



Crl.R.C.(MD).No.828 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.828 of 2023

and

Crl.M.P(MD).Nos.11159 and 11160 of 2023

Dharmalingam

...Petitioner/Appellant/Sole Accused

Vs.

The Inspector of Police,
V2 Avaniyapuram Police Station,
Madurai.

(In Crime No.946/2005)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for records and set-aside the conviction imposed by the Learned 5th Additional District and Sessions Judge, Madurai in C.A.No.59 of 2020 by the Judgment dated 03.01.2023, by confirming the conviction by the Learned Judicial Magistrate Court No.VI, Madurai in C.C.No.86 of 2006 by the Judgment dated 06.10.2020.

For Petitioner : Mr.S.Selvakumar

For Respondent : Mr.M.Muthumanikkam,
Government Advocate(Crl.Side)



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ORDER

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The petitioner is the accused in C.C.No.86 of 2006 on the file of the learned Judicial Magistrate No.6, Madurai. The learned Judicial Magistrate No. 6, Madurai had convicted him under Sections 279, 337, 338 and 304(a) IPC. He was convicted for the offence under Section 279 of IPC, sentenced to undergo one Month simple imprisonment and to pay a fine of Rs.750/- in default to undergo one Month simple imprisonment, for the offence under Section 338 of IPC (6 counts), sentenced to undergo six weeks simple imprisonment and to pay a fine of Rs.750/- (Rs.750/- X 6=Rs.4,500/-) in default to undergo one month imprisonment, for the offence under Section 337 of IPC (4 counts), sentenced to undergo four weeks simple imprisonment and to pay a fine of Rs.500/- (Rs.500 X 4=Rs.2000/-) in default to undergo one month simple imprisonment, for the offence under Section 304(A) of IPC (7 counts), sentenced to undergo 21 months simple imprisonment and to pay a fine of Rs.1,000/- (Rs.1,000/- X 7= Rs.7,000/-) in default to undergo three months simple imprisonment.

2.The said conviction and sentence of imprisonment was confirmed in C.A.No.59 of 2020 on the file of the V Additional District and Sessions Judge, Madurai. Challenging the said concurrent finding, he filed this revision.



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3. According to the prosecution, on 12.10.2005, at 06.00 p.m on the Madurai to Aruppukottai National High way the devotees of Iyyanar Temple proceeded towards standard tyre retreading company near Avanyapuram on the left side, the petitioner drove his tipper lorry bearing Registration No.TN 59 B9786 in a rash and negligent manner and caused injuries to ten persons and death to seven persons. Therefore, P.W.1 made a complaint to the respondent Police. The respondent Police registered a case for the said offence. Thereafter, they conducted the investigation and completed the investigation and filed the final report before the learned Judicial Magistrate VI, Madurai. The learned Judicial Magistrate taken the case on file in C.C.No.86 of 2006. He issued a summons to the accused. After his appearance, he served the 207 Cr.P.C. Documents. After that, learned trial Judge framed the necessary charges and questioned the accused. He denied the charges and pleaded not guilty. He stood for trial.

4. The prosecution proved the case by examining the witnesses P.W.1 to P.W.16 and Marked Ex.P1 to P34. The learned trial judge after recording the above evidence, questioned the accused under Section 313 (1) Cr.P.C. The accused made the following defence:



