

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-11-2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.438 of 2011

M.Subramani

.. Petitioner/Accused

Vs.

State rep. by
Inspector of Police,
Edapadi Police Station,
Salem District
(Crime No.434 of 2007)

.. Respondent/Complainant

This Criminal revision is preferred under Sections 397 r/w 401 of Cr.P.C., against the judgment, dated 6.4.2010 made in C.A.No.13 of 2010 by the Additional Sessions Judge (Fast Track Court No.2), Salem, confirming the judgment, dated 16.12.2009 made in C.C.No.80 of 2008 by the Judicial Magistrate No.II, Sankagiri.

For Petitioner : M/s.K.A.Mariappan and
G.M.Ananthakumar.

For Respondent : Mr.R.Sekar,
Government Advocate

(Crl.Side)

ORDER

The revision petitioner is the accused in C.C.No.80 of 2008 on the file of the learned Judicial Magistrate No.II, Sankagiri, Salem District.

2. In the said Court, the accused has been prosecuted for an offence under Section 304-A IPC.

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

(1) On 27.9.2007, at about 7 a.m., on the Samuthiram-Panickanoor Road, the accused came driven the Government Bus TN-27-N-1220 from North to South. At about that time, one Ravi came driven his Motorcycle TN-24 9024 from the opposite side, from South to North. Near Muniyappasamy Temple, the road turns a little and proceed towards the Western side and then proceeds to Samuthiram. At that place, the accused came driven the bus fastly. The bus dashed on the Motorcyclist. Ravi/Motorcyclist fell down the rear wheel of the bus ran over him. He died on the spot. This occurrence was witnessed to by PWs-1, 2 and 7.

(2) PW-1 gave Ex.P-1 complaint to PW-12/S.I of Police at the Magudanchavadi Police Station. He registered this case (Ex.P-6

FIR). The case was investigated into by PWs-13 and 14/Inspectors. The Investigation Officer visited the scene place. In the presence of witnesses, he prepared Ex.P-7 observation mahazar. Drew Ex.P-8 rough sketch of the scene place, examined the material witnesses and recorded their statement under Section 161 Cr.P.C. At the Government Hospital, Edapadi, PW-10 conducted postmortem on the dead body of Ravi. He opined that the deceased died of road accident injuries (Ex.P-3 Postmortem Certificate).

(3) PW-14/M.V. Inspector inspected the bus as well as the Motorcycle. He found no mechanical defects in the vehicles (Exs.P-4 and P-5 M.V.I Reports). Concluding his investigation, PW-14 filed the Final Report before the Magistrate for an offence under Section 304-A IPC..

4. To establish the offence, prosecution examined Pws-1 to 14 and marked Exs.P-1 to P-9.

5. Upon hearing both sides and on consideration of the evidence, the Trial Court convicted the accused under Section 304-A and sentenced him to undergo 1 year S.I.

6. Aggrieved, the accused preferred appeal in C.A.No.13 of 2010 before the learned Additional Sessions Judge (formerly FTC No.II), Salem. Upon hearing both sides, the Appellate Court dismissed the Criminal Appeal. In the circumstance, the accused has directed this revision.

7. The learned counsel for the revision petitioner contended that the prosecution has failed to establish the ingredients required for an offence under Section 304-A IPC. None of the witnesses have spoken that the accused has driven the bus either rashly or negligently.

8. According to the learned counsel for the revision petitioner, a witness stating that the driver drove the bus fastly is not sufficient to hold that the accused has driven the bus in a rash and negligent manner.

9. In this connection, the learned counsel for the revision petitioner 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)}***
- (iv) ***State vs. Lucky Bedi {Crl.L.P.700 of 2013 dated 2.12.2013 (Delhi High Court)}***
- (v) ***Puttaiah @ Mahesh vs. State by Rural Police {Crl. Review Petition No.1317 of 2010 dated 4.3.2016 (Karnataka High Court)}***

10. The learned counsel for the revision petitioner would contend that the evidence of PWs-1, 2 and 7 would clearly show that they have not seen the actual manner of road accident. Even PW-7, in his cross-examination, admits that only after hearing the sound, he came to the scene place. Further, nothing on record to show that in what speed the bus driver had driven the bus.

