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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24-07-2026**PRONOUNCED ON : 16-09-2026**

CORAM

THE HON'BLE MR. JUSTICE G.ARUL MURUGAN**CRL A No. 512 of 2022**

Udhayakumar

..Appellant(s)

Vs

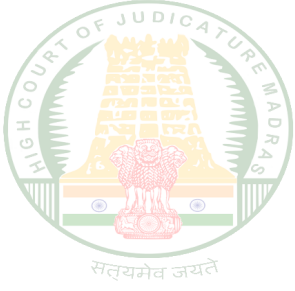
State represented by its
Inspector of Police,
J-2, Adyar Police Station,
Chennai – 600090.
Crime No. 898/AM3/14

..Respondent(s)

PRAYER: Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973, to set aside the Judgment dated 28.04.2022 in S.C.No.221 of 2015 on the file of the III Additional Sessions Judge, Chennai convicting the appellant under Section 279 and 304-A of Indian Penal Code, 1860 (as amended) and convicted and sentenced him to simple imprisonment for six months for offence punishable under Section 279 of IPC and one year for offence punishable under Section 304-A of IPC and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for 1 month and both the sentences are to run concurrently.

For Appellant(s): Dr.G.Krishnamurthy

For Respondent(s): Mr.M.Dinesh
Government Advocate (Criminal Side)

**JUDGMENT**

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The appellant, who is the sole accused, has filed the present appeal challenging the judgment dated 28.04.2022 made in S.C.No.221 of 2015 on the file of the III Additional Sessions Court, Chennai.

2. The appellant was convicted by the Trial Court for the offences under Sections 279 and 304-A of the Indian Penal Code (IPC), 1860 and sentenced as follows:

S.No.	Offence	Sentence	Fine
1	Sec. 279 of IPC	6 Months Simple Imprisonment	Rs.1000 in default one month imprisonment
2	Sec.304-A of IPC	1 Year Simple Imprisonment	
Sentence to run concurrently			

3. It is the case of the prosecution that, on 03.11.2014 at about 7.00 a.m., when PW1 was travelling in a car on Durgabai Deshmuk Flyover, he noticed a private bus proceeding from North to South at a high speed and in a rash and negligent manner. The bus hit the auto proceeding in front of it. On hearing a loud noise, PW1 went to the spot and found the driver of the auto, aged about 60 years, lying on the road with injuries on his head and right elbow. The



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injured was sent to Royapettah Hospital in an 108 Ambulance. The auto was bearing Registration No. TN-07-AZ-0799 and the private bus was bearing Registration No. TN-21-AU-4015. When PW1 enquired with the driver who had got down from the bus, he disclosed his name as Udayakumar/accused. The accused was allegedly under the influence of alcohol. There was a huge crowd at the place of occurrence. PW9/Traffic Inspector, visited the scene and received the complaint (Ex.P1), from PW1. The injured person, who had been taken to the hospital, died on the same day.

4. PW9 recorded the statements of PWs.1 and 2 under Section 161 of Cr.P.C. FIR/Ex.P8, was registered and the Observation Mahazar, (Ex.P2), and Rough Sketch, (Ex.P9) were prepared in the presence of PWs.4 and 5. PW9 conducted the inquest over the dead body, which was marked as Ex.P11, and intimated PW3, the wife of the deceased, for identification. PW7, the Doctor, examined the accused and issued the medical certificate, marked as Ex.P6. The Doctor/PW8 who conducted the post-mortem issued the Post-Mortem Certificate/Ex.P7. PW6/the Motor Vehicle Inspector, conducted inspection, examined the vehicles and issued the Motor Vehicle Inspection (MVI) Report in respect of the bus, marked as Ex.P4, and the Motor Vehicle Inspection (MVI) Report in respect of the auto, marked as Ex.P5.