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வழக்கில் எதிரிக்கு எதிராக அமைந்த சாட்சியங்களை குறித்து எதிரியிடம் சிஆர்பிசி பிரிவு 313ன் படி கேள்வி கேட்ட போது, எதிரி தன் மீதான குற்றத்தை மறுத்து சாட்சியம் அளித்தார். எதிரி தரப்பில் சாட்சிகள் இருப்பதாக தெரிவிக்கப்பட்டது. ஆனால், எந்த ஒரு சாட்சிகளும் விசாரணை செய்யப்படவில்லை. மேலும், எதிரி தன் தரப்பில் மேற்படி கேள்வியின் போது, எழுத்து பூர்வமான ஒரு பதிலை தந்தார். அந்த பதிலில் சம்பவத்தன்று மாலை 6.30 மணிக்கு அருப்புக்கோட்டை முதல் மதுரை தேசிய நெடுஞ்சாலையில் லாரியை ஓட்டி வந்ததாகவும் அப்போது சுமார் 1,000/- பேர் ரோட்டை அடைத்து கொண்டும், வேட்டு வெடித்து கொண்டும் சாமியாடி கொண்டும், தன் முன்பாக சென்றார்கள் என்றும் தான் லாரியை ஓட்டிக் கொண்டு மெதுவாக ஊர்ந்து பின் கடந்து சென்றதாகவும், போலீசார் கூட்டத்தை ஒதுக்கி தன்னை வலதுபுறத்தில் முந்தி செல்ல ஏற்பாடு செய்தார்கள் என்றும் அப்போது, வலதுபுறத்தில் குரூப்பாக நின்று சிலர் சரவெடி போட்டதால் புகை வந்து ரோடு தெரியவில்லை என்றும், அப்போது அரசு பஸ் ஒன்று வெடி போட்டவர்கள் மீது மோதியது என்றும், தான் பஸ்சில் மோதாமல் இருக்க லாரியை பீரேக்



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போட்டதாகவும், பஸ் மோதியதால் தான் 3 பேர்கள் இறந்து விட்டார்கள் என்றும் விபத்துக்கு அரசு பஸ் தான் காரணம் என்றும், அரசு பஸ் டிரைவரையும் காவல் நிலையத்தில் போலீசார் விசாரித்தார் என்றும், ஆனால் ஆளுங்கட்சி தொழிற்சங்கத்தை சேர்ந்தவர்கள் மேற்படி டிரைவரை அழைத்து சென்று விட்டார்கள் என்றும் பதில் தெரிவித்தார்.

The accused denied the same as false. On the side of the accused neither witnesses were examined nor documents were produced.

5.The learned trial Judge after considering the above evidence and documents convicted the petitioner and imposed sentence of imprisonment as stated above. Challenging the same, he preferred the appeal before the V Additional District and Sessions Judge, Madurai, in C.A.59 of 2020. The same was also confirmed.

6.The learned counsel for the petitioner submitted that the petitioner specifically pleaded that accident never happened because of rash and negligence driving of the petitioner. The devotees around 1000 in numbers proceeded in the National



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High ways by bursting the crackers and hence, there was a huge fumes in the highways. In the said circumstances, in order to give way to the Government bus coming opposite, he swerved his vehicle to the left side of the road, which resulted in the accident. Therefore, there was no criminal rashness and negligence on the part of the petitioner. The said aspect was not properly considered by the both the Courts below. Therefore, there is perversity in the finding of the both the Courts. Hence, he seeks for interference of the findings and set aside the conviction passed by the Courts below.

7.The learned Additional Public Prosecutor submitted that the occurrence was admitted by the petitioner. His defence is that in order to give way to the on coming Government bus, he swerved his vehicle to the left side of the Road in the said circumstances, the said accident happened. The said fact itself, clearly proved that the petitioner drove his vehicle in a rash and negligent manner. The learned Additional Public Prosecutor also submitted that in this case the principles of res ipso loquitor is applicable. He also placed the reliance of number of the judgments of the Honourable Supreme Court. He further submitted that in this case more than 7 persons died and 10 persons injured. The learned Trial Judge, only awarded minimum punishment and hence, there is no



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need for interference in the Judgement of the Courts below.

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8.This Considered the rival submission and also perused the records and the precedents relied upon them.

9.Admittedly, there was a temple festival procession in the Aruppukottai Madurai High ways near Avaniyapuram. In the said procession, more than 2000 peoples participated. The said fact also admitted by the petitioner in his Section 313 Cr.P.C.. questioning. In the said circumstances, the petitioner ought to have taken more caution to go past the said procession. As per the evidence of the P.W.3, other injured witnesses and the sketch prepared by the investigating agency, it is clear that the petitioner drove his vehicle in a rash and negligent manner. The petitioner was a driver of the tipper lorry and his specific case is that in order to give way to the bus coming in the opposite direction, he swerved to the left and the accident occurred. The said defence itself shows that he acted rashly and negligently. When the temple procession consisted of 2000 people, the duty of the petitioner is to wait and move the vehicle to safeguard the said persons. But no evidence is available either from the prosecution witnesses or from the defence, to presume that the accused/petitioner drove his vehicle



