

BAIL SLIP

The Petitioner/Accused namely M.Gandhi S/o.Maruthappan was directed to be released on bail as per the order of this court dated 09.08.2011 in CrI.MP.No.3/2011 in CrI.RC.No.885/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.885 of 2011

M.Gandhi ...Petitioner/Accused

Vs

State. Rep. by
The Inspector of Police,
Nagor Police Station,
Nagore Circle. ...Respondent/Complainant

Prayer:-

This Criminal Revision is filed under Section 397 & 401 of Cr.P.C., against the conviction and sentence passed by the District and Sessions court, Nagapattinam in the judgment dated 18.03.2011 in CrI A.No.49 of 2008 confirming the conviction and sentence passed by the learned Judicial Magistrate II, Nagapattinam in C.C.No.831 of 2004 dated 28.07.2008.

For petitioner : Mr.P.Vijendran

For respondent : Mrs. M.F.Shabana,
Gov. Advocate (CrI. Side)

O R D E R

The revision petitioner is the sole accused in C.C.No.831 of 2004 on the file of the Judicial Magistrate II, Nagapattinam. He stood charged for an offence under Section 304-A IPC. The Trial court, convicted and sentenced him to undergo simple imprisonment for six months and to pay a fine of

Rs.5000/-, in default, to undergo simple imprisonment for six months. Out of the above fine amount, of Rs.5,000/-, Rs.4000/- is ordered to be paid as compensation to the legal heirs of the deceased. Challenging the above said conviction and sentence, the revision petitioner/accused has filed an appeal in C.A.No.49/2008 on the file of the District and Sessions Court, Nagapattinam. The lower appellate court, dismissed the appeal and confirmed the conviction and sentence imposed by the trial court. Challenging the above conviction and sentence, the revision petitioner/accused is before this court with this revision petition.

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

2(i). The deceased in this case, one Kannaiyan was riding his bicycle near Vanjore Check Post, at Karaikkal-Nagore Main Road. At that time, the State Transport Corporation Bus bearing Registration No.T.N.49.1051 driven by the accused, came in a rash and negligent manner and dashed against the deceased and the back wheel of the bus run over the deceased and caused his death.

2(ii). P.W.1, who was an eye-witness to the occurrence had informed the same to the deceased family and he has also lodged a complaint to the respondent police. Based on the same, P.W.13, Sub-Inspector of Police, registered a case in Crime No.83 of 2004, for offence under Section 304-A IPC, under Ex.P6. P.W.14, Inspector of Police, who was incharge of Nagore Police Station, after receipt of FIR, commenced the investigation and proceeded to the place of occurrence where he prepared an observation mahazar, Ex.P.2, and drawn a rough sketch, Ex.P.7 and conducted inquest on the dead body and prepared Inquest Report Ex.P8. Thereafter, he sent the deadbody of the deceased for postmortem to the Nagapattinam Government Hospital. PW.10, the Doctor, who was working in the Government Hospital, Nagapattinam, has conducted postmortem on the deceased body and issued Postmortem Certificate Ex.P4, according to PW10, the death was due to shock and hemorrhage and due to multiple injuries on the vital parts of the body.

3. P.W.15, Inspector of Police, continued the investigation, recorded the statement of doctor, who conducted postmortem on the dead body and also examined the Motor Vehicle Inspector, who inspected the offending vehicle and after completion of investigation, he laid charge sheet against the accused.

4. Considering the above materials, the trial Court framed a charge against the accused as mentioned in the first paragraph of the order. the accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15

witnesses were examined and 8 documents were exhibited.

