A THANGASAMY

v.

THE STATE OF TAMIL NADU

(Criminal Appeal No. 698 of 2010)

B FEBRUARY 20, 2019

[ABHAY MANOHAR SAPRE AND DINESH MAHESHWARI, JJ.]

Penal Code, 1860:

C *ss. 304A, 337 and 279 – Negligent and rash driving – Resulting in death of four and injury to three persons – Trial Court convicted the accused u/ss. 279, 337 (3 counts) and 304A (4 counts) and sentenced him to four months imprisonment for offence u/s. 304A imposed fine of Rs.200/- for offence u/s. 279 and of Rs.100/- for the offence u/s. 337 – Appellate Court as well as* D *Revision Court upheld the conviction and sentence – On appeal, held: The courts below rightly concluded that the accident occurred due to rash and negligent driving – No case is made out for reducing the punishment, as Trial Court has already been considerate in awarding the punishment.*

E **Dismissing the appeal, the Court**

HELD: 1.1 The suggestion that the accident in question occurred for the fault of the on-coming vehicle from the opposite direction has been rejected with reference to the evidence on record wherein the witness, including the injured persons, F **uniformly stated that the accident occurred for rash and negligent driving of the offending vehicle by the appellant. So far the question of identity of the appellant as driver of the offending bus is concerned, the trial court, the appellate court and then the High Court have found the fact duly proved with reference to the** G **overwhelming evidence on record, including the testimony of PW1 to PW5. [Paras 11 and 12] [605-E-F; 606-B]**

1.2 There is no infirmity in the appreciation of evidence by the sub-ordinate courts and by the High Court, who have concurrently reached to the definite conclusion that the accident

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occurred for rash and negligent driving of the vehicle by the appellant that resulted in the death of four persons apart from causing injuries to three. The devastation in terms of casualties and injuries, as brought about by the appellant, was bound to result in his conviction for the offences under Sections 304-A IPC (four counts) and 337 IPC (three counts). [Para 13] [606-C-D]

2. No case for reducing the punishment awarded to the appellant is made out. For rash and negligent driving by the appellant, as many as four persons died and three other sustained injuries. Yet, the trial court had been considerate in awarding the sentence only of four months' imprisonment for each count of the offence under Section 304-A IPC and only of fine of Rs. 100 for each count of the offence under Section 337 IPC and Rs. 200/- for the offence under Section 279 IPC. The punishment awarded in this matter had been rather on the lower side. [Para 17] [609-C-D]

Alister Anthony Pareira v. State of Maharashtra **(2012) 2 SCC 648 : [2012] 1 SCR 145;** *State of M.P. v. Ghansyam Singh* **(2003) 8 SCC 13 : [2003] 3 Suppl. SCR 618;** *Dalbir Singh v. State of Haryana* **(2000) 5 SCC 82 : [2000] 3 SCR 1000;** *State of Karnataka v. Muralidhar* **(2009) 4 SCC 463 : [2009] 4 SCR 400 – relied on.**

Case Law Reference

[2012] 1 SCR 145	**relied on**	**Para 14**
[2003] 3 Suppl. SCR 618	**relied on**	**Para 14**
[2000] 3 SCR 1000	**relied on**	**Para 14**
[2009] 4 SCR 400	**relied on**	**Para 16**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 698 of 2010.

From the Judgment and Order dated 07.01.2009 of the Madurai Bench of the Madras High Court in Criminal R.C. No. 232 of 2006.

A Ms.Babita Sant, Ms.Malini Poduval, Advs. for the Appellant.

M.Yogesh Kanna, Adv. for the Respondent.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J. 1. In this appeal, the appellant-
B accused has called in question the judgment and order dated 07.01.2009 in Crl. R.C. No. 232 of 2006 whereby, the Madras High Court at its Madurai Bench, while dismissing the criminal revision petition, has upheld the conviction of the appellant for offences under Sections 279, 337(3 counts) and 304-A (4 counts) of the Indian Penal Code ('IPC').

