

Bail Slip

The Appellant/Accused, namely Sankara Pandian S/o. Poocha konar was released on bail as per order dated 05.02.2016 in MP.NO.1073/16 IN CRL.R.C.No.178 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019
CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.178 of 2016

Sankara Pandian ... Petitioner/Accused/ Appellant
Vs.

State by
The Inspector of Police,
Padalam Police Station,
Kancheepuram District.

... Respondent Respondent/Complainant
(Crime No.31/2003)

PRAYER: This Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.P.C., to set aside the order dated 01.12.2015, made in Crl.A.No.84/2011, by the Principal Sessions Judge, Kancheepuram at Chengalpattu, confirming the conviction and sentence by order dated 25.11.2011, made in C.C.No.348/2003, by the learned Judicial Magistrate No.1, Chengalpattu.

For Petitioner : Mr.T.R.Ravi

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

- 1.This Criminal Revision Petition has been filed, against the order the order dated 01.12.2015, made in Crl.A.No.84/2011, by the Principal Sessions Judge, Kancheepuram at Chengalpattu, confirming the conviction and sentence by order dated 25.11.2011, made in C.C.No.348/2003, by the learned Judicial Magistrate No.1, Chengalpattu.
- 2.The brief facts of the prosecution case is that the petitioner is the driver of the Government Bus bearing registration No.TN01 6448 and on 01.02.2003, at about 7.00 p.m., the petitioner within the jurisdiction limit of Padalam Police Station on North half of GST Road from Madhuranthagam to Chengalpattu from the South to North direction, driven the Government Bus in a rash and negligent manner and due to which, he lost control, resulting in the bus swirled to the extreme end of the road and fallen inside a road side pit and got

capsized, resulting in 19 passengers sustaining simple injuries and 3 passengers sustaining grievous injuries and one passenger succumbing to the injuries and also caused damages to the bus. Based on the complaint given by P.W.1/Rajaiyar, the respondent police registered a case in Crime No.31/2003, for the offences under Sections 279, 337, 338 and 304 (A) of IPC. Thereafter, during the course of the investigation, the FIR was altered and thereafter, final report was filed for the offences under Sections 279, 337 (19 counts), 338 (3 counts) and 304 (A) (1 count) of IPC. The case was taken up in C.C.No.348/2003, and on appearance of the petitioner/accused and after furnishing copies of the documents under Section 207 of Cr.P.C., the Trial Court had questioned the petitioner/accused and he denied the charges and sought to be tried.

3. On the side of the prosecution 14 witnesses were examined as P.W.1 to P.W.14 and 48 documents were marked as Ex.P.1 to Ex.P.48 and on the side of the defence no evidence was let in. After completion of evidence, the petitioner/accused was questioned under Section 313 of Cr.P.C. The petitioner/accused denied the charges and the Trial Court, after hearing both sides, found the accused guilty for the offences under Sections 279, 337 (19 counts), 338 (3 counts) and 304 (A) (1 count) of IPC and sentenced the petitioner to undergo Six Months Rigorous Imprisonment for the offence under Section 279 of IPC and to undergo One Month Rigorous Imprisonment for the offence under Section 337 (19 counts) of IPC and to undergo Three Months Rigorous Imprisonment for the offence under Section 338 (3 counts) of IPC and to undergo Two Years Rigorous Imprisonment for the offence under Section 304(A) of IPC and directed the petitioner/accused to undergo the sentences concurrently. However, no fine was imposed. The petitioner/accused filed CrI.A.No.84/2011, before the Principal Sessions Judge, Kancheepuram District at Chengalpattu, the Appellate Court by Judgment dated 01.12.2015, had dismissed the appeal and confirmed the Judgment of conviction and sentence passed by the Trial Court. As against the same, the present revision petition has been filed.

