

Bail Slip:

The Appellant/Accused Viz., Duraisamy S/o.Kaliyappan, was directed to be released on bail as per order dated 22/11/2010 in Crl.MP.No.1/10 in Crl.R.C.No.1087/10 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.1087 of 2010

Duraisamy

... Petitioner/Appellant

Vs.

State by

The Inspector of Police,
Perumanallur Police Station,
Crime No.12 of 2007,
Coimbatore District

... Respondent/Complainant

Criminal Revision Case filed under Sections 397 r/w. 401 of the Code of Criminal Procedure Code against the judgment in C.A.No.101 of 2010 dated 24.08.2010 on the file of Additional District and Sessions Court, Fast Track Court No.5, Tiruppur allowing the appeal in part and modifying the conviction imposed in the Judgment dated 10/5/10 made in C.C.No.78 of 2007 on the file of the Judicial Magistrate No.II, Tiruppur and to set aside the same.

For Petitioner : Mr. N.Manokaran

For Respondent : Mr. M.F.Shabana,
Gov. Adv. (Crl. Side)

O R D E R

The sole accused in C.C.No.78 of 2007 on the file of the Judicial Magistrate No.II, Tiruppur, is the petitioner herein. He stood charged for an offence under Section 279 and 304(A) IPC. By judgment dated 10.05.2010, the trial court convicted the petitioner/accused for the offences under Sections 279 and 304(A) IPC and sentenced him to undergo simple

imprisonment for 6 months and to pay a fine of Rs.500/- in default to undergo simple imprisonment for 2 months for the offence under Section 279 IPC and also sentenced him to undergo simple imprisonment for 2 years and to pay a fine of Rs.2000/- in default to undergo simple imprisonment for 6 months for the offence under Section 304(A) IPC. Challenging the above said conviction and sentence, the petitioner filed an appeal in C.A.No.101 of 2010 on the file of the Additional District and Sessions Court, Fast Track Court No.V, Tiruppur and the appellate court partly allowed the appeal, thereby setting aside the conviction and sentence imposed under Section 279 IPC and acquitted him from the offence under Section 279 IPC and confirmed the conviction under Section 304(A) IPC and modified the sentence to simple imprisonment for one year and to pay a fine of Rs.3500/-. Challenging the above said conviction and sentence, the present revision has been filed.

2. The case of the prosecution in brief is as follows :

The deceased, in this case, minor Yuvashri, aged about 4 ½ years, is the daughter of P.W.1 and sister of P.W.5. Both the deceased and P.W.5 were studying in Saraswathy Matriculation School at Cunnathur and they used to go to school in the school van, in which the petitioner was the driver. On 20.01.2007, both the deceased and P.W.5 travelled in the school van from the school to their house. After getting down from the van near their house, while they were crossing the road, the petitioner/accused without noticing the children crossing the road, dashed against the deceased and ran over the deceased and the deceased died on the spot. Thereafter, P.W.1, father of the deceased lodged a complaint before the respondent police.

3. P.W.12, Sub-Inspector of Police, in the respondent police, on receipt of the complaint, registered a case in Crime No.12 of 2007 for the offences under Section 279 and 304(A) IPC. Thereafter, he sent the First Information Report, Ex.P.5, to the Judicial Magistrate and also to the Inspector of Police.

4. P.W.14, Inspector of police, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2, and drew a Rough sketch, Ex.P.6 in the presence of the witnesses. He had conducted inquest on the dead body of the deceased in the presence of panchayathars and recorded the statements of the witnesses. Then, he sent the dead body for postmortem to the Government Hospital, Tiruppur. Thereafter, he sent the van to the Motor Vehicle Inspector for inspection.

5. P.W.10, Doctor, working in the Government Hospital, Tiruppur, conducted autopsy on the dead body of the deceased and

given a opinion that the deceased died due to shock and hemorrhage. P.W.9, Motor Vehicle Inspector, inspected the vehicle and given a report stating that there is no mechanical defect in the vehicle. P.W.14, after completion of investigation laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 14 witnesses were examined and 7 documents were exhibited.

7. Out of the witnesses examined, P.Ws.1, 2, 3, 5 and 11 are the eye-witnesses to the occurrence. According to P.W.1, who is the father of the deceased, usually the van will come from the school from East to West. But, on the date of occurrence, the offending van came in the opposite direction, i.e., from West to East and the petitioner/accused stopped the van in some other place away from the usual place and both the deceased and P.W.5, who is another daughter of P.W.1, got down from the van. Immediately, the petitioner in a rash and negligent manner, moved the offending van on the left hand side and dashed against the deceased and the van ran over on the head of the child. Immediately, P.W.1 gave a complaint to the respondent police station.

8. P.W.2 is the brother of P.W.1. He is also an eye-witness to the occurrence. P.W.3 is a residence of Kalavizhi village. According to him, on the date of occurrence, while P.W.3 and another person were walking near the scene of occurrence, both the deceased and P.W.5 got down from the offending van, immediately, the offending van turned to the left side, and dashed against the deceased, and the van ran over the deceased, and she died on the spot.

