



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.31 of 2015

and

M.P.No.1 of 2015

Ganapathy

.. Petitioner/Appellant

Vs

The Inspector of Police,
Tindivanam Police Station,
Tindivanam Taluk,
Villupuram District.

.. Respondent/Respondent

Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code to revise the order of the learned First Additional District and Session Judge, Tindivanam in C.A.No.30 of 2014 dated 07.01.2015 confirming the order dated 21.08.2014 in C.C.No.87 of 2011 on the file of Judicial Magistrate I, Tindivanam.

For Petitioner : Mr.G.Mohanakrishnan

For Respondent : Mr.M.Mohamed Riyaz
Government Advocate (Crl.Side)

O R D E R

Criminal Revision Case is preferred against the order passed in C.A.No.30 of 2014 dated 07.01.2015 confirming the order dated 21.08.2014 in C.C.No.87 of 2011 on the file of Judicial Magistrate I, Tindivanam. The accused is stated to be in Central Prison, Cuddalore.

2. Case of the prosecution is that on 31.07.2011, about 5.00 am., PW1-Sakthivel, PW2-Senthilkumar, PW3-Rathinavel and PW5-Periyasamy, travelled in a 407 van bearing Regn.No.TN25 C 6393 from Marakanam towards Tindivanam. While the van was operated on Pondicherry - Tindivanam National Highways, and near a Christian Cemetery, bus bearing Regn.No.TN73A6853, driven by the petitioner in a rash and negligent manner, dashed the van from behind, due to which the van capsized. As a result of the accident, Pws 1 to 3 and 5, who travelled in the van sustained injuries. PW7-Manikam, PW8-Sarasu, PW9-Rajasekaran, PW10-Kumar and PW11-Murugaiyan, who travelled in the bus, also sustained injuries. Apitha, another person who travelled in the van, also sustained simple injury. Out of the 10 injured,



three persons sustained grievous injuries and 7 sustained simple injuries. One Sathish @ Sathish Raja, died in the accident.

3. PW1-Sakthivel, preferred a complaint Ex.P1 to PW15, Sub Inspector of Police, who registered a case in Cr.No.451 of 2011 against the bus driver for the offences under Sections 279, 337 and 304 (A) IPC. Ex.P16 is the printed copy of the FIR. PW16, who had taken up the investigation, went to the occurrence place and prepared the observation mahazar, Ex.P4, in the presence of PW12-Ganesan and PW13 and rough sketch Ex.P17. Thereafter he had gone to the Tindivanam hospital and recorded the 161 statements. At 9.30 am., he conducted inquest on the body of the deceased Sathish @ Sathish Raja and prepared inquest report, Ex.P5.

4. Material on record discloses that, PW17, directed the vehicle to be sent to the Motor Vehicle Inspector PW6 - Babu, who inspected both the vehicles and issued A.I.R., Exs.P2 and P3, respectively. Ex.P14, Dr.Balaji has examined the injured witnesses. He has issued Accident Register Copy Ex.P6 to Ex.P15. Investigating officer has examined all the witnesses shown, in the charge sheet and filed a final report against the accused under Section 304(A) IPC, 328 (3 counts), 337 (7 counts). One of the witnesses, who sustained a simple injury has not been examined.

5. Before the trial Court, the prosecution has examined witnesses Pws.1 to 17 and marked Exs.P1 to P18. After considering the material on record, the learned Judicial Magistrate No.1, Tindivanam, convicted the accused under Section 304(A) IPC and sentenced to undergo simple imprisonment for six months and to pay fine of Rs.1,000/- i/d S.I. for one month. The learned Magistrate also convicted the accused under Section 337 IPC (6 counts) and sentenced the accused to pay a fine of Rs.250/- i/d S.I. for one week each count. The Court below also convicted the accused under Section 338 IPC (3 counts) and sentenced the accused to pay fine of Rs.500/- each i/d S.I. for one week each. Total fine imposed was Rs.4,000/-.

6. Being aggrieved by the conviction and sentence imposed by the learned Magistrate, Tindivanam, Crl.A.No.30 of 2014 has been filed on the file of the learned First Additional District and Sessions Judge, Tindivanam. While adjudging the correctness of the conviction and sentence imposed, the learned appellate Court has considered the evidence of the prosecution witnesses that the Van bearing Regn. No.TN25C6393 had been hit from behind by the accused who was a driver of Bharathivelu bus bearing Regn.No.TN73A6853. The appellate Court has also found that the evidence of Pws 1 to 3, and PW5, has been corroborated by the evidence of PW6, Motor Vehicle Inspector, to prove that the van was hit from behind. Out of five witnesses, PWs7 to 11, three of them have turned hostile. They did not narrate about the manner of occurrence, but stated that they heard the sound.



7. While appreciating the evidence of the prosecution PWs7 and 10, the learned appellate Judge has found that both the witnesses have clearly spoken about the manner of accident, and that PW6 Motor Vehicle Inspector has also identified the damage caused to the van. Front side of the bus has been damaged. Medical evidence has also corroborated that the passengers in the van and bus were injured.