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5. PW9 completed the investigation and filed the final report before the XVIII Metropolitan Magistrate, Saidapet, in P.R.C.No.4 of 2015 for the offences under Sections 279 and 304(ii) of IPC and Section 185 of the Motor Vehicles Act. The learned Magistrate complied with Section 207 of Cr.P.C. and, since the offences were exclusively triable by the Court of Session, committed the case to the Sessions Court. On committal, the Trial Court framed the charges. When questioned, the accused pleaded not guilty and stood trial. In order to prove the charges, the prosecution examined PWs.1 to 9 and marked Exs.P1 to P11. On completion of the prosecution evidence, the accused was questioned under Section 313 of Cr.P.C. with regard to the incriminating materials available against him. He denied the same as false. However, no oral or documentary evidence was adduced on behalf of the defence.

6. After hearing the arguments on either side and considering the evidence on record, the Trial Court concluded that the charges under Section 304(ii) of IPC and Section 185 of the Motor Vehicles Act had not been proved. However, the Trial Court held that the offence under Section 304-A of IPC being the lesser offence than Section 304(ii) of IPC and charge under Section 279 of IPC had been established and accordingly convicted the appellant under Section 279 and Section 304-A of IPC and imposed the sentence as referred to



above. Challenging the conviction and sentence imposed upon him, the accused has preferred the present appeal.

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7. The learned counsel appearing for the appellant submitted that there is serious doubt regarding the very recording of the complaint (Ex.P1), and the registration of the FIR (Ex.P8). PW1 had admitted that he had not given the complaint and had merely signed the complaint prepared by PW9. He further submitted that, having rightly found that the charge under Section 304(ii) of IPC and the charge under Section 185 of the Motor Vehicles Act had not been proved, the trial Court erred in holding that the offences under Sections 279 and 304-A IPC had nevertheless been established.

8. The learned counsel further submitted that mere speed driving would not constitute an offence under Sections 279 and 304-A of IPC and that both rashness and negligence have to be established by the prosecution in order to sustain a conviction under the said provisions and there is no material to establish that the appellant was driving the bus in a rash and negligent manner so as to cause the accident. He further submitted that the evidence of PW2 is unreliable and improbable, as PW2 had not witnessed the accident and the trial Court erred in convicting the appellant despite the absence of cogent evidence



establishing the charges.

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9. Per contra, the learned Government Advocate (Criminal Side) appearing on behalf of the State submitted that PW1 and PW2 had clearly deposed about the rash and negligent driving of the bus by the appellant, which sufficiently establishes the charge. In the absence of any defect in the vehicle, as established from Ex.P4 and Ex.P5 and the evidence of PW6, and there being no explanation or defence evidence, it is only the rash and negligent driving of the appellant that resulted in the accident and the consequent loss of life. PW3, the wife of the deceased had identified the deceased and the evidence of the Doctor/PW8, coupled with the Post-Mortem Certificate (Ex.P7), establishes that the deceased died as a result of the injuries sustained in the accident.

10. The learned Government Advocate further submitted that, though the trial Court found that the charge under Section 185 of the Motor Vehicles Act could not be sustained in the absence of the blood test report, however on the basis of the evidence of PW1 and PW2, coupled with the other materials available on record, rightly convicted the appellant under Sections 279 and 304-A of IPC. Hence, no interference is warranted.



11. Heard the rival submissions and perused the materials available on record.

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12. The accident occurred on 03.11.2014 at about 7.00 a.m. The appellant was charged for the offences under Sections 304(ii), 279 of IPC and Section 185 of Motor Vehicle Act. The Trial Court, upon finding that the charge under Section 304(ii) of IPC and Section 185 of MV Act had not been established, nevertheless, on the basis of the evidence of PW1 and PW2, came to the conclusion that the appellant had driven the bus in a rash and negligent manner, resulting in the accident and accordingly convicted him under Sections 279 and 304-A of IPC. The appellant has challenged the conviction and sentence imposed on him.

