

BAIL SLIP

THE ACCUSED VIZ., MOHAMED IBRAHIM WAS RELEASED ON BAIL IN
CRL.MP.NO.1 & 2/12 I CRL.RC NO.1311/2012 DATED 7.11.2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.03.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1311 of 2012

Mohamed Ibrahim Petitioner/Accused

Vs.

State: represented by
Circle Inspector of Police,
Sankari,
Crime No.364 of 2007 Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., to set aside the judgment and Decree dated 24.08.2012 made in Crl.A.No.13 of 2011 on the file of the learned II Additional District and Sessions Judge, Salem, confirming the Judgment and Decree dated 24.01.2011 in C.C.No.135 of 2007 on the file of the learned Judicial Magistrate No.I, Sankari.

For Petitioner : Mr.P.H.Manoj Pandian

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

ORDER

The petitioner in the criminal revision case was prosecuted before the learned Judicial Magistrate No.I, Sankagiri in C.C.No.135 of 2007 for the offence punishable under Sections 279, 337 and 304(A) of I.P.C. The Trial, having found guilty, convicted on all charges excepting the charge under Section 337 of I.P.C., and sentenced to pay a fine of Rs.1,000/-, in default to pay fine, the petitioner shall undergo three month Simple Imprisonment for the Offence under Section 279 of I.P.C. and sentenced to undergo rigorous imprisonment for a term of 6

months and a fine amount of Rs.2,500/- and in default the petitioner shall undergo six months Simple Imprisonment for the offence punishable under Section 304(A) of IPC.

2.On appeal the learned II Additional District and Sessions Judge, Salem, confirmed the conviction for the aforesaid offences and the sentence imposed under Section 304(A) of I.P.C., thereby upholding Trial Court's decision. As against the said judgment confirming the conviction recorded by the Appellate Court, the present revision case has been filed under Sections 397 and 401 of Cr.P.C.

3.The facts in short leading to the filing of the criminal revision case, in brief, are as following that :-

On 10.05.2007 at about 04.15 p.m. near Valakuttai, the revision petitioner drove in a rash and negligent manner a Hyundai Car bearing Reg No. TN-07-K-2034 and hit over the two wheeler bearing Reg No. TN-34-E-7023 ridden by one Mani. In the said accident, Mani succumbed to the injuries and the occupant of the car namely Jayamurugan also sustained injuries. PW2 and PW3 who were bystanders in occurrence place, on hearing upon the sound of the accident, turned out and rushed to the place of accident and a complaint in Ex-P1 was lodged by PW3, before the respondent police. In accordance with Mahazar in Ex-P2 inspection of the place of accident was made by the respondent police. The Government Doctors PW 10 and PW12 treated said Jayamurugan they have recorded Ex-P5, Accident Register Copy and on examination of corpus of Mani issued Ex-P3 Postmortem Certificate.

4.It is seen that based on the said complaint a case was registered on the file of respondent Police Station, in Cr.No.364 of 2007 for alleged offences under Sections 279, 337 and 304(A) of I.P.C. on investigation the then Inspector of Police Sankagiri, conducted investigation and filed the charge sheet alleging commission of offences by the revision petitioner/accused, punishable under Sections 279, 337 and 304 (A) of I.P.C. The same came to be taken on file by the learned Judicial Magistrate, Sankagiri as C.C.No.135 of 2007. The revision petitioner/accused pleaded not guilty.

5.The trial was conducted, as many as 13 witnesses were examined as PW1 to PW13 and 9 documents were marked as Ex.P1 to Ex.P9. No material object was produced on the side of the prosecution.

6. On questioning under Section 313(1) of Cr.P.C. regarding the incriminating materials appearing in the evidence adduced on the side of the prosecution, the revision petitioner pleaded innocence and responded that such evidence appearing against him were false. No witness was examined and no document was marked on the side of the revision petitioner/accused.

7. The learned Judicial Magistrate on assessment of the evidence and hearing upon the arguments advanced, held that the charges framed against the accused were proved beyond reasonable doubt and thereby convicted the revision petitioner/accused for the said offences and imposed the sentences as stated above.