8. While considering the arguments of the learned counsel for the accused that the van was suddenly stopped and thus the accident occurred, the lower appellate Court has observed that even if the van was suddenly stopped, it is the duty of the bus driver to apply the brakes and stop the bus.

9. On the application of doctrine of res ipsa loquitor to road accidents, where the accused is charged under Section 304-A, 279 and 337 IPC, let me consider the decision in Ravi Kapur Vs. State of Rajasthan, reported in (2012) 9 SCC 284, wherein the Apex Court considered the Words and Phrases - "Negligence", "reasonable care", "rash and negligent driving", "culpable rashness" and "culpable negligence".

10. The Supreme Court has explained what would constitute the "rash and negligent driving" as follows:

"14. Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to rash and negligent driving within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words manner so rash or negligent as to endanger human life. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

13. Negligence means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing



15. The other principle that is pressed in aid by the courts in such cases is the doctrine of *res ipsa loquitur*. This doctrine serves two purposes one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is *prima facie* evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the IPC that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of culpable rashness and culpable negligence into consideration in cases of road accidents. Culpable rashness is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their



WEB COPY

happening. The imputability arises from acting despite consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is prima facie evidence of such negligence. This maxim suggests that on the circumstances of a given case the res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some persons negligent conduct."

11. At para No.9, the Apex Court also considered as to what constitutes negligence and the same is extracted hereunder:

"9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edn.), Vol. 34, Para 1 (p. 3), as follows:

1. General principles of the law of negligence. Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause



and effect between the two.”

12. In Mohd.Aynuddin Vs. State of A.P., reported in (2000) 7 SCC 724: 2000 SCC (Cri) 1281, the appellant was driving a bus and while a passenger was boarding the bus, the bus was driven which resulted in the fall of the passenger and the rear wheel of the bus ran over the passenger. This Court, drawing the distinction between a rash act and a negligent act held that it was culpable rashness and criminal negligence and held as under :

“7. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus.

9. A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution”

13. In Ravi Kapur's case cited supra, Supreme Court has also considered the attendant circumstances and inference of rash and negligent driving as hereunder:

“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



WEB COPY

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

- The event would not have occurred but for someones 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.

14. In *Thakur Singh v. State of Punjab* reported in (2003) 9 SCC 208, the petitioner drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of *res ipsa loquitur* since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down. The Court held as under:

"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."

15. In *Mohd. Aynuddin's* case cited *supra*, this Court at paragraph No.8 has held as follows:

" 8. The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer."

16. The accident has caused the death of Sathish @ Sathish Raja.



On an overall appreciation of evidence and the material documents, the Courts below has rightly convicted the accused and accordingly imposed the sentence.

17. On the aspect of revisional jurisdiction involving vehicular accident the Apex Court in Duli Chand Vs. Delhi Administration reported in 1975 (4) SCC 649 : 1975 SCC (Cri.) 663 : AIR 1975 SC 1960, held as follows:

"The question whether the appellant was guilty of negligence in driving the bus and the death of the deceased was caused due to negligent driving in a question of fact which depends for its determination on appreciation of the evidence. Where the Magistrate, and the Additional Sessions Judge arrived on assessment of the evidence, at a concurrent finding of fact that the death of the deceased was caused by negligent driving of bus by the accused and the High Court even though justified in refusing to reappreciate the evidence, reviewed the same in order to satisfy itself that there was evidence in support of the finding and that the finding was not perverse, came to the conclusion that the evidence established the death of the deceased was caused by negligent driving of bus by the accused, the Supreme Court on an appeal under Article 136 refused to interfere".

18. In the State of Kerala vs. Puttumana Illath Jathavedan Namboodiri, reported in 1999 (2) SCC 452 : 1999 SCC (Cri.) 275, it was held as follows:

".. the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court not can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

19. Going through the judgments of both the courts, this Court is of the view that there is no irregularity or illegality in the finding rendered by the courts below. There is no perversity warranting interference. Accordingly, the order of the learned First Additional District and Session Judge, Tindivanam in C.A.No.30 of 2014 dated 07.01.2015 and the conviction in C.C.No.87 of 2011 on the file of Judicial Magistrate I, Tindivanam, is confirmed. However, this Court is inclined to alter the sentence. Accordingly, this Court orders as follows:

"the substantive sentence of imprisonment of 6 months



WEB COPY

S.I., imposed for offence under Section 304-A IPC alone is modified to one of three months S.I. In all other respects, judgments of Courts below are confirmed. The period already undergone by the accused, if any, is ordered to be set off. The period already undergone by him is given set off."

20. With the above modification, the Criminal Revision case is disposed of. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars

To

1. The Judicial Magistrate No.I, Tindivanam.
2. The I Additional District and Sessions Judge, Tindivanam.
3. The Inspector of Police, Tindivanam Police Station,
Tindivanam Taluk, Villupuram District.
4. The Superintendent of Police,
Central Prison, Cuddalore.
5. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.G.Mohanakrishnan ,Advocate, SR.No.2027

Crl.R.C.No.31 of 2015

jsv(co)
pmk.17.3.2015