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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05-11-2026

CORAM

THE HON'BLE MR.JUSTICE D.LINGESWARAN

CRL A(MD) No. 108 of 2019

CNR:{HCMD010344882019}

Case QR

Muthiah,
S/o.Subbiah, 21/14, Thaika Street, Tenkasi,
(Now Confined In Central Prison, Madurai)

..Petitioner(s)

Vs

The Inspector of Police,
Andipatti Police Station, Theni District
(Crime No.107/2016)

..Respondent(s)

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. 1973 to set aside the conviction and sentence passed in S.C. No.141 of 2016 dated 12.10.2018 by the learned Additional District and Sessions Judge, (Fast Track) Theni.

For Petitioner(s) :Mr S. Ravi

For Respondent(s) : Mr. G. Ganesh Kumar
(Government Advocate)

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JUDGMENT

The case of the prosecution is that the appellant, Muthiah, was driving a lorry bearing registration number PY 03 8877 on the Theni–Madurai High Road at about 14:00 hours on 06.03.2016, under the influence of alcohol. Near the Government Hospital, Andipatti, he drove the lorry in a rash and negligent manner at high speed and straight into a crowd gathered near the hospital, hitting Pandiyan and Parthasarathy. He then drove the lorry from the northern side of the road to the southern side, hitting a Tata Magic Van and an auto-rickshaw on the way, and thereafter two EB poles. The appellant did not stop; he sped away. Auto-rickshaw drivers, including PW-1, chased him in another vehicle, and the lorry could be stopped only at a nearby checkpost. The appellant was arrested there.

2. Pandiyan died at the spot, and Parthasarathy died on the way to the hospital. Three persons sitting in the Tata Magic Van and one pedestrian (PW-5) sustained injuries. On completion of the investigation, the police laid a final report against the appellant for offences under Section 185 of the Motor Vehicles Act, 1988 and under Sections 279, 304 Part II (two counts), 337 (four counts) and 427 of the Indian Penal Code,1860 (IPC). The final report was filed before the Judicial

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Magistrate, Andipatti, and taken on file as PRC No. 6 of 2016. After due process, the learned Magistrate committed the case to the Principal Sessions Judge, Theni, who made it over to the Additional Sessions Judge, Theni, for trial.

3. The trial court examined 18 witnesses and marked 17 documents; no material object was marked. The defence adduced neither oral nor documentary evidence.

4. On consideration of the entire evidence, the trial court held that the prosecution had proved the offences under Sections 279, 304 Part II (two counts) and 337 (four counts) of the IPC and Section 185 of the Motor Vehicles Act. Although it convicted the appellant under Section 279 of the IPC and Section 185 of the Motor Vehicles Act, the trial court imposed no sentence for those two offences. It sentenced the appellant only under Section 304 Part II (two counts) and Section 337 (four counts) of the IPC: seven years of rigorous imprisonment and a fine of Rs. 5,000/- for each count under Section 304 Part II, and a fine of Rs. 1,000/- for each of the four counts under Section 337. The appellant was acquitted of the offence under Section 427 of the IPC.

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5. Aggrieved by the judgment of conviction and the sentence, the appellant has preferred this appeal.

6. Both sides were heard.

7. The learned counsel for the appellant submitted that, although the appellant was produced before a medical officer, he was not subjected to a breath analyser test or any laboratory test, and no blood sample was drawn to determine the alcohol content of his blood. The learned Counsel for the appellant contended that the trial court relied solely on Exhibit P-12, the drunkenness certificate issued by the doctor (PW-17), to conclude that the appellant was under the influence of alcohol. He found fault with this approach, pointing out that the doctor did not certify that the appellant was under the influence of alcohol and that, since no blood test was conducted, the alcohol content of the blood was not established.

8. The learned Counsel for the appellant further submitted that the witnesses did not identify the appellant as the driver of the lorry involved in the accident. In the alternative, he argued that, at the worst, the case was one of death by negligence, and he prayed for appropriate relief.

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9. Per contra, the learned Government Advocate (Criminal Side) submitted that the appellant was caught red-handed. He relied on the Motor Vehicle Inspection Report (Exhibit P-5), which records damage to the lorry, and on the evidence of eyewitnesses, including PW-1, who clearly identified the appellant as the driver. He further submitted that the witnesses, by their own observation, and the doctor had both stated that the appellant was under the influence of alcohol. He added that PW-1 and the other injured witnesses clearly spoke to the rash and negligent driving, and that the accident was not caused by mechanical or brake failure. He therefore prayed that the conviction and sentence be upheld.

