

Bail Slip

The petitioner therein P.Venkatesan was released on bail by the order of this court dated 26.4.2011 made in MP.1/2011 in Crl.RC.No.450/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.R.C.No.450 of 2011

P.Venkatesan

.. Petitioner

Vs.

State by Inspector of Police,
J3 Traffic Investigation,
Traffic Investigation Wing,
Chennai.

(Crime No.281/S2/2005)

... Respondent

Criminal Revision Case filed under Sections 397 and 401 Criminal Procedure to call for the records of the learned Additional District Sessions Judge, Fast Track Court No.IV, Chennai and to set aside the judgement passed by him in C.A.No.96 of 2010 by judgement dated 29.01.2011 which confirmed the conviction and sentence made in C.C.No.6953 of 2005 dated 20.05.2010 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai-600 015.

For Petitioner : Mr.M.Selvam

For Respondent : Mr.R.Ravichandran,
Government Advocate

O R D E R

This revision is filed as against the order of the First Appellate Court confirming the conviction and sentence passed on the accused under Sections 304-A, 338 IPC and Section 184 of Motor Vehicles Act.

2. The prosecution of the case was, PW1 is the wife of the deceased and she was the pillion rider in a two-wheeler bearing No.TN-22-Z-3477 and her husband was riding the motor cycle on 17.07.2005 at about 08.45 p.m. At that time the accused drove the offending vehicle bearing No.25-X-6009 in an opposite direction in the Taluk Office Road and dashed against the two-wheeler, as a result, PW1's husband succumbed to injuries there itself. PW1 also sustained injuries and admitted in the hospital. PW4, the Sub Inspector of Police, on hearing the accident went to the place of occurrence and obtained Ex.P1's complaint from one Saravanan and registered a case in Crime No.281/S2/2005 under Sections 304-A, 338 IPC and 184 of Motor Vehicles Act under Ex.P3 FIR. PW6, the Investigation Officer took up the investigation and finally laid a final report against the accused. The Trial Court based on the evidence and materials found the accused guilty under Sections 304-A, 338 IPC and 184 of Motor Vehicles Act, as against which, an appeal was filed. The Appellate Court also confirmed the judgment. Assailing the same, the present revision is filed by the revision petitioner before this Court.

3. The learned counsel appearing for the revision petitioner would contend that, absolutely there is no evidence to show that the accused caused death either by rash and negligent act and except PW1 pillion rider, no other witness had seen the accident. Even the evidence of PW1 does not show that accused drove the vehicle in a rash and negligent manner, whereas the Trial Court and the Appellate Court have not properly appreciated the evidence and found the revision petitioner guilty.

4. The learned Public Prosecutor submitted that, PW1 is an injured and also the pillion rider, and her evidence proves rash driving on the part of the accused and hence, submitted that the Appellate Court has appreciated the evidence properly and the revision is not maintainable.

5. This Court perused the materials. Of course, unless there are compelling reasons, the Revision Court would not re-appreciate the evidence. Similarly, when the evidence before the Trial court is not properly appreciated or the finding is perverse, the Revisional court certainly can reappreciate the evidence. In order to establish the offence under Section 304-A IPC as well as under Section 338 IPC, the initial burden lies on the prosecution to prove either rashness or negligence on the part of the accused in causing either death or injuries. The

offence under Section 304-A IPC has to be proved like other offence. The prosecution cannot be relieved on the ground of principle res ipsa loquitur. Though the principle of res ipsa loquitur would be applicable in a motor accident case, such principle cannot be applied to all cases. It can be used taking into consideration the circumstances and facts of each case. Therefore, it is the duty of the prosecution to establish the rash and negligent on the part of the accused. Unfortunately, the deceased/husband of the PW1 succumbed to injuries while driving the two-wheeler in a busy road, i.e., Guindy main road near Taluk office at 08.45 p.m. The evidence of PW1 does not show that the accused was either driving the vehicle in a rash manner or a negligent manner except stating that the accused drove the vehicle in a speedy manner and no other aspect was spoken to by PW1.

6. It is to be noted that mere riding the vehicle in some speed cannot be said that it constitutes of rashness or negligence. Similarly, it is also not in dispute that even in an ordinary speed driving vehicle in certain places like sharp streets or areas in front of hospitals and educational institutions, such driving also sometimes constitute rashness or negligence, whereas any man rides even in an excessive speed, in Highways more than 60 k.ms. or 80 k.ms. may not amount to rash or negligent act.

7. To assert as to whether the vehicle was driven in such a manner in the highly populated place or where the people movement was so high to bring the act of accused driving the vehicle in somewhat speedy manner within the ambit of Sections 304-A or 338 IPC and 184 of Motor Vehicle Act, the prosecution has to first prove the fact that the vehicle was driven with such a speed in the particular area when the people movement is also very high. In the absence of any evidence in this regard, merely on the basis of oral evidence of PW1, the injured, that vehicle was driven in some speedy manner, we cannot presume that an offence has been made out, when the topography of the area, where the accident took place has not been established by the prosecution. Investigation in this type of case has casually been carried away by the investigation officer even without establishing the topography of the place of occurrence. Even the photographs showing the nature of accident place have not been filed by the prosecution. Therefore, this court is of the view that evidence of PW1 alone is not sufficient to constitute offence under Sections 304-A or under Section 338 IPC. Hence, the Trial Court has not properly appreciated the evidence and has also assumed the role of Investigation officer and found that the accused was driving the vehicle in a wrong side and

caused accident without proper material evidence and imposed the punishment in other sections also. Hence, this Court holds that the order of the Trial Court is liable to be interfered with and accordingly, the revision is allowed. The judgment of the First Appellate Court is hereby set aside.

abr/rka

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.Additional District Sessions Judge,
Fast Track Court No.IV, Chennai.
- 2.The IV Metropolitan Magistrate,
Saidapet, Chennai-600 015.
- 3.The District Collector
Chennai
- 4.The Commissioner of Police, Chennai-4
- 5.The Superintendent, Central Prison, Puzhal, Chennai.
- 6.The Inspector of Police,
J3 Traffic Investigation,
Traffic Investigation Wing,
Chennai.
- 7.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.UdayaChandar, Advocate Sr.No.17726

LRS (CO)

sm:11.4.2018

CRL.R.C.NO.450 of 2011