

Bail Slip

The Petitioner/Accrued Viz Vijayendran, was directed to the released on bail as per the order of this court dated 5.8.2011 and made in MP.NO.1 of 2011 and CrI.RC.No.1069/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-11-2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

CrI.R.C.No.1069 of 2011

Vijayendran

..Petitioner/Accused

Vs.

State rep. by
Station House Officer,
Thirupapuliyur Police Station
(Crime No.349 of 2007)

..Respondent/Complainant

This Criminal revision is preferred under Sections 397 & 401 of Cr.P.C., against the judgment, dated 13.5.2011 made in C.A.No.72 of 2009 by the Additional Sessions Judge (Fast Track Court No.2),Cuddalore, confirming the judgment, dated 1.12.2009 made in C.C.No.239 of 2007 by the Judicial Magistrate No.III, Cuddalore.

For Petitioner : Mr.C.Prasanna Venkatesh

For Respondent : Mr.R.Sekar,
Government Advocate (CrI.Side)

ORDER

The revision petitioner is the accused in C.C.No.239 of 2007 on the file of the learned Judicial Magistrate No.III, Cuddalore.

2. The case of the prosecution briefly runs as under:-

On 25.7.2007, at about 8.45 a.m., one Krishnamoorthy was riding his bicycle on the Cuddalore-Thiruvanthipuram Main Road from East to West. At about that time, the accused came driven the Balaji Bus behind him fastly and hit behind the bicycle. The cyclist sustained grievous injuries. This accident was witnessed to by PWs-1, 5 and 6. The injured was taken to Government Hospital, Cuddalore. At the hospital, PW-12/Head

Constable of Thirupapuliyur Police Station recorded statement from the injured. He registered this case (Ex.P-5 FIR). He did initial investigation. Subsequently, the case was investigated into by PWs-13 and 14/Police Officers. PW-10/Doctor treated the injured. However, he died of injuries two days later. Postmortem was conducted by PW-11/Doctor. He opined that he died of road accident injuries. PW-9/M.V Inspector inspected the bus and found no mechanical defect in it (Ex.P-2).

3. Relying on the above evidence, the learned Magistrate convicted the accused under Section 304-A IPC and sentenced him to 6 months R.I and fined him Rs.2,000/-, i/d directed him to undergo 2 months S.I.

4. Aggrieved, the accused has filed Appeal in C.A.No.72 of 2009. The learned Additional Sessions Judge (Fast Track Court No.2), Cuddalore, after hearing both sides, dismissed the Criminal Appeal. In the circumstances, the accused has directed this Revision.

5. The learned counsel for the revision petitioner would contend that it is the primary duty of the prosecution to establish that at the time of accident, the accused had driven the bus in a rash and negligent manner. This is a basic requirement to convict a person under Section 304-A IPC.

6. The learned counsel for the revision petitioner further submitted that the witness saying that the accused had driven the vehicle fast would not attract Section 304-A. Even if the witness says that the accused had driven the vehicle at high speed it will not attract Section 304-A IPC because it will not be rash and negligent driving of the vehicle.

7. In this connection, the learned counsel for the revision petitioner also cited the following decisions:-

- (i) State of Karnataka vs. Satish {(1998) 8 SCC 493}
- (ii) Abdul Subhan vs. State (NCT of Delhi) {2007 Cri.L.J. 1089 (Delhi)}
- (iii) State vs. Avadh Kishore {Crl.L.P. No.213 of 2007 dated 30.1.2009 (Delhi High Court)}

8. The learned counsel for the revision petitioner further submitted that, in the instant case, PW-6 had simply stated that he had seen the bus hitting on the rear side of the bicycle. He did not say anything further.

9. The learned counsel for the revision petitioner further submitted that the evidence of PWs-1 and 5 is that the bus driver drove the bus fast. That will not amount to he having

driven the bus in a rash and negligent manner. Prosecution has thoroughly failed to establish the ingredients required for an offence under Section 304-A IPC. However, this aspect has been missed by both the Courts below. The findings recorded by them suffers from legality. It calls for interference by this Court.

10. On the other hand, the learned Government Advocate (Criminal Side) would submit that the deceased died of road accident injuries. The evidence of PWs-1, 5 and 6 would show that the accused had come driven the bus fastly and caused the accident. It is because of his such act, the accident took place. In the circumstances, both the Courts have rightly convicted him and punished him. Therefore, no interference is called for.

11. I have anxiously considered the rival submissions, perused the impugned judgments, the entire materials on record and the decisions cited by the learned counsel for the revision petitioner.

12. Now the question before us is whether the findings recorded by the Trial Court and the Appellate Court suffers from legality and propriety, calling for our interference under Section 397 r/w Section 401 Cr.P.C.