11. On the other hand, the learned Government Advocate submits that the evidence of PW-7 and other witnesses would clearly

show that the accused came driven the bus fastly and hit on the Motorcyclist, because of his rash driving, the Motorcyclist died on the spot. In the circumstances, the Trial Court as well as the Appellate Court have rightly convicted and sentenced him.

12. 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.

13. Now the question 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.

14. It is not in dispute that on 27.9.2007, at about 7 a.m., on the Panickanoor-Samuthiram Road, which is proceeding from North to South, near Muniyappasamy Temple, a road accident has taken place. It is also in dispute that the Government Bus driven by the accused is involved. In the accident, one Ravi, who at that time came driven a Motorcycle from the opposite side, died at the rear wheel of

the bus.

15. The core issue in this case is whether the prosecution has established that the accused has driven the bus in a rash and negligent manner and because of that Ravi died in the accident.

16. PW-1 lodged Ex.P-1 complaint. He has travelled on that in the ill-fated bus. He had stated that the bus driver ran over the Motorcyclist. However, in his cross-examination, he admits that only after hearing a loud sound, he had noticed the accident. Further, at that time, he was sitting inside the bus in the third row. So, he could not have seen the actual manner of the road accident.

17. PW-2 is residing on the Eastern side of the road. It is after Muniyappasamy Temple. In his cross-examination, he admits that at the time of the accident, he was in his house and only after hearing the loud sound, he came out and followed certain children who ran towards the accident spot. So, PW-2 also has not seen the actual manner of this road accident.

18. According to PW-7, at about that time, he was walking from North to South and the bus crossed him, at a distance of 100 to 150 feet and the accident took place. He had also stated that the bus driver came driven the bus fastly. However, in his cross-examination, he also admits that after hearing the sound, anticipating some untoward incident, he went to the accident spot. Thus, he too has not seen the actual manner of the road accident.

19. 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.

20. 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."

21. 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.

22. 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).

23. Recently in ***Puttaiah @ Mahesh vs. State by Rural Police {Crl. Review Petition No.1317 of 2010 dated 4.3.2016 (Karnataka High Court)}***, the Karnataka High Court held as under:

"In this view of the matter, both the Trial Court as well as the First Appellate Court have not assessed the oral and documentary evidence in right perspective. Both the Courts should have navigated through the evidence of material witnesses cautiously. Glaring inconsistencies have been brushed aside as minor variations. They have adopted wrong approach to the real state of affairs and have not properly scanned the evidence. Both the Courts have forgotten that the initial burden was on the prosecution to establish the charge of rashness or negligence beyond reasonable doubt. Thus, the judgments of both the Courts

suffer from perversity and illegality. Hence, this Court is of the opinion that the revision petition is to be allowed."

24. Except a word 'fastly' from the mouth of PW-7, there is no indication from him that the accused came driven the bus at what speed and whether it was in a rash and negligent manner. Further, there is no material to decide what was the speed in which the bus driver came driven the bus. In this case, the eye-witnesses did not depose that the bus driver had driven the bus in a rash and negligent manner.

25. Thus, the Trial Court as well as the Appellate Court, while appreciating the evidence have failed to notice the said aspects in the prosecution evidence and this has resulted in recording a wrong finding. A sentence based on such a finding is legally unsustainable. Thus, the findings recorded by the Trial Court and the Appellate Court suffers from legality.

26. In view of the foregoing, it is 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.

22-11-2016

Index : Yes
Internet : Yes
Svn

To

1. Principal Sessions Judge,
Salem.
2. Additional Sessions Judge
(Formerly Fast Track Court No.II),
Sankagiri,
Salem District.
3. Judicial Magistrate No.II,
Sankagiri,
Salem District.
4. Government Advocate,
High Court,
Madras.

DR.P.DEVADASS, J.,

Svn

5. Superintendent,
Central Prison,
Salem.
6. Inspector of Police,
Magudanchavadi Police Station,
Salem.

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