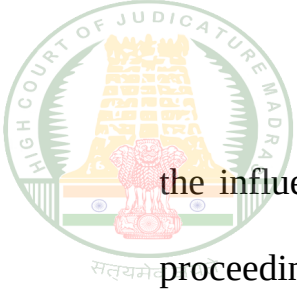
13. PW1 had deposed that, during the incident he was driving his car over the Adyar Bridge near Malar Hospital towards Durgabai Deshmuk Road. He had further stated that vehicles could proceed on the bridge only from North to South direction and not from South to North, as it is a one-way bridge. There is a three-feet-high steel safety barrier on either side of the bridge. If a vehicle hits the safety barrier, there is a possibility of the vehicle falling down from the bridge. PW1 further deposed that, on 03.11.2014 at about 7.00 a.m., while he



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was travelling in his car, a bus proceeding in front of him from North to South at high speed and in a rash manner hit the auto which was proceeding in front of the bus. Due to the impact, the auto toppled and its driver, aged about 60 years, sustained injuries in his head and elbow and was lying on the road. The accused was allegedly under the influence of alcohol and had hidden behind the bus. PW1 identified the accused. He further stated that, since he did not know to read and write, PW9 prepared the complaint, and he affixed his signature therein. In cross-examination, PW1 admitted that he had not noticed on which side of the road the auto was driven. He had also not noticed the name of the bus. He stated that the bus had a seating capacity of about 40 or 50 persons. He further stated that the driver was present at the scene and that a person who came on a two-wheeler informed the 108 Ambulance.

14. PW2 deposed that, on 03.11.2014 at about 7.00 a.m., he was proceeding on a two-wheeler to meet a relative at Thiruvannamiyur. While he was proceeding on the Adyar Bridge, the bus bearing Registration No. TN-21-AU-4015 was coming from behind him. The bus by speeding overtook him and hit the auto, resulting in the accident. When he went to the spot and saw, he found the auto driver, aged about 60 years, lying on the road with injuries to his head and elbow. He stated that the accused, who was driving the bus, was under

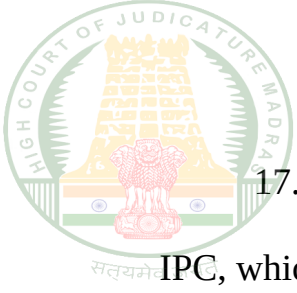


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the influence of alcohol. In the cross-examination, PW2 stated that a car was proceeding in front of him, which was behind the auto. He also stated that the bridge was a one-way bridge. According to him, the bus overtook him and thereafter hit the auto, resulting in the accident. He further stated that he informed the ambulance after the accident and that the accused driver had gone behind the bus and hid himself.

15. PW3, the wife of the deceased, deposed that at about 3.00 p.m., she received information regarding the accident and thereafter went and identified her husband. PW4 and PW5 were the witnesses in whose presence PW9 prepared the Observation Mahazar, (Ex.P2) and the Rough Sketch, Ex.P9. PW7/Doctor who examined the accused, deposed that there was a smell of alcohol from the accused. However, no blood test was conducted. PW8/Doctor who conducted the post-mortem examination, issued the Post-Mortem Certificate, (Ex.P7). He noted injuries to the skull and elbow and opined that the deceased would have died due to shock and coma as a result of multiple injuries.

16. PW6/Motor Vehicle Inspector, examined both the bus and the auto and issued the Motor Vehicle Inspection Reports, Ex.P4 and Ex.P5.