13. On 25.7.2007, at about 8.45 a.m., at the Thirupapuliur-Cuddalore Main Road, a road accident took place. In this one Krishnamoorthy, a cyclist, sustained injuries. At about that time, the accused came driven the bus TN-31-E 7117. Subsequently, after two days, at the hospital the injured died.

14. The accused/bus driver has been prosecuted before the Trial Court for an offence under Section 304-A IPC.

15. For an offence under Section 304-A IPC, the death of a person should have been caused by a rash and negligent act of the accused. So the crux of the offence under Section 304-A IPC is commission of a rash and negligent act. If it results the death of the victim then it will fall under Section 304-A IPC. If the victim sustains injury simple or grievous, then it is Section 337 or 338 IPC, as the case may be. However, if no injury, no death occurred, but there is rash and negligent act by the accused, then it will fall under Section 279 IPC. Thus, Section 279 IPC is generic and Sections 337, 338 and 304-A IPC are its species.

16. Now, in this case, the specific version of the prosecution is that by his rash and negligent act/driving, the accused/ bus driver had caused the death of the deceased.

17. The findings recorded by both the Courts below is based on the appreciation of evidence of three eye-witnesses, namely, PWs-1, 5 and 6.

18. The main blank of attack of the learned counsel for the revision petitioner is that the findings recorded by the Trial Court is not based on the proper appreciation of evidence and proper application of law to the facts established by such evidence.

19. PW-1 had stated that at about that time, the bus driver came driven the bus fastly and hit on the rear side of the bicycle. So also is the evidence of PW-5. PW-6 had simply stated that he had seen the bus driver hitting behind the bicycle.

20. Thus, from the above, it is seen that at about that time, the bus driver/accused has driven the bus fastly. Neither PW-1 nor PW-5 did say that at about that time the bus driver drove the bus in a rash and negligent manner.

21. In State of Karnataka vs. Satish {(1998) 8 SCC 493}, in a road accident where the accused was prosecuted under Section 304-A IPC, one of the witness had stated that the bus driver came driven the bus at a high speed. The Hon'ble Apex Court held that it would not satisfy the requirement of the driver driving the vehicle in a rash and negligent manner as required under Section 304-A IPC and acquitted the accused.

22. In this respect, the following observations made by the Hon'ble Supreme Court in SATISH (supra) are relevant here to note:-

"3. Both the Trial Court and the Appellate Court held the respondent guilty for offences under Sections 337, 338 and 304-A IPC after recording a finding that the respondent was driving the truck at a "high speed". No specific finding has been recorded either by the Trial Court or by the First Appellate Court to the effect that the respondent was driving the truck either negligently or rashly. After holding that the respondent was driving the truck at a "high speed", both the Courts pressed into aid the doctrine of res ipsa loquitur to hold the respondent guilty.

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."

23. Subsequently, in Abdul Subhan vs. State (NCT of Delhi) {2007 Cri.L.J. 1089}, in a road accident case for an offence under Section 304-A IPC, the only available evidence of an Head Constable is that the bus driver had driven the bus fastly. The Delhi High Court relying on the Hon'ble Apex Court decision in SATISH (supra) held that the bus driver cannot be held to have drove the bus in a rash and negligent manner.

24. In State vs. Avadh Kishore {Crl.L.P. No.213 of 2007 dated 30.1.2009 (Delhi High Court)}, the Delhi High Court reiterated its earlier view in ABDUL SUBHAN (supra).

25. Now in the case before us, as PWs-1 and 5 have only stated that the bus driver had driven the bus fastly and they have not stated that the bus driver came driven the bus in a rash and negligent manner. In the facts and circumstances, the principles laid down by the Hon'ble Supreme Court in SATISH (supra) squarely applies to the facts of this case.

26. Now, in the light of the above, we hold that the findings recorded by the Trial Court and the Appellate Court suffers from legality. Thus, our interference is called for.

27. In view of the foregoing, ordered as under:-

- (1) This Criminal Revision is allowed;
- (2) The conviction recorded and the sentence awarded by the Trial Court as well as by the Appellate Court are set aside;
- (3) The accused is found not guilty under Section 304-A IPC;
- (4) He shall be refunded the fine amount.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Svn
To

1. The Additional Sessions Judge
(Formerly Fast Track Court No.II),
Cuddalore.
2. -do- Thro' The Principal Sessions Judge,
Cuddalore.
3. The Judicial Magistrate No.III,
Cuddalore.
4. -do- Through The Chief Judicial Magistrate Cuddalore.
5. The Public Prosecutor, High Court, Madras.
6. The Inspector of Police,
Thirupapuliur Police Station,
Cuddalore District.

+ 1 cc to M/s. C. Prasanna Venkatesh, Advocate SR.66198

Cr1.R.C.No.1069 of 2011

SSK(CO)
Eu 10.09.16