4. The learned counsel for the petitioner/accused would submit the Courts below erred in convicting the petitioner/accused without there being requisite materials to prove the charges against the petitioner/accused. The prosecution has failed to prove the charge under Section 304(A) of IPC and that none of the witnesses have spoken that the petitioner/accused had driven the bus in a rash and negligent manner. The First document which came in to existence in this case is Ex.P.1, the complaint given by P.W.1/Rajaiyar. As per Ex.P.1, the occurrence is said to have happened due to bursting of the tyre of the bus, due to which, the vehicle had been swirled and

dragged to the left side of the road and thereafter, had fallen in to a pit on the left side of the road and the vehicle got capsized resulting in some of the witnesses suffering injury and death of one passenger.

- 5.P.W.1/Rajaiar, has categorically spoken that the accident had happened, due to the tyre burst and no suggestion had been put by the prosecution that the accident had happened due to the bus being driven in a rash and negligent manner by the driver/petitioner/accused of the bus and that the rash and negligent act, on the part of the petitioner/accused cannot be presumed or assumed merely because, the vehicle involved in an accident. Though the passengers in the bus have been examined, none of them have spoken about the petitioner having driven the vehicle in a rash and negligent manner. Admittedly, the accident had happened, immediately after the bus had started from the motel where it was stopped for tiffin thereby, suggesting that the bus could not have been driven in a rash and negligent manner and not even in a speedy manner and confirmed that the accident had happened only due to the tyre burst. Since, because several passengers have been injured, the petitioner/accused cannot be presumed to have driven the vehicle in a rash and negligent manner. He would further submit that P.W.6 had deposed that the vehicle was driven speedily. However in his further evidence, he had stated that the accident had happened within 200 feet from the Hotel makes his evidence self contradictory and making it clear that the bus could not be driven speedily whereas, strangely P.W.7/Indumathi, had stated that the accident had happened within 10 feet from the Hotel. Taking into entirety, none of the witnesses have spoken that the bus was driven in a rash and negligent manner.
- 6.The learned counsel for the petitioner would further submit that taking into consideration, Ex.P.10/Observation Mahazar and Ex.P.11/Rough Sketch, they clearly show that the tyre has been dragged for 75 feet and that the vehicle had been pulled to the left side after the burst of bus tyre, thereby, the petitioner/accused losing his control and thereby, the bus falling in to the pit on the left side and getting capsized.
- 7.The Trial Court as well as the Appellate Court, on mere presumptions and assumptions had wrongly held that the tyre marks were available and if the accident could have happened due to the burst of the tyre then the tyre marks would have been in a haphazard manner. The prosecution has failed to prove the case beyond reasonable doubt that the petitioner had driven the bus in a rash and negligent manner. In support of his contention, the petitioner would rely on the Judgment of this Court in M.Subramani v. State rep by the Inspector of Police, Edapadi reported in (2011) 1 Law weekly Criminal 160 and in Senthil Kumar v. The Station House Officer, Valavanur Police

Station reported in (2017) 2 Law Weekly Criminal 113.

8. The learned Additional Public prosecutor would submit that the prosecution has proved that the petitioner had driven the vehicle and that the witnesses have spoken about the petitioner having driven the vehicle in a speedy manner and having caused the accident and that the prosecution has proved that the petitioner is responsible for the accident, due to which, some of the passengers sustained simple injuries and some of them have sustained grievous injuries and one person died due to the accident.
9. This Court heard the submissions made by the learned counsel on both sides and carefully gone through the orders and perused the materials placed on record.
10. Now, while analysing the evidence of the prosecution:
 - a) P.W.1/Rajaiyar, had deposed that he was working as a conductor in the Government bus driven by the petitioner/accused and that the vehicle started at 9.30.a.m, from Madurai and that they were on the way of Chennai, crossing Maamandur by-pass. The front tyre on the left side bursted and thereby, the vehicle was dragged towards the left side of the road and got capsized and fell in to the pit on the road side and that he was injured and the driver sustained fracture and that he had given a complaint and the said complaint was marked as Ex.P1.
 - b) P.W.2/Markandan is a passenger of the bus, he had deposed that the petitioner/accused had driven the bus and he had boarded the bus at 9.30.a.m, from Madurai to Chennai and that around 7.00p.m., the bus had fallen in to the pit and got capsized due to which he and his co-passengers sustained injuries and took treatment at Government Hospital at Chengalpattu.
 - c) P.W.3/Muruganandam is the Motor Vehicle Inspector and he had deposed that he had inspected the vehicle and that he had certified that the accident did not happened due to any mechanical failure and the report is marked as Ex.P2.
 - d) P.W.4/Dr.Parasakthi, who conducted the autopsy on the deceased Ravi and given a report and that had deposed that the said injured Ravi and died on account of the injury sustained on his body and the post-mortem report was marked as Ex.P3.
 - e) P.W.5/Dr.Raja Pilligram, who treated the passengers, viz., Ravi, Chinnaraj, Kamala, Merina and Meenakshi had issued the accident registers in respect of them which are marked as Exs.P4 to P8 respectively.
 - f) P.W.6/Dhanasekar, had deposed that he had gone to Melmalaiyanur Temple and while he was returning to Chennai