9. P.W.5 is the sister of the deceased, who was also studying in the same school with the deceased and both the deceased and P.W.5 travelled in the same van. According to P.W.5, the van stopped in an unusual place and the van driver moved the van in high speed and dashed against the deceased and the van ran over the head of the deceased. Immediately, the van driver ran away. P.W.5's father was present at the time of occurrence to receive them and immediately he gave a complaint. P.W.11 is yet another eye witness, he is the resident of the same village. According to him, after the children got down from the offending van, while crossing the road, the van dashed against the deceased and both the front and back wheel of the van ran over the deceased. He also identified the petitioner/accused as the driver of the van.

10. P.W.9 is the Motor Vehicle Inspector. He inspected the van and gave a report that there is no mechanical defect found in the offending van. P.W.10 is the Doctor, who conducted autopsy on the dead body of the deceased and gave a postmortem report and also of the opinion that the deceased died due to shock and hemorrhage and he also found fracture in the head of the deceased. P.W.12 is the Sub-Inspector of Police, who registered the complaint. P.W.14 is the Inspector of Police, conducted investigation and on completion of investigation, he laid charge sheet.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, he has not chosen to examine any witness or mark any documents.

12. Having considered all the above materials, the trial Court convicted the petitioner/accused, as stated in the first paragraph of this judgment. Being aggrieved by the conviction, the petitioner/accused has filed an appeal in C.A.No.101 of 2010 and the lower appellate court partly allowed the appeal as stated in paragraph one of the judgment and challenging the said conviction and sentence, this revision has been filed.

13. The learned counsel appearing for the petitioner would contend that there are so many contradictions in the evidence of eye-witnesses regarding the accidents and absolutely there is no evidence to show that the petitioner had driven the vehicle in a rash and negligent manner. In the absence of any evidence for rash and negligent driving, the petitioner cannot be convicted under Section 304(A) IPC. In support of his submission, the learned counsel also relied upon judgments reported in 2001(2) MWN 249 (Sekar /vs/ State by S.I. of Police, Ethapur, Salem), 1998(8) SCC 493 (State of Karnataka /vs/ Satish) and in 2001 (2) MWN SC 77(Mohammed Aynuddina @ Miyam /vs/ State of Andhra Pradesh).

14. Per contra, the learned Government Advocate (Criminal Side) would submit that there are 5 eye-witnesses to the occurrence and all of them have consistently stated that the driver of the van drove the vehicle in a negligent manner and ran over the school going child and caused her death and all of them are independent witnesses and there is no reason to disbelieve their evidence. The trial Court considering all the above evidences, convicted the petitioner and there is no reason to interfere with the well considered judgments of the courts below.

15. I have considered the rival submissions and perused the materials available on record carefully.

16. P.W.5 is the sister of the deceased. She has also travelled along with the deceased in the school van. She had categorically stated that after getting down from the van, while she was walking in front of the deceased in the edge of the road, the van came in a high speed and dashed against her sister. At that time, their father was also there to take them and the driver left the van and ran away. Thereafter, they had taken the deceased to the hospital and found her dead. P.W.1 is the father of the deceased. He came there to take both the children and according to him, after the children got down from the van, the driver drove the van in high speed and dashed against the deceased. P.W.2, brother of P.W.1 is also an eye-witness to the occurrence. P.W.3 is also an independent eye-witness to the occurrence and as the evidence of all the eye-witnesses are consistent and their presence in the scene of occurrence cannot be denied.

17. Hence, from the evidence of eyewitnesses, it is clear that the petitioner has moved the vehicle in a negligent manner and in high speed and dashed against the child from her behind. Considering the nature of accident that the deceased was a school going child, who was aged 4 ½ years old and the petitioner/accused, being the driver of the school van, ought to have taken more care and caution, but, he failed to exercise his duty with proper care. From the evidence of eyewitnesses, it could be seen that without taking such care, the driver moved the vehicle rashly and without due care, dashed against the deceased and caused her death.

18. The Hon'ble Supreme Court in 2001 (2) MWN (Cr.) SC.77 in Mohammed Aynuddina @ Miyam vs. State of Andhra Pradesh has held as follows:

" 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.

8. The principle of res ipsa loquitor 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 wrong doer.

9. A rash act is primarily an over hasty 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 duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

19. In the above circumstances, I am of the view that the accident took place only due to the rash and negligent act of the petitioner and both the courts below after analyzing the evidence, convicted the petitioner and I find no infirmity or perversity in the judgment of the Courts below. So far as the quantum of sentence is concerned, the petitioner is a poor man and having a big family to maintain and he has no bad antecedent. Apart from that he was already in jail for more than 60 days. Considering all the mitigating as well as the aggravating circumstances, the sentence is modified to the period already undergone.

20. In the result, the Criminal Revision is partly allowed and the conviction under Section 304(A) IPC is confirmed and the sentence is modified to that of the period already undergone by the petitioner and to pay a fine of Rs.3500/-, in default, to undergo rigorous imprisonment for 4 weeks.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mrp

To

1. Additional District and Sessions Judge,
Fast Track Court No.V,
Tiruppur.

2. The Judicial Magistrate, No.II,
Tiruppur.

3.-Do-thro The Chief Judicial Magistrate,Thiruppur.

4.The Inspector of Police,
Perunanllur Police Station,
Coimbatore.

5.The Superintendent,
Central Prison,Coimbatore.

6. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.N.Manokaran,Advocate sr.73105

Cr1.R.C.No.1087 of 2010

kk(co)
ss(30/6/2017)



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