17. At this juncture, it is appropriate to refer to Sections 279 and 304-A

IPC, which read as follows:

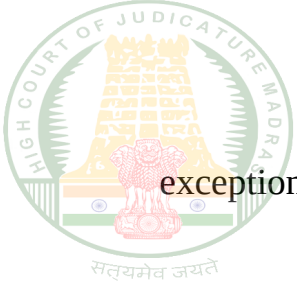
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“Section 279 - Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 304-A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

18. The Hon'ble Supreme Court, in the case of ***State of Karnataka vs. Satish¹***, has held that ‘High Speed’ is a relative term and merely driving a vehicle at a high speed would not, by itself, constitute rashness or negligence. Unless rashness or negligence is independently established, high speed alone cannot be made the basis for conviction. Always burden rests on the prosecution to prove the charge beyond doubt and there is presumption of innocence in favour of the accused until the contrary is proved, subject to statutory

¹ (1998) 8 SCC 493

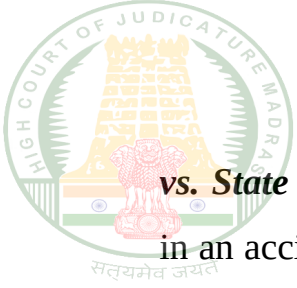


exceptions if available. The relevant portion of the judgment is extracted below:

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“4. Merely because the truck was being driven at a “high speed” does not bespeak 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. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. 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”. There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.”

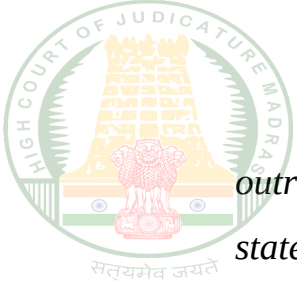
19. Further, the Hon'ble Supreme Court, in the case of **Ravi Kapur**



vs. State of Rajasthan², held that the negligence on the part of the accused in an accident can also be gathered from attendant circumstances, however only if the action of the victim or any third party being a cause for the accident, is ruled out from the evidence on record. The relevant portion of the judgment is extracted below:

“20. In light of the above, now we have to examine if negligence in the case of an accident can be gathered from the attendant circumstances. We have already held that the doctrine of res ipsa loquitur is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the court with the aid of proper evidence may take assistance of the attendant circumstances and apply the doctrine of res ipsa loquitur. The mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence. In cases where negligence is the primary cause, it may not always be that direct evidence to prove it exists. In such cases, the circumstantial evidence may be adduced to prove negligence. Circumstantial evidence consists of facts that necessarily point to negligence as a logical conclusion rather than providing an

² (2012) 9 SCC 284



outright demonstration thereof. Elements of this doctrine may be stated as:

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- * The event would not have occurred but for someone's negligence.
- * The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.
- * The accused was negligent and owed a duty of care towards the victim.”

20. From the aforesaid decisions, it is clear that driving at high speed alone by itself does not constitute ‘Rashness’ or ‘negligence’ but the rash or negligent act of the accused that resulted in the accident, has to be independently established by the prosecution.

21. In the instant case, the trial Court placed heavy reliance on the evidence of PW1 and PW2, coupled with the evidence of PW6, the Motor Vehicle Inspector, who had found no defect in the vehicles, and came to the conclusion that the accident had occurred due to the negligent driving of the appellant. PW1 had stated that he was travelling in a car behind the bus and that the auto was proceeding in front of the bus. As stated above, even though PW1 had deposed that the accused was driving the vehicle at high speed and in a rash manner, however he admitted in his cross-examination that he had not noticed



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on which side of the road the auto was being driven. Therefore, PW1 did not have any opportunity to see or observe the manner in which the auto was being driven immediately before the accident. This admission raises a serious doubt regarding the reliability of his evidence about the manner of accident, as he did not even see the auto and also observe as to whether any negligent act was committed by the victim auto driver resulting in the accident.

22. From the rough sketch marked as Ex.P9 it is clear that in the bridge, there is a bifurcation of road, near which the accident has occurred. While so, the evidence of PW1 that the appellant drove the bus at this place speedily and rashly causing the accident, without even seeing the auto in which side it was driven, is not credible and trustworthy. Moreover PW1 has not even stated the approximate speed in which the bus was driven, particularly when the bus was allegedly behind the auto and PW1 was driving the car behind the bus. In the absence of any clear and cogent evidence regarding the role played by the auto driven by the victim at the time of accident, the charge of rash and negligent driving by the appellant has not been established beyond reasonable doubt.