in the bus driven by the accused, the vehicle had been stopped at Maamandur Hotel for tiffin and that when the petitioner had driven it speedily, it fell in to the pit due to which, the bus got capsized, due to which, the passengers sustained injury and that he also sustained injury.

- g) PW.7/Indumathi had deposed that the petitioner had taken the vehicle from the Hotel and that within 10 feet the bus had fallen in to the pit and got capsized resulting in her and her co-passengers sustaining injuries and one person died, due to the said accident.
- h) P.W.8/Murali had deposed that he had slept in the bus and that the accident had happened at 7.00p.m., and that he fell unconscious and that he had woken up when he was taking treatment in the Government Hospital, Chennai.
- i) P.W.9/Maria Joseph, had deposed that the accident had happened immediately after the bus was taken from the Hotel and that he sustained injuries. The evidence of P.W.10/Amulraj is corroborated by the evidence of P.W.9/Maria Joseph and P.W.11/Dhass.
- j) P.W.12/Krishnamoorthi, is the Inspector of Police and he had deposed that on the complaint given by P.W.1, he had registered a case in Crime No.31/2003, for the offences under Section 279, 337, 338 and 304-A of IPC and after registering First Information Report. He took up the case for investigation and gone to the place of occurrence and in the presence of witnesses he had prepared the Observation Mahazar/Ex.P.10 and Rough Sketch/Ex.P.11 and thereafter, conducted inquest on the body on the deceased Ravi Ex.P2 and thereafter, he sent the dead body for post-mortem along with a requisition and thereafter, he had arrested the petitioner/accused and released him on bail. Thereafter, he had recovered the vehicle and send it for motor vehicle inspection and he examined the witnesses and the doctors and collected the documents and subsequently, he had altered the report and the alteration report was marked as Ex.P13. He had collected the accident registers and wound certificates regarding to enquire the witnesses/passengers which they were marked ad Exs.P14 to P 48 respectively and thereafter, he had examined the motor vehicle inspector and recorded his statement and after completion of investigation, filed the final report against the petitioner/accused for the offences under Sections 279, 337 and 304(A) of IPC.
- k) P.W.13/Revathi, she is yet another passenger, she had deposed that the accident had happened on 01.02.2003, at 7.00 p.m., while, she was proceeding from Madurai to Chennai.

1) P.W.14/Viswanathan, had deposed that he had boarded the bus Tindivanam and while, the bus was turning on the half of the northern side of Maamandur, the bus fallen into the pit and got capsized.

11. Now while analysing the evidence on record, the first document which had come into existence in this case is Ex.P1/Complaint given by P.W.1. P.W.1 has stated that he had heard the noise and by the time he could go to the front area of the bus, the vehicle fallen in to the pit. While, the bus was crossing Maamandur by-pass, the tyre on the front side of the bus got burst and thereby, the vehicle was dragged to the left side of the road resulting in the bus falling in to the pit and got capsized. A suggestion has been made by the prosecution during the cross examination and P.W.1 had confirmed that but for the burst of the tyre, the accident could not happened ("lah; btof;ftpy;iy vd;why; ,e;j rk;gtk; Vw;gl;oUf;fhfJ vd;why; rhpjhd; "). This contention is supported by Ex.P11 which shows the tyre mark has been dragged from the road towards the left side, showing that the vehicle had swirled towards the left side, resulting in the bus falling in to the pit and got capsized. Further, while, analysing the evidence of the passengers of the bus, none of them have spoken about the petitioner/accused, driven the vehicle in a rash or negligent manner.