10. This Court has carefully considered the rival submissions.

11. **Point for consideration:**

Whether the Judgment of conviction and sentence passed by the Trial Court is sustainable?

12. PW-1, the complainant, is an eyewitness. He deposed clearly that he knew the accused and that, at about 2:00 PM on 06.03.2016, the accused drove the lorry bearing registration number PY-03-8877 in a rash and negligent manner. The lorry hit two persons standing in front of the

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Government Hospital, Andipatti, turned to the right and hit an auto-rickshaw bearing registration number TN 60 F 7084, hit two electric poles, and then hit a Tata Magic van. According to PW-1, it also hit Mahalakshmi, Veeralakshmi, Vipin Raj and Gowri. Even then the driver did not stop and drove towards Madurai.

13. PW-1 and Chinnasamy boarded another auto-rickshaw and chased the lorry. They could intercept it only near a checkpost some distance away. They stopped the lorry and pulled the driver out, and PW-1 observed that the driver appeared to be under the influence of alcohol. He then learnt the identity of the appellant. PW-1 was subjected to detailed cross-examination. He identified the accused categorically, narrated the sequence of events consistently, and proved his complaint, Exhibit P-1. Nothing was elicited to discredit his evidence.

14. PW-2, Mahalakshmi, is an injured eyewitness and spoke clearly about the rash and negligent driving of the appellant. In cross-examination, the rashness and negligence were not disputed. PW-3, PW-4, PW-5 and PW-9 were also eyewitnesses, few of them injured. There can therefore be no doubt that the appellant drove the lorry in a rash and negligent manner.

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15. The evidence of the injured witnesses and the other eyewitnesses establishes that the lorry was driven at high speed and that it did not stop even after hitting two persons, two vehicles, two electric poles and a further pedestrian. This shows that the appellant drove not only rashly and negligently but also recklessly, in that he failed to stop after causing a chain of collisions. He was intercepted and arrested immediately afterwards, so the plea of mistaken identity cannot be sustained. Further, the Motor Vehicle Inspection Report (Exhibit P-5) records damage on the right side of the lorry, which is consistent with the rough sketch and with the manner of the accident described by the witnesses.

16. The police took the appellant to a Medical Officer. Knowing the history of the case, the doctor ought to have drawn a blood sample from him. Instead, the drunkenness certificate bears an endorsement suggesting that the appellant admitted drinking and did not want a blood test. That endorsement was made by the police, not by the doctor, and the doctor failed in his duty by relying on it. Where a person is brought to a doctor after an accident in which two persons died and several were injured, the doctor should have taken a blood test. Section 185 of the Motor Vehicles Act requires proof that the driver had alcohol in his blood

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exceeding 30 mg per 100 ml, as shown by a breath analyser test or a laboratory test of the blood. It is admitted that neither test was conducted. The doctor merely signed a printed certificate of drunkenness and recorded no specific opinion. PW-17, in his examination-in-chief, said that Exhibit P-12 certified that the appellant had consumed alcohol and was under the influence of alcohol. In cross-examination, however, he clarified that Exhibit P-12 did not state that the appellant was under the influence of alcohol, and he admitted that the endorsement was made by the police. These contradictions, together with the lack of any specific opinion in the certificates, make it unsafe to rely on Exhibit P-12 to prove that the appellant was under the influence of alcohol. The observation of PW-1 that the appellant appeared to be drunk may show that the appellant had consumed alcohol, but a lay impression cannot substitute for the proof the statute requires. There is therefore no reliable evidence that the appellant had alcohol in his blood beyond the permitted limit. The conviction under Section 185 of the Motor Vehicles Act cannot be sustained.

17. The prosecution having failed to prove that the appellant was under the influence of alcohol at the time of the accident, one aggravating circumstance on which the conviction under Section 304 Part II of the

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IPC rested is absent. That section requires proof that the accused acted with the knowledge that his act was likely to cause death, though without intention to cause it. Rashness and negligence, however gross, do not by themselves establish such knowledge.

18. The learned Government Advocate (Criminal Side) relied on ***Alistair Anthony Pareira v. State of Maharashtra (AIR2012SC3802)*** to contend that an offence under Section 304 Part II can be sustained on the proved facts even if the appellant was not under the influence of alcohol. This Court has carefully considered that decision. It is distinguishable. There, it was categorically found that the accused was under the influence of alcohol and knew the route of the accident very well, since he lived in the same locality and travelled that route many times a day. Here, the appellant was a stranger to the area, and nothing on record shows that he was familiar with the locality. The complaint itself records that he was a resident of Tirunelveli. The two factors from which the Hon'ble Supreme Court inferred knowledge in that case, namely intoxication and familiarity with the place, are absent here.