C 2. Put in brief, the accusation against the appellant had been that on 24.02.2001 at about 07:15 p.m., while driving a government passenger bus bearing registration No. TN-72-N-0891 in a negligent manner, he caused an accident near Korampallam on Tuticorin-Tirunelveli Main Road, which resulted in the death of four persons namely, Jayaraj, Muniasamy, Gopal and Dharma Nadar whereas three persons namely, Murugan,
D Senthur Pandian and Krishnan were injured. For the incident in question, FIR came to be registered as Crime No. 70 of 2001; and after investigation, the accused was charge-sheeted for the offences as aforesaid.

3. In trial, the prosecution, *inter alia,* relied on the testimony of PW-1 Chellathrai (the informant), who asserted that at the time of the
E accident, he was standing near Thangaiah STD booth and saw the accused driving the offending vehicle in a rash and negligent manner, without even blowing the horn; and having caused the accident whereby, four out of five persons, who were standing near the booth, came beneath the vehicle and those four persons succumbed to their injuries whereas,
F the fifth person was taken to the hospital. PW-2 Samadhana Raj, who had a cycle shop on Korampallam main road, corroborated the testimony of PW-1 and stated that Dharamraj, Gopal, Jayraj etc. had come to his shop to fix a puncture and they were standing on the mud side of the road when the vehicle in question came at a fast speed from Tirunelveli and dashed against them; that a TVS 50 vehicle also came under the
G offending vehicle; and that he helped the injured to reach the hospital. PW-3 Adhisaya Pandi, who was taking tea at a nearby place, further corroborated the testimonies of PW-1 and PW-2. Moreover, PW-4 Murugan, also a victim of the accident, testified that while he was standing and talking to Muniasamy, Dharma, Senthur Pandian and Murugan, a
H government bus, which was over-speeding from the right side, caused

the accident. This witness also stated that the driver of the bus left the vehicle and fled away from the scene of the accident. PW-5 Senthur Pandian, the only surviving member of the five who came beneath the bus, testified in the same manner as PW-4. He, of course, stated in the cross examination that the driver of the offending bus having ran away, his identity was not known. However, in the examination-in-chief this witness stated thus: *"The person who drove the bus is the accused here. He alighted and went away."* This witness also deposed in the cross-examination that a lorry from the opposite direction of the bus came fast after overtaking a bullock cart; and that southern side of the road in question had a slope and any vehicle taking to that side of the road would turn upside down.

4. The accused-appellant attempted to suggest that there was neither any oral evidence nor any documentary proof that he was driving the bus and had caused the accident; and that, since the driver of the bus allegedly fled from the scene, his identification was a matter of serious doubt.

5. In its order dated 24.09.2004 in C.C. No. 205 of 2001, on appreciation of evidence, the Trial Court rejected the contentions urged on behalf of the accused and found it proved that he did cause the accident which resulted in the death of four persons apart from causing injuries to three. Accordingly, the Trial Court convicted and sentenced the accused-appellant for the offences under Sections 279, 337 (3 counts) and 304-A (4 counts) in the following manner:

> "*14A. Finally, in the light of the evidence that was elicited in the case and the documents marked and the material objects produced and after analysing the evidence, I have come to the conclusion that the charges laid against he accused have been proved and hold him guilty under Sections 279, 337 IPC (3 counts) and Section 304-A IPC (4 counts). Therefore, I impose a fine of Rs. 200/- and in default one month imprisonment for the offence under Section 279 IPC, Rs. 100/- for each count of the offence under Section 337 IPC (3 counts) and in default one month imprisonment, four months imprisonment for the offence under Section 304-A IPC (4 counts) for each count. I order that the accused will serve the sentences simultaneously. The total fine is Rs. 500/-"*

A 6. The appeal preferred by the accused-appellant against the judgment and order aforesaid, being Criminal Appeal No. 91 of 2004, was considered and dismissed by the Sessions Judge, Tuticorin in the judgment dated 28.11.2005, after re-examination of the entire evidence on record.

