

BAIL SLIP

The Petitioner/Accused namely Ramesh, Aged 42 years, S/O. Palaniappan is directed to be released on bail as per order of this Hon'ble Court dated 09.05.2019 in CrI.Mp.No.6561 of 2019 in CrI.RC.No.430 of 2019, on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.RC.No.430 of 2019

Ramesh

...

Petitioner/Accused

Vs

State rep by
The Inspector of Police,
Mettur Police Station, Mettur,
Salem District.
(Crime No.453/2015)

...

Respondent/Complainant

Prayer: This Criminal Revision Petition filed, under Section 397 and 401 of Cr.PC, to call for the records in connection with the Judgment of conviction, dated 25.04.2019, made in CrI.A.No.61/2019, by the Additional District (Fast Track) Court, Mettur, confirming the Judgment of conviction and sentence imposed by the Judgment dated 08.03.2019, made in C.C.No.48/2016, by the Judicial Magistrate No.I, Mettur, Salem District and to set aside the same.

For Petitioner : Mr.D.Selvaraju

For Respondent : Mr.Mohamed Riyaz, APP

ORDER

1.This Criminal Revision Petition has been filed by the petitioner/accused, against the order, dated 25.04.2019, made in CrI.A.No.61/2019, by the Additional District (Fast Track) Court, Mettur, confirming the Judgment of conviction and sentence imposed by the Judgment dated 08.03.2019, made in

C.C.No.48/2016,by the Judicial Magistrate No.I, Mettur, Salem District.

- 2.The case of the Prosecution is that on 09.07.2015 at about 8.50 a.m., one Sowkath Ali was travelling in RVT bus, bearing Registration No. TN 52 V 0599, from Salem to Mettur, to join duty in the Heard quarters Government Hospital, Mettur. The bus was driven by the petitioner/accused and at Mettur Bus stand, the petitioner/accused drove the bus in a rash and negligent manner, turned the bus and without any sign and warning, he drove the vehicle in the reverse side and so on, Sowkath Ali fell down from the front foot board of the bus, got injury on his right side temple, grievous injury on his head and died. Hence, the petitioner/accused was charged and tried the offences under Sections 279, 304(A) of IPC.
- 3.The Trial Court, on perusal and analysis of the evidence and materials on record, had convicted him under Section 279 IPC sentenced him to pay a fine of Rs.1,000/- with a default sentence of one month Simple Imprisonment; and convicted him for the offence under Section 304 (A) IPC and sentenced or to undergo one year Rigorous Imprisonment and to pay a fine of Rs.10,000/- with a default sentence of three months Simple Imprisonment. The Lower Appellate Court has confirmed the said conviction and sentenced and challenging the same, the present revision is filed.
4. The learned counsel for the petitioner would submit that P.Ws.1 and 4 are hearsay witnesses and P.Ws.2 and 3 are stated to be eyewitnesses to the occurrence. However, they have not supported the case of the prosecution. Further, two witnesses who have been examined by the prosecution to prove the preparation/drawing of the Observation mahazar have not supported the case of the prosecution. Admittedly, the accident had happened during the time, when the bus was reversed and was put in to the rack in a slow manner and there was no negligence, the petitioner had not reversed in a rash and negligent manner and the witnesses have not spoken that the petitioner reversed the vehicle in a rash and negligent manner, thereby, the deceased succumbed injuries.
- 5.Admittedly, the Investigation Officer had stated that the place in which the accident has stated to have happened, the vehicle could not be driven by the petitioner in a rash manner and that there is no clarity with regard to the manner/direction in which the vehicle was seized and would submit that at no stretch of imagination, the petitioner can be held to have driven the vehicle in a rash and negligent manner,

resulting in the death of the deceased. He would further submit that none of the eyewitnesses have supported the case of the prosecution.

6. The learned counsel further submit that to fasten the liability, on the driver for negligent driving when a passenger falls down from a moving vehicle, there should be evidence to prove that he moved the bus suddenly before the passenger could get out of the vehicle or that he moved the vehicle even before getting any signal from the rear side. In this case, no witness had said that the petitioner either acted rashly or negligently and the evidence in this case is too scanty to fasten the petitioner with criminal liability and admittedly, there is no evidence to prove that the passenger fell down from the bus due to the negligence of the driver of the bus. Whereas, strangely the Trial Court presuming that the local witnesses will not support the case of the prosecution had erroneously found the petitioner guilty without any legal evidence indispensable required to convict the petitioner, finding of the courts below which is against the principles of res ipsa loquitur. In support of his contention, he would place reliance upon [Mohammed Aynuddin Alias Miyam V. State of Andhra Pradesh] reported in (2000) 7 Supreme Court Cases 72.
7. The learned Additional Public Prosecutor would submit that the occurrence had happened when the petitioner had reversed the vehicle inside the bus stand, to park it in the rack/bay in a rash and negligent manner, resulting in the death of the victim deceased.
8. In this case on hand, the occurrence had happened when the petitioner/driver had reversed the bus to park it in the parking bay during which time the deceased had attempted to alight from the bus through the front foot board and had fallen down and died due to the result of sustaining injury on the right fore head and on the right side of his head.
9. P.W.1/Naushak, the relative of the deceased though not an eye witness has stated that he came to know that the accident had happened inside the bus stand and that there was a big speed breaker in the bus stand and that the victim had sustained injuries when the bus was taken on the reverse side. P.W.2 and P.W.3, are the alleged eye witnesses and they have not supported the case of the prosecution and they have been treated as hostile. P.W.8/Angamuthu, the conductor has also turned hostile. P.W.9/Yaraf Serif, the Motor Vehicle Inspector had stated that it is the duty of the passenger to alight from the bus only after bus stops and that when a vehicle is taken

in reverse, it is the duty of the conductor, to take care. Further, P.W.16/Shanmugasundaram, the Investigation Officer had admitted that the accident had happened inside the bus stand and that the vehicle could only be driven slowly and that the occurrence had happened when the vehicle was taken in the reverse side to be parked in the parking bay and further, he had stated that the conductor was not added as an accused.