19. The learned counsel for the appellant relied on the decision of the Honourable Supreme Court in ***Prabhakaran v. State of Kerala(2007***

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14 SCC 269) for the proposition that the appellant had neither intention nor knowledge that his driving would cause death, and that the case is one of rashness and negligence alone. This contention has force. The oral evidence and the rough sketch (Exhibit P-14) show that the lorry was being driven on the left side of the road, at its northern end, where a crowd had gathered in front of the Government Hospital, Andipatti. The lorry first hit two persons in the crowd. The sketch indicates that the appellant then turned the lorry to his right, apparently to avoid further harm, and in doing so hit two more vehicles and two electric poles. After hitting the poles on the right side, the lorry turned to the left and moved on. It is plausible that the appellant sped away out of panic. That conduct is reprehensible and aggravates the offence, but it is equally consistent with fear as with knowledge, and it does not by itself prove that he knew his driving would in all probability cause death.

20. The rough sketch (Exhibit P-14) speaks for itself. There is no doubt that the lorry was driven at high speed and that the appellant was rash and negligent. However, in the absence of proof that he was under the influence of alcohol, the knowledge required for an offence under Section 304 Part II of the IPC cannot be attributed to him.

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21. This Court therefore finds that the appellant had no intention to cause death and no knowledge that his act would in all probability cause death. This is a case of rash and negligent driving, which was the direct cause of the death of two persons, the injury of four others and damage to vehicles. The conviction under Section 304 Part II of the IPC is accordingly altered to one under Section 304A of the IPC. As two persons died in the accident, the conviction under Section 304 Part II (two counts) is altered to Section 304A (two counts).

22. The trial court found that the four injured persons sustained only simple injuries and was lenient in imposing only a fine of Rs. 1,000/- for each count. This Court therefore does not interfere with the punishment under Section 337 of the IPC (four counts). On sentence for the offence under Section 304A, this Court recalls the observation of the Honourable Supreme Court in paragraph 9 of ***Prabhakaran v. State of Kerala,*** that the maximum punishment of two years provided under Section 304A is grossly inadequate and that it is for the legislature to provide an appropriate sentence. '***Prabhakaran's case*** concerned the death of a ten-year-old boy. This case concerns the deaths of two persons. Further, it is only because of the carelessness of the investigating officer and the doctor who examined the appellant that the charge under Section

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185 of the Motor Vehicles Act could not be proved; had it been proved, the position would have been materially different. Taking these circumstances into account, together with the recklessness of the appellant in not stopping the vehicle after the accident, this Court considers it fit to award the maximum sentence of two years of rigorous imprisonment for each count under Section 304A of the IPC. Since the deaths of two different persons are separate offences, each warranting its own punishment, and since the statutory maximum for each is grossly inadequate, this Court exercises its discretion under Section 31 of the Code of Criminal Procedure to direct that the sentences run consecutively.

23. The fine imposed by the trial court is maintained for the altered offence. The conviction under Section 279 of the IPC is upheld. The trial court imposed no punishment for that offence on the ground that the punishment under the other provisions would suffice. Although this is not the proper course, this Court does not impose any further imprisonment in an appeal preferred by the accused. The point is answered accordingly.

24. In the result, the appeal is partly allowed. The conviction of the appellant under Section 304 Part II of IPC (two counts) is altered to a

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conviction under Section 304 A of IPC (two counts) and the sentence is modified to two years of rigorous imprisonment with a fine of Rs. 5,000/- for each count with default sentence imposed by the Trial Court. The sentence of imprisonment is ordered to run consecutively. The conviction of the appellant under Section 337 of IPC (four counts) and the sentence of fine of Rs.1,000/- imposed by the Trial Court with default clause are upheld. The conviction under Section 279 of IPC is upheld. The appellant is acquitted under Section 185 of IPC. The bail bonds executed by the appellant stands cancelled. The appellant, who is on bail, is directed to surrender immediately before the trial court to undergo the remaining period of the sentence. The appellant is entitled to set off the period of imprisonment already undergone.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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D.LINGESWARAN, J.
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To

1. The Inspector Of Police
   Andipatti Police Station, Theni District (Cr.No.107/2016)

2. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai

3.Section Officer (VR Section)
Madurai Bench of Madras High Court.

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