5. Out of the witnesses examined, P.Ws.1, 2, 7 and 12 are eye-witnesses to the occurrence. P.W.1 deposed in his evidence, that he already known the deceased as well as the accused. According to him, the deceased was riding in his bicycle in Karaikkal-Nagore Main road from North to East at the left side of the road. At that time, the offending Bus came behind, in a high speed and dashed against the deceased and caused his death. P.W.2 has also deposed in his evidence that the deceased was riding his bicycle from North to South, at that time, the offending bus came in a high speed and dashed against the deceased and caused his death. P.W.3, is the brother of the deceased had deposed that he came to know about the accident only after getting phone call and he went to the place of occurrence and he came to know about the complaint made by PW1, and the other witnesses who were present in the place of occurrence. P.W.4 has deposed in her evidence that she is the wife of the deceased and after hearing the news, she went along with her son to the place of occurrence. P.W.5 - one Rajagopal Pillai is the witness to the observation mahazar. P.W.6, one Chinnapandy, is also the attesting witness to the observation mahazar. P.W.7-Mahalingam, is one of the eye witnesses to the occurrence. According to him, at the time of occurrence, the bus came from North to South direction in a high speed and dashed against the cyclist/deceased and the bus run over the deceased. PW.8 is working as Commercial Tax Officer. When he was working at the Check Post, Vanjore, he heard the noise and went to the scene of occurrence. P.W.9 is working as Office Assistant in the Commercial Tax Department. While he was working at the Check Post, he came to the scene of occurrence after the accident. P.W.10-Doctor, conducted postmortem on the dead body of the deceased at the Government Medical College Hospital, Nagapattinam. P.W.11, Motor Vehicle inspector, who inspected the offending bus and has given a report Ex.P5 and according to him, there is no mechanical failure in the offending bus. P.W.12, is another eye witness, and he has stated in his evidence that the bus came in a high speed and dashed against the cyclist/deceased. P.W.13 is the Sub Inspector of Police, Nagore, who registered the case in Cr.No.8 of 2004, based on the complaint made by PW1 and forwarded the FIR and the complaint to the Court and copy of the FIR to the Inspector of Police, Nagapattinam Town. P.W.14- is the Inspector of Police who was incharge of Nagore Police Station. After receipt of FIR, he has taken up the case for investigation and went to the scene of occurrence and prepared observation mahazar, Ex.P2 and also drawn a rough sketch , Ex.P7 and thereafter, commenced investigation and conducted inquest on the dead body of the deceased and prepared Inquest Report Ex.P8 and sent the dead body to the Nagapattinam Government Hospital for postmortem and Ex.P4 is the postmortem certificate and he recorded the

statements of the witnesses. Thereafter, P.W.14 handed over the the case to the file of regular Inspector of Police, Nagore. P.W.15 Inspector of Police, Nagore, continued the investigation and he had examined the Motor Vehicle Inspector and postmortem doctor and after completion of investigation, he laid charge sheet against the accused.

6. After completion of the prosecution side evidence, the accused was questioned under Section 313 (1) (b) of Cr.P.C. about the incriminating materials found against him and he totally denied the such allegations. However, he did not examine any witness nor marked any documents.

7. Having considered all the above materials, the trial Court convicted the petitioner/accused as mentioned in the first paragraph of this order. Challenging the same, the petitioner preferred an appeal before the District and Sessions Judge, Nagapattinam and the lower appellate court dismissed the appeal therebyby confirming the judgment of the trial court. Aggrieved by the same, the petitioner/accused is before this court, with this present revision.

8. I have heard Mr. P.Vijendran, learned counsel appearing for the petitioner and Mrs. M.F.Shabana, learned Govt. Adv.(crl. Side) appearing for the respondent.

9. There are four eye-witnesses to the occurrence. Viz., P.Ws.1, 2, 7 and 12. They are independent witnesses and they have consistently stated that when the deceased was riding his bicycle from North to South in a highway near check-post at Vanjore, the offending bus was driven by the petitioner/accused in high speed and dashed against the cyclist and the rear wheel of the bus run over the deceased and caused his death. All the witnesses have consistently stated that the bus came in a highway in high speed and dashed the cycle. But there is no evidence available to show that the petitioner has driven the bus in a rash and negligent manner and thereby caused the death.