12. In M.Subramani v. State rep. by the Inspector of Police, Edapadi Police Station, Salem District reported in (2017) 1 Law Weekly Criminal 160 as held as here under:

"19. In State of Karnataka vs. Satish [(1998) 8 SCC 493], in a road accident where the accused was prosecuted under Section 304-A of IPC, one of the witness 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 driving the vehicle in a rash and negligent manner as required under Section 304-A of IPC and acquitted the accused.

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

21. Subsequently, in *Abdul Subhan v. State (NCT of Delhi)* [2007 Cri. L.J.1089], in a road accident case for an offence under Section 304-A of IPC, the only available evidence of an Head Constable is that the bus driver had driven the bus fastly. The Delhi High Court relying on the Hon'ble Apex

Court decision in SATISH (Supra) held that the bus driver cannot be held to have drove the bus in a rash and negligent manner.

22. In State v, Avadh Kishore [Crl. L.P.No.213/2007 dated 30.01.2009 (Delhi High Court)], the Delhi High Court reiterated its earlier view in ABDUL SUBHAN (Supra).

23. Recently in Puttaiah @ Mahesh v. State by Rural Police [Crl. Review Petition No.1317/2010, dated 04.03.2016 (Karnataka High Court)], the Karnataka High Court held as under:

"In this view of the matter, both the Trial Court as well as the First Appellate Court have not assessed the oral and documentary evidence in right perspective. Both the Courts should have navigated through the evidence of material witnesses cautiously. Glaring inconsistencies have been brushed aside as minor variations. They have adopted wrong approach to the real state of affairs and have not properly scanned the evidence. Both the Courts have forgotten that the initial burden was on the prosecution to establish the charge of rashness or negligence beyond reasonable doubt. Thus, the judgments of both the Courts suffer from perversity and illegality. Hence, this Court is of the opinion that the revision petition is to be allowed."

24. Except a word 'fastly' from the mouth of P.W.7, there is no indication from him that the accused came driven the bus at what speed and whether it was in a rash and negligent manner. Further, there is no material to decide what was the speed in which the bus driver came driven the bus. In this case, the eye-witnesses did not depose that the bus driver had driven the bus in a rash and negligent manner."

13. In the case on hand, as stated above, none of the witnesses have spoken about the bus having been driven in a rash and negligent manner. Further, no evidence has been let in by the prosecution to decide, as to what was the speed in which the bus was driven. Admittedly, the evidence suggest that the accident had happened only due to the burst of the tyre. In the opinion of this Court, the Trial Court as well as the Appellate

Court, while appreciating the evidence have, without there being any evidence to suggest that the vehicle was driven in a rash and negligent manner, have wrongly found the petitioner guilty for the offence under Section 304 A of IPC. The Courts below failed to take into consideration the evidence of P.W.1 regarding the burst of the tyre and also did not take into consideration Ex.P.11 rough sketch regarding the tyre mark and thereby the conviction had been recorded on wrong finding which suffers from manifest error. The findings of the Courts below suffers from illegality.

14. In view of the above, the Criminal Revision Petition stands allowed and the conviction and sentence passed by the both Courts below are set aside. The Bail Bond if any executed by the petitioner/accused, shall stand cancelled.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Sessions Judge, Kancheepuram at Chengalpattu.
2. The Judicial Magistrate No.1, Chengalpattu.
3. The Inspector of Police,
Padalam Police Station, Kancheepuram District.
4. The Public Prosecutor, High Court, Chennai.

+1cc to Mr.T.R.Ravi, Advocate SR.No. 95006

Cr1.RC.No.178 of 2016

A.SK(30/01/2020)

सत्यमेव जयते

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