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carefully. In the said circumstances as rightly pointed out by the learned Additional Public Prosecutor on the basis of the following judgment of the Hon'ble Supreme Court, the applicability of res ipso loquitor is well founded:

(I) In the case of ***North-East KRTC v. Devidas Manikrao Sadananda***, reported in **(2006) 8 SCC 52**

9. The facts, as narrated above, show that the offending bus collided with the hind portion of the other bus. That the other bus was running in front of the offending bus. The impact of the offending bus running into the other bus was so great that the other bus went and dashed against a tree resulting in injuries to 56 passengers and death of 4 lives. In such circumstances, was the Labour Court not required to apply the doctrine of res ipsa loquitur, is the question which we have to answer.

10. In Shyam Sunder v. State of Rajasthan [(1974) 1 SCC 690] this Court held that the maxim res ipsa loquitur does not embody any rule of substantive law nor a rule of evidence. It is resorted to when the accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the driver. It was held that the mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering damages from the



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defendant, if the proper inference to be drawn from the circumstances which are known is that the accident was caused by the negligence of the defendant. It was held that the fact of the accident may constitute evidence of negligence and in such cases the above maxim applies. The principal function of the maxim is to prevent injustice which would result if the management is compelled to prove the precise cause of the accident, particularly, when the respondent driver has knowledge of the cause of the accident. This judgment has not been considered by the Division Bench of the Karnataka High Court.

*11. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd. [(1977) 2 SCC 745] this Court held that where the evidence shows that dashing of the vehicle against the tree was so violent that it caused the death of the passengers then the burden rests on the opposite party to show that the cause of the accident could not have been avoided by exercise of ordinary care and caution (see para 5). In the present case no such attempt was made by the driver to show the plea of inevitability, therefore, the Labour Court had erred in misdirecting itself in not invoking the maxim *res ipsa loquitur*.*



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12. In Cholan Roadways Ltd. v. G. Thirugnanasambandam [(2005) 3 SCC 241 : 2005 SCC (L&S) 395] this Court held that in certain cases the accident speaks for itself; that in such cases the management has only to prove the accident and nothing more; and that in such cases the driver has to establish that the accident happened due to some cause other than his own negligence. Once the maxim *res ipsa loquitur* is found to be applicable, the burden of proof would shift on the delinquent. In such cases, the nature of impact has to be seen because it indicates that the vehicle was being driven rashly and negligently. In such cases, the burden of proof was on the driver to show that the offending vehicle was not driven by him rashly and negligently. In the said case, it was further held that the learned Single Judge of the High Court in that case had erred in observing that unless witnesses (passengers) were examined by the management it was not possible to draw any inference of misconduct against the workman. In this connection, it was held that the principles of the Evidence Act have no application in a domestic enquiry. It was observed that the principles of natural justice are required to be complied with in a



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domestic enquiry, however, they cannot be stretched too far nor can they be applied in a vacuum. In Cholan Roadways [(2005) 3 SCC 241 : 2005 SCC (L&S) 395] this Court came to the conclusion that in cases of accident of the above nature it was not necessary as a relevant factor to examine before the enquiry officer passengers of the bus and that the Labour Court had failed to apply the correct standard of proof in relation to the domestic enquiry, which is “preponderance of probability” and thus a case for judicial review stood, clearly made out by the Corporation.

(ii) In the case of ***Thakur Singh Vs. State of Punjab*** reported in **2004**

SCC Crl 1183

4. It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into canal. In such a situation the doctrine of res ipsa loquitur comes into play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part.



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This court does not find any reason to interfere the finding of the both the Courts below. Accordingly, this Criminal Revision Case is dismissed.

09.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
vsg

To

1. The 5th Additional District and Sessions Judge,
Madurai.
2. The Judicial Magistrate No.VI,
Madurai.
3. The Inspector of Police,
V2 Avaniyapuram Police Station,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

Pre-delivery Order made in
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and
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