8. Assailing the same, revision petitioner/accused filed an appeal in CrI.A.13 of 2011, before the learned II Additional District and Sessions Judge, Salem. The learned Appellate Judge, confirmed the Judgment of Trial Court and thereby dismissed the revision petitioner's appeal. Assailing the judgment of the learned II Additional District and Session Judge, Salem, confirming the conviction recorded by the learned Judicial Magistrate the present revision is being filed.

9. I heard Mr.P.H.Manoj Pandian, learned counsel for the petitioner and Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the respondent and perused the entire material available on records.

10. It is the contention of the learned counsel for the Revision petitioner that prosecution has miserably failed to prove its case against the accused beyond shadow of doubt. In support of said contention, he relied upon the testimony of PWs 5, 6 and 7 who have not supported the case of prosecution and was declared hostile.

11. The learned counsel for the Revision petitioner submits that the prosecution witnesses had not supported the case of the prosecution that PWs 1, 5 to 7 turned hostile. Again PW2, who is projected as a direct witness to the accident, cannot be relied upon, since according to his own version he came to the place of occurrence 10 minutes later to the accident on hearing noise of the collusion. PW3 is a tuned witness for the sake of prosecution and the same could be ascertained from the Rough Sketch put forth by the respondent revealing that Pw3's land is situated elsewhere and the same is not found near or adjoining the place of occurrence. The prosecution has failed to examine the Sub-Inspector of Police who have registered FIR and

proceeded with the case and the same remain fatal to the prosecution.

12.Per Contra, the Learned Government Advocate (Criminal Side), representing the respondent complainant Police, contended that there is neither infirmity nor irregularity in the findings of the Courts below and only on due appraisal of the oral and documentary evidence made by the prosecution, the Courts below have rightly found the accused guilty of the offences charged and hence he seek for dismissal of the instant Criminal revision petition.

13.On careful perusal of the case records, it is seen that in the case on hand there is no direct witness as to state that the car was driven by the accused. Further PW-1 turned hostile and his version hence becomes unreliable. Looking into the version of PW-2 it is his specific case that he came to the scene of occurrence about 10 minutes later on hearing upon the noise of collusion. No doubt, the occurrence of accident is not in dispute in the case on hand, whereas only what has to be seen is as to whether it happened due to the negligent and rash driving of the car.

14.It is further seen that nowhere PW1 and PW3, in their examination have stated that the accused was driving the Hyundai Car bearing Reg No. TN-07-K-2034. On the other hand PW3 deposes that ahead of his reach to the spot of accident, none was found. The said version also creates a doubt in the mind of this court as to the presence of PW1 as projected by the prosecution.

15.At this juncture it is equally important to note that PWs 5 and 6 had stated that the accident took place as a follow-on of a two wheeler, which all of a sudden turned to the left side and in such circumstance to avoid Head on collusion with yet another car proceeding therein. In the said circumstance, in the opinion of this Court, the car driver cannot save accident and in fact, in the said accident the car capsized and the occupant of the car namely Jeyamurugan sustained injury and therefore the driver /accused cannot be held to be negligent in such a case.

16.It is to be seen that time and again vide catena of judgments delivered by Hon'ble Supreme Court of India that investigation in accidental cases, should be conducted in most swift and scientific manner.

17. In the case of Abdul Subhan Vs. State (NCT of Delhi) reported in 133 (2006) DLT 562 it has been held as under:

"As observed in Badri Prasad (supra) the essential ingredients of Section 279 of I.P.C., are that there must be rash and negligent driving or riding on a public way and the act must be such so as to endanger human life or be likely to cause hurt or injury to any person. As regards the offence punishable under Section 304-A of I.P.C., it was observed that the point to be established is that the act of the accused was responsible for the death and that such act of the accused must have been rash and negligent although it did not amount to culpable homicide. As observed in Badri Prasad (supra), to establish the offence either under Section 279 or Section 304-A of I.P.C., the commission of a rash and negligent act has to be proved. The only distinction being that in Section 279 of I.P.C., rash and negligent act relates to the manner of driving or riding on a public way while the offence under Section 304-A of I.P.C. extends to any rash and negligent act falling short of culpable homicide. As correctly observed by the learned Judge, the rashness or negligence which needs to be established is something more than a mere error of judgment. There is also a distinction between rashness and negligence in that, rashness conveys the idea of doing a reckless act without considering any of its consequences whereas negligence connotes want of proper care".