10. Based on the above evidence, the Trial Court has convicted the petitioner and the Appellate Court has confirmed the same. Now what is to be seen is whether the Courts below are right in convicting the petitioner.

11. In (2000) 7 Supreme Court Cases 72, the Hon'ble Apex Court has held that:

"4. The conductor of the bus was examined as P.W.3. He did not say how the accident happened. However, he admitted that while the bus was in motion he heard a sound of accident and the bus was then stopped. The only witness who spoke about the occurrence was P.W.4. What that witness has deposed in the examination-in-chief is the following:

"Agamma was boarding the bus and the bus moved; and she fell down beneath the bus and died on the spot; the bus stopped at some distance. I saw the driver of the bus at that time."

5. What is the culpable negligence on the part of the bus driver in the above accident? A passenger might fall down from a moving vehicle due to one of the following causes; it could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking-off of the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side.

6. A driver who moves the bus forward can be expected to keep his eyes ahead and possibly on the sides also. A driver can take the reverse motion when that driver assures himself that the vehicle can safely be taken backward.

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 principles of *res ipsa loquitur* 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 wrongdoer.

9. A rash act is primarily an overhasty 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 in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.

10. In the present case the possible explanation of the driver is that he was unaware of even the possibility of the accident which happened. It could be so. When he moved the vehicle forward his focus normally would have been towards what was ahead of the vehicle. He is not expected to move the vehicle forward when passengers are in the process of boarding the vehicle. But when he gets a signal from the conductor that the bus can proceed he is expected to start moving the vehicle. Here no witness has said, including the conductor, that the driver moved the vehicle before getting a

signal to move forward. The evidence in this case is too scanty to fasten him with criminal negligence. Some further evidence is indispensably needed to presume that the passenger fell down due to the negligence of the driver of the bus. Such further evidence is lacking in this case. Therefore, the Court is disabled from concluding that the victim fell down only because of the negligent driving of the bus. The corollary thereof is that the conviction of the appellant of the offence is unsustainable."

12. In this case on hand, as stated above, the accident had happened inside the bus stand when the petitioner had attempted to reverse the vehicle and park it in the bus bay and the victim had fallen down while attempting to alight through the front foot board and died due to sustaining injuries in his fore head and the right side of his head. P.W.1 is not an eyewitness, P.Ws.2 and 3 though are stated to be eye witness, they have not supported the case of the prosecution. Further, the other witnesses who have been examined by the prosecution to prove the preparation of the observation mahazar and rough sketch have also not supported the case of prosecution. P.W.8, the conductor of the bus has also turned hostile. No other legal evidence has been let in by the prosecution to prove that the petitioner had driven the bus in a over hasty manner or in a deliberate manner without due care and caution.
13. The Trial Court without their being any legal evidence let in by the prosecution to prove the charges, on presumptions and assumptions stating that in given circumstances, the independent witnesses will not support the prosecution and by arriving at a conclusion, that the occurrence could have happened due to the rash and negligent act of the driver had convicted the petitioner. The Appellate Court thereafter, without properly appreciating the facts and materials on record and also without proper appreciation of law had confirmed the judgment of conviction and sentence.
14. The principles of criminal jurisprudence mandate that a person cannot be convicted on mere presumptions, assumptions and surmises without their being any legal evidence on record. In order to convict the person, the prosecution has to prove its case by letting any valid and cogent legal evidence.
15. In this case on hand, the prosecution has failed to prove the charges against the accused beyond all reasonable doubt

whereas, the Trial Court as well as the Appellate Court erred in convicting the petitioner.

16. In view of the same, the Criminal Revision is allowed and the Judgment, dated 25.04.2019, made in Crl.A.No.61/2019, by the Additional District (Fast Track) Court, Mettur, confirming the Judgment of conviction and sentence imposed by the Judgment dated 08.03.2019, made in C.C.No.48/2016, by the Judicial Magistrate No.I, Mettur, Salem District is set aside and fine amount if any paid by the petitioner is directed to be returned to the respondent.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Judicial Magistrate No.I,
Mettur, Salem District.
2. The Chief Judicial Magistrate,
Salem (For Information)
3. The Additional District Judge,
(Fast Track) Court, Mettur.
4. The Inspector of Police,
Mettur Police Station, Mettur,
Salem District.
5. The Public Prosecutor,
High Court, Chennai.

CC: The Section Officer, Criminal Section,
High Court, Madras-104.

+1cc to Mr.D.Selvaraju, Advocate SR.84757

NMI(CO)
CB(26/11/2019)

Crl.RC.No.430 of 2019