B 7. Against the judgment aforesaid, the accused-appellant filed a revision petition, being Crl.R.C. No. 232 of 2006, before the Madras High Court, Madurai Bench which was also dismissed by the impugned order dated 07.01.2009. The High Court approved the conviction and sentencing of the appellant while observing as under:

C *"11. It has already been pointed out that due to accident four persons have passed away and three others have sustained injuries. Considering the nature of the accident and also considering that four persons have lost their lives, it is needless to say that no leniency can be shown in awarding sentence against the revision petitioner/accused.*

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12. The courts below, after evaluating all the evidence available on record, have rightly found that the accused has committed offences under Sections 279, 337 (3 counts) and 304-A (4 counts) of the Indian Penal Code and in view of the discussion made earlier, this court has not found even a filmsy ground to impinge the concurrent judgments passed by the courts below and altogether the present criminal revision case deserves dismissal."

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8. Assailing the order aforesaid, learned counsel for the accused-appellant has contended that the orders passed by the High Court as F also the sub-ordinate Courts are contrary to law and that the order of conviction was passed while completely ignoring the portion of the statements of PW-4 and PW-5 wherein, they had also deposed that the accident had occurred due to rash and negligent driving of a lorry coming from the opposite direction; and further that the bus had to swerve to G north instead of going south, since there was a valley like slope on the southern plank of the road. Learned counsel has further submitted that the identity of the driver of the bus remained doubtful, as could be noticed from the testimony of prosecution witnesses, who admit that the driver of the bus had immediately fled from the scene of the accident and, for want of identification parade, the testimony of the alleged eye-witnesses

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could not have been relied upon as regards identity of the appellant. The learned counsel would submit that without strict proof of the identity of the bus driver, the appellant could not have been convicted in this case. The learned counsel would also pray for waiving of the sentence of imprisonment with reference to the passage of time and the circumstances of the case. *Per contra*, learned counsel for the respondent-State has duly supported the order impugned and has submitted that looking to the gravity of the offence, no case for any interference is made out.

9. Having given anxious consideration to the rival submissions and having examined the record with reference to the law applicable, we find no reason to show any interference in this matter at the instance of the appellant.

10. The grounds on which the appellant seeks exoneration in this case are twofold: one, that there was no evidence to prove that he was driving the bus involved in the accident; and second, in the alternative, that the incident in question took place for the reason of the vehicle from the opposite side approaching in a negligent manner and if the driver of the bus in question had not taken to the northern side, the passengers of the bus would have been at the greater risk because of a valley like slope on the southern plank of the road. The submissions remain totally bereft of substance.

11. So far the question of identity of the appellant as driver of the offending bus is concerned, the Trial Court, the Appellate Court and then the High Court have found the fact duly proved with reference to the overwhelming evidence on record, including the testimony of PW1 to PW5. In this regard, the observations of the Appellate Court could be usefully taken note of as under:-

> *"... Regarding the submissions of the defence that the prosecution witnesses could not tell who actually was driving the bus because PWs 1 to 5 could not establish during their cross-examination that the accused was a driver and that they had stated that the driver ran away and they did not know who was the driver. But the trial court which examined this submission in the light of the testimonies and other necessary evidence, has held that PWs 1 to 5 had identified the accused as the person who was driving the bus No. TN-72-0891 and*

A *that the accused was present in the court and accordingly identified him. In view of this, this court rejects the arguments of the appellant-accused."*

12. The suggestion that the accident in question occurred for the fault of the on-coming vehicle from the opposite direction has also been B rejected with reference to the evidence on record wherein the witness, including the injured persons, uniformly stated that the accident occurred for rash and negligent driving of the offending vehicle by the appellant.

13. The contentions urged before this Court essentially relate to the appreciation of evidence. Having regard to the contentions urged, C we have examined the material placed on record in this appeal and find nothing of infirmity in the appreciation of evidence by the sub-ordinate Courts and by the High Court, who have concurrently reached to the definite conclusion that the accident occurred for rash and negligent driving of the vehicle by the appellant that resulted in the death of four persons apart from causing injuries to three. The devastation in terms of D casualties and injuries, as brought about by the appellant, was bound to result in his conviction for the offences under Sections 304-A IPC (four counts) and 337 IPC (three counts).

