



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	07.03.2019
Date of Judgment	06.06.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.RC(MD)No.519 of 2018****and****Crl.MP(MD)No.1525 and 7137 of 2019**

Ponnaiah : Appellant/Accused

Vs.

State rep. by
Assistant Commissioner of Police,
Navalpatti Police Station,
Tiruchy City.

: Respondent/Respondent

Prayer: Criminal Appeal filed under Section 397 r/w 401 Criminal Procedure Code, against the Principal Sessions Judge, Trichy, in Crl.A.No.57 of 2016, dated 10.04.2017, confirming the order passed by the Chief Judicial Magistrate, Trichy, in C.C.No.80 of 2011, dated 29.09.2014.

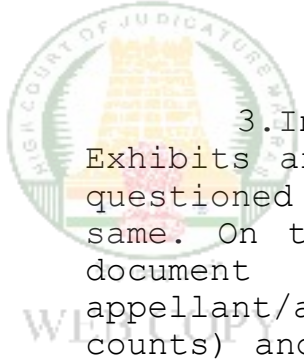
For Appellant : Mrs.Prabha
for Mr.D.Ramesh Kumar

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal is directed against the Principal Sessions Judge, Trichy, in Crl.A.No.57 of 2016, dated 10.04.2017, confirming the order passed by the Chief Judicial Magistrate, Trichy, in C.C.No.80 of 2011, dated 29.09.2014.

2.According to the prosecution, the accused drove the lorry TCI-1179 rashly and negligently from Trichy to Pudukkottai and dashed on the Maruthi Versa Car TN-47-L-4646 coming from the opposite direction and as a result of the accident, 6 persons who were travelling in the car died and 3 persons in the car and 2 persons travelling the lorry have sustained grievous injuries and 4 persons in the lorry sustained simple injuries. The Assistant Commissioner of Police, Havalpattu Police Station, Trichy has filed a final report against the accused by examining the witnesses.



3. In the trial court, 36 witnesses were examined and 16 Exhibits and 2 material objects were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no document was produced. The trial court convicted the appellant/accused for the offence under Section 304(A) IPC (5 counts) and for each count to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months simple imprisonment; for the offence under Section 338 IPC (2 counts) for each count to undergo 6 months rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo 2 months simple imprisonment; for the offence under Section 279 IPC (2 counts) for each count to undergo 6 months rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo 2 months simple imprisonment; for offence under Section 131 r/w 177 of the Motor Vehicles Act to pay a fine of Rs.500/-, in default to undergo 2 months simple imprisonment, for the offence under Section 161 of the Railway Protection Act to undergo 1 year rigorous imprisonment. Aggrieved by the judgment passed by the trial court, the appellant/accused is before this court.

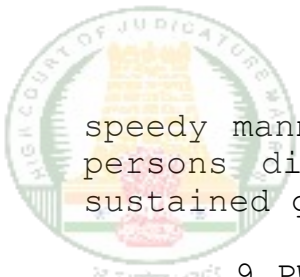
4. The learned counsel for the revision petitioner/accused submitted that the prosecution has failed to establish the ingredients required for all the offences with which he stood charged and convicted him for the said offences and none of the witnesses have spoken that the accused has driven the vehicle either rashly or negligently and there is no specific allegation of negligence as against the accused in driving the vehicle and the eye witnesses are interested witnesses and 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.

5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that both the courts below 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 appellant and passed proper sentence, which do not require any interference by this court and the accused is not entitled for acquittal and prays that the criminal appeal may be dismissed.

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

7. In this case, out of 29 witnesses, PW1 to PW4 and PW9 are cited as eye witness.

8. PW1 is the complainant and she gave Ex.P1 complaint. PW1 stated in her complaint and the evidence that on the fateful day of the accident, she along with eight other persons were travelling in the car and when the car reached near the occurrence place, the lorry driven by the accused came from the opposite direction in a



speedy manner and hit against the car and due to the accident, six persons died, 5 persons who travelled in the car and the lorry sustained grievous injuries and 4 others sustained simple injuries.

9. PW2 deposed that the accident happened only due to the rash and negligent act of the driver of the lorry and she seated at the last right side single seat of the Maruthi Car. But PW1 narrates that PW2 seated at the left side of the car. Hence, there are contradictions between the evidence of PW1 and PW2.

10. PW3 deposed that he did not see the occurrence directly and when he reached the occurrence place he had seen the lorry standing on the mud portion of the road and the car was on the right side of the road. PW4 deposed that he came to the place of occurrence after the accident. Hence, there is no chance for PW3 and PW4 to see the occurrence.

11. It is to be noted that even though PW3 and PW4 have been cited as eye witness to the occurrence, they have not deposed the manner of accident in support of the prosecution. Further, in this case, PW9 was examined as one of the eye witnesses, but he turned hostile and did not support the case of the prosecution. PW9 to PW13 and PW26 have stated that some other vehicle hit the lorry on its back portion and caused the accident.

12. In this case, PW22 is the Regional Transport Officer and she deposed that Maruthi Versa Car carry only five persons including the driver, but the car was loaded more than 10 persons which resulted in accident.

13. It is mainly argued on the side of the revision petitioner/accused that the oral evidence of the prosecution witnesses was not proved the rash and negligent driving of the accused and there are contradictions between the oral evidence of the prosecution witnesses and there can be no general presumption that a person should have driven a vehicle in a rash and negligent manner, merely because there was an accident.

14. At this juncture, it is relevant to refer the decision of this Court reported in **2017-1-LW. (Cr1.) 160 (M. Subramani Vs. State rep. By Inspector of Police, Edapadi Police Station, Salem District)**, wherein this court has held as follows:-

"19. In State of Karnataka vs. Sathish (1998) 8 SCC 493), in a road accident where the accused was prosecuted under Section 304-A IPC, one of the witness had stated that the bus drive 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 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 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 exceptions. There is no such 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 vs. State (NCT of Delhi)* {2007 Cri.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 30.1.2009 (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 4.3.2016 (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."

15. On coming to the instant case on hand, the prosecution witnesses have not stated that the accident occurred due to the rash and negligent driving of the accused.

16. For all the reasons stated above, this court is of the considered view that the prosecution has not proved the case beyond reasonable doubt.

17. In the result, the Criminal Revision is **allowed**. The impugned judgment of conviction and sentence are set aside. The revision petitioner/accused is acquitted of the charge 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. The revision petitioner may be set at liberty forthwith,



unless his detention is required in connection with any other case. Consequently, the connected Crl.M.Ps are closed.

Sd/-

Assistant Registrar (co)

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Sub Assistant Registrar(CS)

To

- 1.The Principal Sessions Judge,
Trichy.
- 2.The Chief Judicial Magistrate,
Trichy.
3. Assistant Commissioner of Police,
Navalpatti Police Station,
Tiruchy City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.RAMESHKUMAR, Advocate (SR-67176[F] dated 06/06/2019)

Judgment made in
Crl.Rc.(MD)No.519 of 2018
06.06.2019

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