18. In this regard it would be further relevant to look into the decision made by this Court in the case of R. Nandakumar Vs State rep by Inspector of Police, Pollachi West Police Station, reported in 2013(1)CLT (Cri) 601 holding as following that

"8. Except mentioning the presence of PW8-Sakthivel and another, she did not refer to the very presence of other witnesses in the scene of occurrence. Out of two witnesses mentioned in the FIR, PW8 did not support the case of prosecution and other witness was conveniently omitted to be brought into the witness box. It is also relevant to point out at this juncture that the witnesses as referred to above did not admittedly say any thing about the rash and negligent manner in which the Van was driven in the statement given to the IO and the IO has also categorically admitted in the course of his cross examination about the omission or failure to make one such statement from the witnesses.

9. Here is the case, wherein not only the oral evidence of witnesses do not support the prosecution theory regarding the manner of occurrence, but also, they do not disclose requisite ingredients to constitute the offence under Section 304-A of IPC and their evidence is not only bereft of material particulars, but also stand contradicted. As the witnesses would uniformly say that the accident occurred, when the deceased was about to cross the road at 00.30hours, the judgment of the Hon'ble Supreme Court reported in AIR 1972 SC 221 - Mahadeo Hari Lokre V. The State of Maharashtra will come to the aid of the accused. The facts involved in that decision are identical to the facts of the present case. There again, the vehicle was driven on the public way and the accident took place when the pedestrian suddenly crossed the road without noticing the bus. The Hon'ble Supreme Court was of the view that if a pedestrian suddenly crossed a road without taking note of the approaching bus, there is every possibility of his dashing against the bus, without the driver becoming aware of it and the bus driver cannot save accident however slowly he may be driving and therefore he cannot be held to be negligent in such a case. The law laid down by the Hon'ble Supreme Court in the judgment above cited is squarely applicable to the facts of the present case.

10. Considering the time and place of the accident and the manner in which the accident occurred, the direction from which the deceased was about to cross the road and absence of the light if coupled with the failure of the witnesses to depose about the manner of accident would only lead to serious doubt as to whether the accident occurred in the manner as narrated by the prosecution. Both the Courts below on the basis of the legally permissible evidence ought to have raised genuine doubt about the involvement of the accused in the commission of the offence and on their failure to do so resulted in totally erroneous and perverse judgment of conviction and sentence and the same deserves serious interference from this Court."

19. Therefore, it is needless for this Court to emphasise that in cases of offences under Section 279 or Section 304-A of I.P.C., the negligence of the accused has to be proved beyond reasonable shadow of doubt. However in the case on hand, the prosecution has failed to prove that accused was driving the vehicle in rash and negligent manner, as the PW3 has stated

that he had reached the spot when the accident had already taken place and PW1 turned hostile. Thus, it is pointless to hold that the accident in question was occurred due to the rash and negligent driving by the accused which is an essential ingredient for offence under Section 279 and 304-A of I.P.C.

20. In view of the forgoing reasons stated above, this Court is of the opinion that guilt of accused qua offence punishable under Sections 279 and 304-A of I.P.C. has not been proved.

21. In the result, this Criminal Revision Case stands allowed by setting aside the judgment and decree dated 24.08.2012 made in CrI.A.No.13 of 2011 on the file of the learned II Additional District and Sessions Judge, Salem, confirming the Judgment and Decree dated 24.01.2011 in C.C.No.135 of 2007 on the file of the learned Judicial Magistrate No.I, Sankari and the accused is acquitted and the fine amount, if any paid by the accused, shall be refunded and the bail bonds, if any, executed by him shall stand cancelled.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs
To

- 1.The II Additional District and Sessions Judge,
Salem.
- 2.The Judicial Magistrate No.I,
Sankari.
- 3.The Chief Judicial Magistrate,
Salem.
- 4.The Circle Inspector of Police,
Sankari, Salem District.

+1cc to Mr.P.H.Manoj Pandian, Advocate Sr.23897

CrI.R.C.No.1311 of 2012

srg 29/06/2018