and caused the accident. P.W.7 Motor Vehicle Inspector, who inspected the vehicle confirmed accident was not due to any mechanical defect. During trial, all witnesses supported the case of the prosecution, confirmed that the accused driven the vehicle in a rash and negligent manner who caused the



Crl.A.No.701 of 2016

accident and he was under the influence of alcohol, due to which one person died on the spot and another person sustained grievous injuries who took treatment in the hospital for more than four months. Further two other persons also sustained injuries in the accident. Considering all these aspects, the trial Court rightly convicted the accused and hence, prayed for dismissal of this appeal.

8. In this case, P.W.2 is the defacto complainant, who is present in the scene of occurrence. The prosecution case is that the appellant driven the Tata Sumo Car on the wrong side of the road near Singaram Pillai Girls Higher Secondary School and he dashed against one Kuppusamy who was walking on the eastern side and also dashed against the three persons who were sitting in a culvert and P.W.4 got under the vehicle and he was dragged to 60 ft. Thereafter, the crowd gathered and the vehicle stopped, the accused was pulled out from the vehicle and he was beaten, detained in the scene of occurrence. P.W.2 handed over the appellant and the vehicle to P.W.13, the Investigating Officer. P.W.4 and injured Kuppusamy was sent in 108 ambulance to Rajiv Gandhi Government Hospital and P.W.4 was admitted in the hospital and injured Kuppusamy was declared brought dead. P.W.8, doctor gave treatment to P.W.4. P.W.13 Inspector of Police, conducted



Crl.A.No.701 of 2016

investigation, visited scene of occurrence, examined P.W.2 and recorded his statement. The appellant was sent for medical examination, P.W.11 examined the appellant and collected blood and urine samples and issued drunkenness certificate. P.W.11 treated P.W.1 and Jeyan. P.W.10 postmortem doctor the death of Kuppusamy and opined in the postmortem certificate that the deceased died due to shock and haemorrhage.

9. In this case, P.W.1 to P.W.4 all deposed confirming appellant was driving the vehicle on the wrong side of the road caused the accident. P.W.11 doctor confirmed appellant was under the influence of alcohol. P.W.11 had examined the appellant on 05.06.2012 and collected blood and urine samples and found alcohol smell and reddishness in his eyes. After getting chemical analysis report, finding the percentage of Ethyl alcohol, P.W.10 had certified appellant was under the influence of alcohol.

10. The contention of the learned counsel appearing for the appellant that the chemical analyst, who had given chemical analysis report not been examined and Ex.P.10 marked through P.W.11, investigating officer. Further no written consent obtained from the appellant for medical examination are now raised for the first time. P.W.11 doctor given opinion on the basis of the



Crl.A.No.701 of 2016

report Ex.P.10 drunken state of appellant, though there are some infirmities in the investigation, but the fact that driving of the Tata Sumo Vehicle at the time of occurrence by the appellant proved by the employer, P.W.6 and rash and negligence by P.W.1 to P.W.4. Hence, the trial Court had rightly convicted the appellant.

11. Considering the age of the appellant at the time of accident and that he is married, having a child and has to take care his family, he is the bread winner for his family and, appellant as a driver by profession. The learned Government Advocate [Criminal Side] submitted that except for this solidly incident of accident the appellant not involved in any other case, in this case the appellant was in remand from 06.06.2012 to 21.06.2012 under trial and thereafter, after conviction he was in prison from 26.07.2016 to 17.07.2017, the appellant is in prison for more than one year. The conviction sustained and the sentence is modified to the period already undergone.

12. In view of the above, the conviction of the petitioner for the offence under Section 304[ii] of I.P.C. is confirmed. But the sentence is modified to period already undergone by the appellant.



Crl.A.No.701 of 2016

13. In the result, the Criminal Appeal is partly allowed.

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29.01.2026

Index : Yes / No

Neutral citation : Yes / No

Internet : Yes/No

Speaking / Non-speaking order

To

1. The XVIII Additional Judge,
City Civil Court, Chennai.
2. The Public Prosecutor,
High Court, Madras.



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Crl.A.No.701 of 2016

M.NIRMAL KUMAR, J.

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Crl.A.No.701 of 2016

29.01.2026