



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	05.03.2019
Date of Judgment	03.06.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrl.RC(MD)No.654 of 2018andCrl.MP(MD)Nos.10395 and 10396 of 2018

Palavesam : Petitioner/accused

Vs.

State rep. by
Maniyachi Police Station,
Tuticorin District.

: Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 397 and 401 of the Criminal Procedure Code against the judgment passed in C.A.No.20 of 2018, dated 08.10.2018 by the II Additional Sessions Judge, Tuticorin, which is partially modifying the order passed in C.C.No.44 of 2012, dated 02.02.2018 on the file of the Judicial Magistrate No.I, Kovilpatti, Tuticoron District.

For Revision Petitioner : Mr.Ka.Ramakrishnan

For Respondent : Mr.A.Robinson
Government Advocate
(Criminal side)**J U D G M E N T**

This Criminal Revision has been filed against the judgment passed in C.A.No.20 of 2018, dated 08.10.2018 by the II Additional Sessions Judge, Tuticorin, which is partially modifying the order passed in C.C.No.44 of 2012, dated 02.02.2018 on the file of the Judicial Magistrate No.I, Kovilpatti, Tuticoron District.

2.The case of the prosecution is that on 30.04.2011 at about 11.00 am, when one Thangapandian was riding his TVS 50 bike TN-69-F-5422 on Maharajapuram-Ottanatham Road, while the deceased Thirumani was riding as a pillion rider, the accused drove the Lorry TN-69-D-5341 in a rash and negligent manner and hit against TVS 50. In that process, both the rider and pillion rider of the TVS-50 caused injuries and the pillion rider Thirumani has sustained grievous



injuries and while he was taking to the Hospital, he succumbed to injuries on the way. The Inspector of Police attached to Maniyachi Police Station has filed a final report against the accused.

3. In the trial court, on the side of the prosecution, 13 witnesses were examined and 11 Exhibits were marked. When the accused was questioned about the incriminating circumstances, he denied the same. The trial court convicted the revision petitioner/sole accused and sentenced him to undergo one year RI for the offence under Section 304(A) IPC and imposed a fine of Rs.1,000/-, in default to undergo 3 weeks SI; for the offence under Section 337 IPC imposed a fine of Rs.500/-, in default to undergo 2 weeks SI; for the offence under Section 279 IPC imposed a fine of Rs.1,000/-, in default to undergo 3 weeks of SI and for the offence under Section 3 r/w 181 and 196 of the Motor Vehicles Act, imposed a fine of Rs.500/-, in default to undergo 2 weeks SI. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.20 of 2018, which was heard by the Principal District and Sessions Judge, Tuticorin. The first appellate Court has modified the sentence of imprisonment by reducing from one year to six months RI and confirmed the other aspects. Aggrieved over the same, the revision petitioner/accused is before this court.

4. The learned counsel for the revision petitioner/accused submitted that the prosecution has failed to establish the ingredients required for the offence with which he stood charged and convicted him for the said offences and none of the witnesses have spoken that the accused has driven the vehicle either rashly or negligently and there is no specific allegation of negligence as against the accused in driving the offending vehicle and there is no direct cause in between the rash and negligent act of the accused and the death of the deceased and the eye witnesses are interested witnesses and that with regard to the offence under Section 3 and 196 of the Motor Vehicles Act, absolutely there is no material to frame charge and the competent person to speak about the offence is PW6 and he has not spoken anything about the licence or insurance. In view of the above circumstances, the prosecution has failed to prove the case beyond reasonable doubt and the accused is entitled to acquittal and prays that the criminal revision may be allowed. In support of his contention, the learned counsel appearing for the petitioner relied upon the following judgments:-

(i) 2017-1-LW(Crl.) 160 (M.Subramani Vs. State rep. by Inspector of Police, Edapadi Police Station, Salem District)

(ii) (2018)1 MLJ (Crl.) 441 (Sundaravedivel Vs. State by the Inspector of Police)

5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that

first appellate court appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offences, convicted the revision petitioner for rash and negligent driving of the vehicle and passed proper sentence, which does not require any interference by this court and the accused is not entitled for acquittal and prays that the criminal revision may be dismissed.

6. Heard both sides and perused the materials available on record.

7. The main contention raised on the appellant / accused is that there was no evidence for rash and negligent driving on the part of the accused and hence, the accused is entitled to acquittal.

8. PW1 is the injured and he gave Ex.P1 complaint. PW1 in his complaint stated that on 30.04.2011 at 11.15 a.m, he and the deceased Thirumeni in his TVS 50 Two Wheeler proceeded from Maharajapuram to Ottanatham and when they reached Ottanatham colony, at the time the accused drove his vehicle in a rash and negligent manner and dashed against the two wheeler and both sustained injury and they were taken to the hospital and in the hospital, the Doctor declared that Thirumeni was reported to be dead and hence he gave the complaint to the police.

