

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Criminal Revision No.565 of 2011

Renugopal

..Petitioner/Appellant/Accused

Vs

State rep. By
Inspector of Police,
Vishnu Kanchi Police Station,
Kancheepuram,
Crime No.308/2007

..Respondent/Respondent/Complainant

Prayer:-

This Criminal revision is filed under Section 397 & 401 of Cr.P.C., to set aside the judgment dated 08.04.2011 passed in C.A.No.2 of 2011 on the file of Hon'ble Sessions Judge, Sessions court No.II, Kancheepuram and confirming the judgment dated 03.01.2011 passed in C.C.No.72 of 2008 on the file of learned Judicial Magistrate No.I, Kancheepuram.

For petitioner : Mr.K.M.Balaji

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

ORDER

The accused in C.C.No.72 of 2008 on the file of the learned Judicial Magistrate No.I, Kancheepuram is the revision petitioner.

2. Before the trial Court, the accused has been prosecuted for offences under Sections 279, 337 (2 counts), 304-A (2 counts) IPC.

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

(1) On 16.07.2007, at about 4.30 p.m., after worshipping in a temple in Kanchipuram, P.Ws.3 and 5 have travelled in a horse-driven cart. It was followed by another horse driven-cart. In this cart, P.W.2, Pappayammal and one Venkatammal travelled. It was driven by P.W.1.

(2) At that time, behind the second horse-cart, the accused came driven the Van No.TN 23 T 7063 fastly. The van hit on the rear side of the said horse-cart. A road accident took place. In this, Venkatammal died. Pappayammal sustained injuries. The horse of the said cart got frightened. Run amok. Mauled one Ravi. He died at the hospital. P.Ws.1 to 5 and P.W.11 have witnessed the occurrence.

(3) P.W.1 gave complaint to P.W.10, S.I. of Police, Vishnu Kanchi Police Station. The case was investigated into by P.W.18 Inspector of Police. P.W.14, Motor Vehicle Inspector found no mechanical defect in the van. P.W.15 treated the injured. P.W.17 conducted postmortem on the dead body of the deceased Venkatammal. Concluding his investigation, the investigation officer filed final report against the accused for offences under sections 279, 337(2 counts) and 304-A (2 counts) IPC.

4. To substantiate the offences, prosecution examined P.Ws.1 to 18 and marked Ex.Ps.1 to 14.

5. Relying on the said evidence, the trial Court acquitted the accused from an offence under Section 304-A IPC with regard to the death of Ravi, however, found him guilty under Section 279IPC and under Section 304-A IPC with regard to the deathh of Venkattamma and sentenced him as under :-

Offence	sentences
279 IPC	Fine Rs.500/-, i/d two weeks S.I.
304-A IPC	Three months S.I.

He has paid the fine amount.

6. As against the said judgment, the accused preferred Criminal Appeal in C.A.No.2 of 2011 before the Sessions Court No.II, Kancheepuram.

7. The learned Appellate Judge, after hearing both sides, dismissed the criminal appeal.

8. In the circumstances, the accused has preferred this revision.

9. According to the learned counsel for the revision

the prosecution. Actually, the second horse-cart capsized and its passengers sustained injury and one of them died. Further, none of the witnesses stated that the accused had driven the van in a rash and negligent manner. In such circumstances, Sections 279, 337 I.P.C. and 304-A I.P.C. are not attracted. The trial Court and the appellate Court have not viewed the evidence in proper perspective.

10. On the other hand, the learned Government Advocate submitted that there is more number of eye-witnesses in this case. P.W.1, an eye-witness lodged the F.I.R. The eye-witnesses have stated that the van driver came driven the van fastly. Because of him Venkatammal died and another passenger sustained injury. In the circumstances, the trial Court as well as the appellate Court have rightly convicted and punished the accused.

11. I have anxiously considered the rival submissions, perused the impugned judgments, materials on record and the decisions cited.

12. Now, the question is whether the trial Court and the appellate Court have failed to appreciate the evidence in proper perspective, whether their findings suffer from legality, whether it is required to be interfered with by this Court under Section 397 r/w. 401 Cr.P.C ?.

13. We have already given a graphic picture of this road accident. In this case, two sets of witnesses have been examined as ocular witnesses. They are P.Ws.1 to 5 and 11.

14. P.W.1 had driven the second horse-cart. In this, the injured and the deceased travelled. The van came from the eastern side. In his evidence, P.W.1 had stated that the van came driven behind his cart and hit on the rear side of his cart. Thus, he could not have seen the actual manner of road accident, because, at that time, he was driving the horse-cart sitting in the front side of the cart looking towards the western side. The other witnesses have stated that the van had dashed on the rear side of the second horse-cart. They have stated that the van came driven fastly.

15. It has been mainly contended by the learned counsel for the revision petitioner that none of the witnesses had spoken that the accused had driven the van in a rash and negligent manner. Therefore, an offence under Section 304-A IPC is not made out.

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

(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))

17. In State of Karnataka vs. Satish {(1998) 8 SCC 493}, in a road accident, the accused was prosecuted under Section 304-A IPC. One of the witnesses 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 having driven the vehicle in a rash and negligent manner as required under Section 304-A IPC. and acquitted the accused.

18. In this respect, the following observations of the Hon'ble Supreme Court made 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."

19. 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 Head Constable, a witness in the case had stated that the bus driver had driven the bus fastly. The Delhi High Court relying on Satish (supra) held that the bus driver cannot be held to have driven the bus in a rash and negligent manner.

20. 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).

21. The principles laid down in the said cases equally applies to an offence under Section 279 IPC also.

22. As rightly pointed out by the learned counsel for the revision petitioner none of the eye-witness had stated that the vehicle was driven by the accused in a rash and negligent manner. P.Ws.2 , 5 and 11 have stated that the accused came driven the van fastly.

23. In the decided cases when the witnesses stated that the driver had driven the vehicle at high speed, the Courts held that that will not be a rash and negligent act. Further the ipse dixit of the eye-witnesses in this case is that the accused came driven the van fast. There is no material as to what was the speed, what was the details of the speed there is no material to decide whether the accused has driven the van in a rash and negligent manner.

24. In the light of the above, the principles laid down in the said cases squarely applies to the facts of the present case. Both the trial Court as well as the appellate

Court have missed these important aspects. They have failed to notice them while appreciating the evidence adduced. They did not notice that the ingredients required for the offences alleged are not made out in this case.

25. In view of the foregoings, it is ordered as under:-

(i) This Revision is allowed.

(ii) The conviction and sentence awarded by the trial Court and the appellate Court are set aside.

(iii) The accused is acquitted under Sections 279 and 304-A IPC.

(iv) Fine amount shall be refunded to the accused.

mrp

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge No.II, Kancheepuram.
- 2 The Judicial Magistrate No.1, Kancheepuram.
- 3 The Government Advocate (Crl.side), High Court, Madras.
- 4 The Superintendent, Central Prison, Puzhal, Chennai.
- 5 The Inspector of Police,
Vishnu Kanchi Police Station,
Kancheepuram.

+ 1 cc to Mr.K.M.Balaji, Advocate Sr 65908

KR/28/12

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