14. So far the plea for reducing the period of imprisonment is concerned, the same has only been noted to be rejected. In this regard, E we may usefully refer to the decision of this Court in ***Alister Anthony Pareira v. State of Maharashtra: (2012) 2 SCC 648*** wherein, the allegations against the appellant had been that while driving a car in drunken condition, he ran over the pavement, killing 7 persons and causing injuries to 8. He was charged for the offences under Sections 304 Part F II and 338 IPC; was ultimately convicted by the High Court under Sections 304 Part II, 338 and 337 IPC; and was sentenced to 3 years' rigorous imprisonment with a fine of Rs. 5 lakhs for the offence under Section 304 Part II IPC and to rigorous imprisonment for 1 year and for 6 months respectively for the offences under Section 338 and 337 IPC. Apart from other contentions, one of the pleas before this Court was G that in view of fine and compensation already paid and willingness to make further payment as also his age and family circumstances, the appellant may be released on probation or his sentence may be reduced to that already undergone. As regards this plea for modification of sentence, this Court traversed through the principles of penology, as H enunciated in several of the past decisions including those in ***State of***

M.P. v. Ghansyam Singh: (2003) 8 SCC 13 as also in **Dalbir Singh v. State of Haryana: (2000) 5 SCC 82;** and, while observing that the facts and circumstances of the case show *'a despicable aggravated offence warranting punishment proportionate to the crime',* this Court found no justification for extending the benefit of probation or for reduction of sentence. On the question of sentencing, this Court re-emphasised as follows:-

> *"**84**. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.*
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> *85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence."*
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> *(underlining supplied for emphasis)*

15. It shall also be apposite to recapitulate the observations of this Court in the case of *Dalbir Singh* (supra), guarding against leniency in relation to the drivers found guilty of rash driving, in the following passages:

> *"1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly*

professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and frolic.

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13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion……. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

(underlining supplied for emphasis)

16. We may also usefully refer to a decision of this Court in the case of ***State of Karnataka v. Muralidhar*** **: (2009) 4 SCC 463,** wherein, for rash and negligent driving, the respondent caused accident resulting in demise of a 16 year old boy while another person sustained grievous injuries. The Trial Court sentenced the respondent to six months imprisonment and to a fine of Rs. 1,000/- with default stipulation for offence under Section 338 IPC and to rigorous imprisonment for one year with fine of Rs. 5,000/- with default stipulation for the offence

under Section 304-A IPC. The appeal was dismissed by the Sessions Court. However, the High Court waived custodial sentence and only fines were imposed. This Court referred to the principles related with the offence under Section 304-A IPC as also the problems associated with the road traffic injuries and found absolutely no reason that the High Court waived the custodial sentence awarded to the respondent. Hence, the impugned judgment of the high Court was set aside and that of the Trial Court restored.

17. In the light of the principles aforesaid, when we examine the facts of the present case, it is noticed that for rash and negligent driving by the appellant, as many as four persons died and three other sustained injuries. Yet, the Trial Court had been considerate in awarding the sentence only of four months' imprisonment for each count of the offence under Section 304-A IPC and only of fine of Rs. 100 for each count of the offence under Section 337 IPC and Rs. 200/- for the offence under Section 279 IPC. To say the least, the punishment awarded in this matter had been rather on the lower side. There being no appeal for enhancement of sentence and looking to the time that has elapsed, we would not be making any further comment in the matter. Suffice it to conclude that no case for reducing the punishment awarded to the appellant is made out.

18. Accordingly, and in view of the above, this appeal fails and is, therefore, dismissed. The appellant shall surrender before the Court concerned within a period of 4 weeks from today and shall undergo the remaining part of the sentence. In case he fails to surrender within the period aforesaid, the Trial Court will take necessary steps to ensure that he serves out the remaining part of sentence, of course, after due adjustment of the period already undergone.

Kalpana K. Tripathy Appeal dismissed.