9. PW1 during his evidence stated that on 30.04.2011 at 11.15 am, he and the deceased Thirumeni in his TVS 50 Two Wheeler proceeded from Maharajapuram to Ottanatham and when they reached Ottanatham colony, at the time the accused came in the opposite direction in a speedy manner and dashed against his two wheeler and he and Thirumeni sustained injuries and they were taken to the hospital and in the hospital, the Doctor declared that Thirumeni was reported to be dead and hence, he gave the complaint to the police. PW1 in his evidence has not stated that the accused drove his vehicle in a rash and negligent manner. But he deposed that the accused drove his vehicle in a speedy manner.

10. PW2 and PW3 are cited as eye witnesses. PW2 and PW3 deposed during their evidence that on 30.04.2011 in the morning, they were doing work in Gopal's Punja land nad at the time, PW1 and the deceased proceeded from Maharajapuram to Ottanatham and when they reached Ottanatham mud road, the accused drove his vehicle in a speedy manner and dashed against PW1's two wheeler and PW1 and the deceased sustained injuries and they were taken to the hospital and in the hospital, the Doctor declared that Thirumeni was reported to be dead and hence, he gave the complaint to the police.

11. PW2 during his chief examination stated that she saw the occurrence. But during his cross examination, he stated as follows:- “நான் வந்து பார்க்கும் போது அ.சா.1 உட்கார்ந்திருந்தார். On careful perusal of the evidence of PW2, it reveals that he has not seen the occurrence. PW4 and PW5 are the wife and son of the deceased



Thirumeni. They are only hearsay witnesses. Hence, much importance cannot be given to the evidence of PW4 and PW5.

12. The learned counsel for the revision petitioner/accused argued that the occurrence witnesses have not stated that the accused drove the vehicle in a rash and negligent manner and they only stated that the accused drove the vehicle in a speedy manner and hence, mere speed alone is not sufficient to hold guilty for offence under Section 304(A) IPC and prays that the accused is entitled to acquittal. For that, the learned counsel for the accused submitted a ruling reported in **2017-1-LW (Crl)160 (M.Subramani Vs. State rep. by Inspector of Police, Edapadi Police Station, Salem District)**, wherein it has been held in para 21 to 24 as follows:-

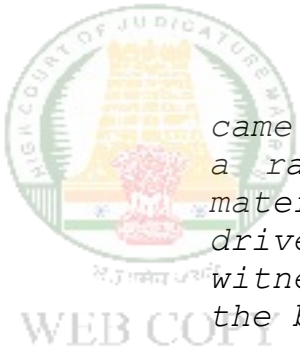
'21. Subsequently, in *Abdul Subhan vs. State (NCT of Delhi) (2007 Crl.L.J.1089)*, in a road accident case for an offence under Section 304(A) IPC, the only available evidence of an Head Constable is that the bus driver had driven the bus fastly. The Delhi High Court relying on the Hon'ble Apex Court 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 vs. Avadh Kishore {Crl.L.P.No.213 of 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 vs. State by Rural Police {Crl. Review Petition No.1317 of 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 PW-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 this case, on careful perusal of the evidence of PW1 and PW2, it reveals that they have not stated that the accused drove his vehicle in a rash and negligent manner and they only stated that the accused drove the vehicle in a speedy manner. To hold guilty under Section 304(A) IPC, the main ingredients is rash and negligent driving on the part of the accused. Mere speed is not sufficient to hold guilty of the accused under Section 304(A) IPC. Hence, the offence under Section 304(A) IPC is not made out.

14. Further, in this case, the charge under Section 3 and 196 of the Motor Vehicles Act, the competent person to speak about the offence is PW6 and he has not spoken anything about the licence or insurance and even in the Motor Vehicle Report said that licence and insurance are not produced, which does not make an offence and hence, the said charges are also not proved by the prosecution. Further, PW1 and PW2 have stated that the Tractor does not bear any number of registration, whereas PW6 has spoken that Tractor had Registration Number and the version of PW6 which is in page number 50 of the typed set of paper is "நான் ஆய்வு செய்தபோது டிராக்டரின் பதிவு எண் எழுதப்பட்டு உள்ளது. So the prosecution case against the petitioner is highly doubtful.

15. For all the reasons stated above, this Court is of the considered view that the prosecution has failed to prove the case beyond reasonable doubt and hence, the impugned judgment of conviction and sentence are liable to be set aside.

16. In the result, this Criminal Revision is **allowed**. The impugned judgment of conviction and sentence are set aside. The revision petitioner is acquitted of the charges levelled against him. The bail bond if any executed by him shall stand cancelled and the fine amount if any paid by him shall be refunded to him. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To,

<https://hcservices.ecourts.gov.in/hcservices/>

1. The Judicial Magistrate No.1,
Kovilpatti.



2.The II additional Sessions Judge,
Tuticoron.

3.The Inspector of Police,
Maniyachi Police Station,
Tuticorin District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
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Judgment made in
Cr1.R.C (MD) No.654 of 2018
03.06.2019

ER
JM/19.08.2019/6P/7C