10. In order to prove the charge under Section 304 IPC, the prosecution should establish that the vehicle was driven by the accused in a rash and negligent manner. Merely because the vehicle came in the highway in high speed, it cannot be presumed that the bus was driven in a rash and negligent manner and rash and negligent act of the accused resulted the death of the deceased. The Hon'ble Supreme Court in STATE OF KARNATAKA V. SATISH reported in (1998) 8 SCC 493 has held as follows:

"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 case, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is presumption of innocence in favour of the accused until the contrary is proved. Criminally 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".

In the instant case, none of the witness was examined by the prosecution deposed that the bus was driven in a rash and negligent manner.

11. On perusal of the materials, it could be seen that the occurrence took place at 09.30 a.m. in a high way near the check-post at Vanjore. From the rough sketch filed by the prosecution, it is seen that the occurrence took place in the middle of the road and not on the left side of the road. Considering all the above materials and in the absence of any evidence to establish rash and negligent driving on the part of petitioner, he cannot be convicted under Section 304 A of IPC. In view of the above, the petitioner is entitled for acquittal.

12. In the result, the revision petition is allowed and the judgment and decree passed by the Courts below convicting the petitioner/accused are hereby set aside and the petitioner is acquitted from the above charges.

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Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The District and Sessions Judge,
Nagapattinam.

2. The Judicial Magistrate II,
Nagapattinam.

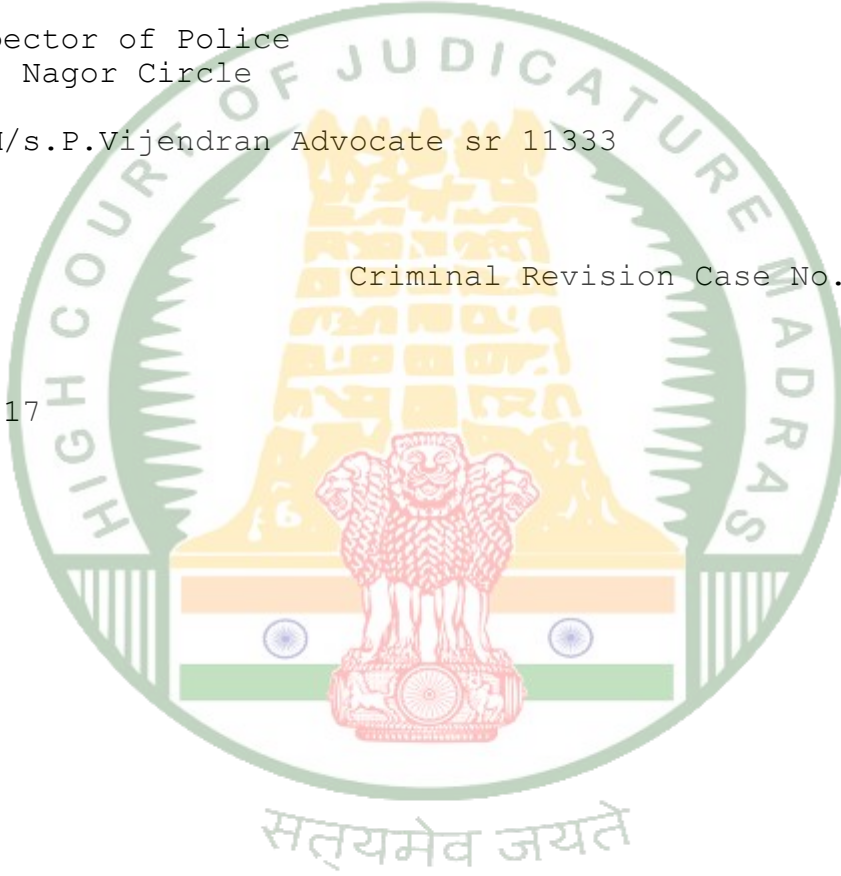
3. The Public Prosecutor,
High court, Madras.

4. The Inspector of Police
Nagor P.S, Nagor Circle

+1 cc ot M/s.P.Vijendran Advocate sr 11333

Criminal Revision Case No.885 of 2011

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