23. As regards the evidence of PW2, he had deposed that the bus came from behind at high speed, overtook him and hit the autorickshaw. PW2 has not

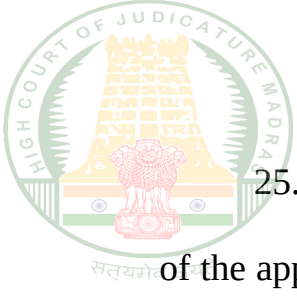


said anything about rash or negligent driving by the accused. As such even accepting the evidence of PW2 that the bus was travelling at high speed, there is

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no specific evidence establishing that the appellant drove the bus in a rash and negligent manner. The testimony of PW1 and PW2 are inconsistent with each other and not corroborative, as according to PW2 he was driving the bike behind a car which followed the auto that met with the accident. When PW1 claims he was driving the car behind the bus, he has not deposed that the bus by overtaking a bike driven by PW2 and also a car had hit the auto resulting in the accident. Therefore the evidence of PW1 and PW2 regarding the bus being driven at high speed itself is doubtful and not reliable.

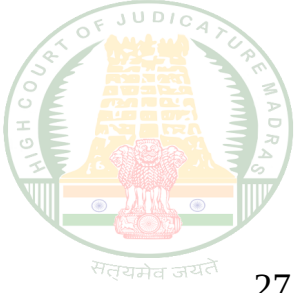
24. Though the appellant was also charged for offences under Sec.304(ii) of IPC on the premise that the appellant was drunk and under the influence of alcohol had caused the accident, the trial court finding the allegation that the appellant was drunk was not established but however convicted the appellant for offences under Sec.279 and 304-A of IPC. The trial Court has mainly proceeded on the premise that, on a one-way bridge, there was no reason for the bus to travel at speed and therefore, the high speed itself constituted negligence. Such an inference cannot be sustained in law.



25. The trial Court thus presumed rash and negligent driving on the part of the appellant merely from the evidence that the bus was driven at high speed.

Unless rashness or negligence is established beyond doubt, as held by the Hon'ble Supreme Court, mere driving at high speed alone does not prove 'rashness' or 'negligence' constituting the offences under Sections 279 and 304-A of IPC. Criminality cannot be presumed, but subject to statutory presumptions if any available. It was upon the prosecution to prove beyond reasonable doubt about the rash and negligent driving of the accused which resulted in the accident.

26. In the present case, there is no independent evidence establishing that the appellant drove the bus in a rash and negligent manner. Accordingly, the charges under Sections 279 and 304-A of IPC have not been proved beyond reasonable doubt. On reappraisal of the entire oral and documentary evidence available on record, this Court finds that the finding of the trial Court that the accident occurred due to the rash or negligent driving of the appellant is not supported by sufficient evidence and suffers from perversity and infirmity. Therefore, the conviction and sentence imposed upon the appellant cannot be sustained.



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27. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant are set aside and the appellant is acquitted of all the charges. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount paid, if any, shall be refunded to the appellant.

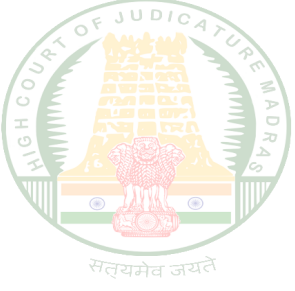
16-09-2026

Index: Yes
Speaking order
Neutral Citation: Yes

Jeni

To

- 1.The III Additional Sessions Judge, Chennai.
- 2.The Inspector of Police, J-2, Adyar Police Station, Chennai – 600090.
- 3.The Public Prosecutor, High Court of Madras, Chennai.



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Order QR

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G.ARUL MURUGAN, J.

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