

**BAIL SLIP**

Mr.Raffel @ Rabel, S/o.Anthony, aged about 30 years was released on bail vide order dated 20/02/2014 in MP(MD)No.2 of 2014 in Crl RC(MD)No.132 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	19.07.2019
Date of Judgment	29.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.132 of 2014
and
MP(MD)No.3 of 2014

Raffel @ Rabel : Revision Petitioner/
Appellant/Accused

Vs.

The State rep. by
The Inspector of Police,
Manaparai Police Station,
Trichy District.
(Crime No.470 of 2011)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment, dated 18.12.2013 passed in C.A.No.51 of 2013 on the file of the Principal Sessions Judge, Trichy, confirming the judgment of the Judicial Magistrate, Manaparai, dated 30.09.2013 made in C.C.No.30 of 2012.

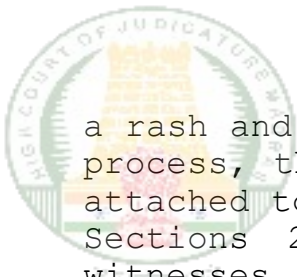
For Petitioner : Mr.B.Prahalad Ravi

For Respondent : Mr.APG Ohm Chairma Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Revision is directed against the judgment, dated 18.12.2013 passed in C.A.No.51 of 2013 on the file of the Principal Sessions Judge, Trichy, confirming the judgment of the Judicial Magistrate, Manaparai, dated 30.09.2013 made in C.C.No.30 of 2012.

2.The case of the prosecution is that on 30.09.2011 at about 1.30 pm, the deceased was proceeding from east to west near Santhalipettai in his TVS XL Super TN-59-AX-3510 and at that time, the accused in a Maruthi Car TN-21-AJ-4792 came from west to east in



a rash and negligent manner and dashed against the deceased. In that process, the deceased succumbed to injury. The Inspector of Police attached to Manapparai Police Station has filed a final report under Sections 279 and 304(A) IPC against the accused examining the witnesses.

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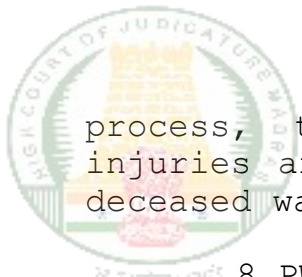
3. In the trial court, 15 witnesses were examined and 10 Exhibits were marked. When the accused was questioned about the incriminating circumstances, he denied the same. The trial court convicted the revision petitioner for the offence under Section 279 IPC and sentenced to pay a fine of Rs.500/- in default to undergo simple imprisonment of one month and also convicted for the offence under Section 304(A) IPC and sentenced to undergo rigorous imprisonment for one year with fine of Rs.5,000/-, in default to undergo simple imprisonment for 3 months. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.51 of 2013, which was heard by the Sessions Judge, Tiruchirappalli. The first appellate Court has also confirmed the findings of the trial court. Aggrieved by the concurrent findings of the courts below, the petitioner 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 the 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. In this case, PW1 is the injured and he gave Ex.P1 complaint. PW1 in his complaint stated that on 30.09.2011 at about 1.30 pm, when the deceased was proceeded from east to west in his
<https://heservices.courts.gov.in/heservices/>
TVS XL IN 59-AX-3510, the accused proceeded from west to east in a rash and negligent manner and dashed against the deceased. In that



process, the deceased was thrown away and sustained grievous injuries and the accident was witnessed by PW2 and PW3. When the deceased was taken to the hospital, he was died on the way.

8.PW1 in his evidence stated that on 30.09.2011 at about 01.30 pm, when the deceased was proceeding from east to west in his TVS XL TN 59 AX 3510, the accused came from west to east in a speedy manner and dashed against the deceased. Due to the impact, the deceased was thrown away and he sustained grievous injuries and when the deceased was taken to the hospital, the deceased was died.

9.PW2 and PW3 are cited as eye witnesses. But they have not stated during their evidence that the accused drove his vehicle in a rash and negligent manner.

10.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.

11.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."

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

13. In the result, this Criminal Revision is **allowed**. The impugned judgment of conviction and sentence are set aside. The revision petitioner/accused 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 Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

er/gns

To

1. The Judicial Magistrate,
Manapparai, Trichy.

<https://hcservices.ecourts.gov.in/hcservices/>
2. The Principal Sessions Judge,
Trichy.



3.The Chief Judicial Magistrate,
Trichy.

4.The Superintendent of Police, Trichy District.

5.The Inspector of Police,
Manaparai Police Station, Trichy.

6.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.(2 COPIES)

+1 cc Mr.B.PRAHALAD RAVI ,Advocate, SR.No.78927

er/gns

Cr1.R.C (MD) No.132 of 2014
29.07.2019

KK/SAR/28.08.2019/6P-10C/