

**BAIL SLIP**

K.Paulraj, S/o.Koilraj, male, aged 40/2014 years (Sole Accused) is released on bail vide Court order dated 25.02.2014 made in MP(MD)No.1 of 2014 in CRL RC(MD)No.134 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.07.2019

DELIVERED ON : 10.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.134 of 2014

K.Paulraj : Revision Petitioner/
Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Thalamuthu Nagar Police Station,
Thoothukudi District.
(Crime No.490 of 2011)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, against the judgment of the II additional Sessions Court, Thoothukudi, dated 20.11.2013 made in C.A.No.79 of 2013, confirming the judgment of the Chief Judicial Magistrate, Tuticorin, dated 19.09.2013 made in C.C.No.99 of 2012.

For Revision Petitioner : Mr.C.Vakeeswaran
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 passed by the II Additional Sessions Court, Thoothukudi, dated 20.11.2013 in C.A.No.79 of 2013, confirming the judgment of the Chief Judicial Magistrate, Tuticorin, dated 19.09.2013 made in C.C.No.99 of 2012.

2.The case of the prosecution is that on 15.11.2011 at 5.00 pm, while the deceased Mariappan was going in his cycle in front of Madumatha Kovil at Thalamuthunagar main road, the accused drove the bus TN-72-B-5499 in a rash and negligent manner and hit the cyclist Mariappan and due to which, the said Mariappan sustained severe injuries and thereafter, he succumbed to injuries at Hospital. The Inspector of Police attached to Thalamuthunagar Police Station has filed a final report under Section 304(A) IPC against the accused examining the witnesses.



3. In the trial court, 10 witnesses were examined and 8 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 304 (A) IPC and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 3 months SI. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.79 of 2013, which was heard by the II Additional Sessions Judge, Thoothukudi. The first appellate Court also confirmed the judgment of trial court. Hence, this criminal revision.

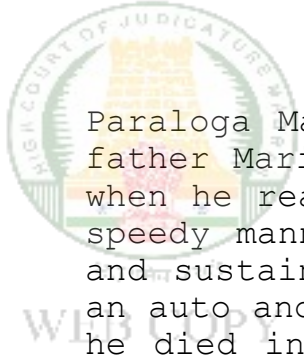
4. The learned counsel for the revision petitioner/accused submitted that the prosecution has failed to establish the ingredients required for the offence with which he stood charged and convicted him for the said offence and none of the witnesses have spoken that the accused has driven the vehicle either 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 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 offence, 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 revision petitioner/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. PW1 is the friend of Mahadevan. Mahadevan is the son of the deceased Mariappan and Mahadevan only gave a complaint in respect of the accident. Mahadevan also died after the occurrence. Mahadevan in his complaint stated that on 15.11.2011 at 5.00 pm, when he, his uncle, Raja Mohamed, Nagoor Pitchai were taking tea in a Tea Stall near Paralogamatha Kovil in Thalamuthu Nagar, at that time, Mahadevan's father Mariappan proceeded from south-north in a bicycle and when reached Caldwell School, at that time, the accused drove his vehicle in a rash and negligent manner and dashed against Mariappan and Mariappan fell down and sustained injuries and then they took the injured Mariappan in an auto and he was admitted in Thoothukudi Government Hospital. But he died in the hospital.

8. PW1 during his evidence stated that on 15.11.11 at 5.00 pm, he Mahadevan, Nagoor Pitachai were taking tea in a Tea Shop near



Paraloga Matha Kovil in Thalamuthu Nagar, at that time Mahadevan's father Mariappan was proceeded from south to north in a bicycle and when he reached Caldwell School, the accused drove the vehicle in a speedy manner and dashed against Mariappan and Mariappan fell down and sustained injuries and then they took the injured Mariappan in an auto and he was admitted in Thoothukudi Government Hospital. But he died in the hospital. The deceased Mahadevan in his complaint stated that the accused drove his vehicle in a rash and negligent manner. But PW1 during his evidence stated that the accused drove his vehicle in a speedy manner. PW1 has not stated during his evidence that the accused drove his vehicle in a rash and negligent manner.

9. PW2 was cited as eye witness. PW2 stated during his evidence that on 15.11.2011 at 5.00 pm, he, Mahadevan, Raja Mohamed were taking Tea in a Tea Stall near Paraloga Matha Temple at Thalamuthu Nagar, at that time, the deceased Mariappan came from south to north in a bicycle and when they reached Caldwell school, the accused drove his vehicle in a speedy manner and dashed against the deceased Mariappan and they took the deceased Mariappan to Thoothukudi Government Hospital and in the hospital he died.

10. The learned counsel for the revision petitioner submitted that PW1 and PW2 have not deposed that the accused drove his vehicle in a rash and negligent manner and he only drove his vehicle in a speedy manner and then there was no evidence for rash and negligent driving. Hence, the offence under Section 304 (A) IPC is not made out.

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."

11. 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.

12. 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 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.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Chief Judicial Magistrate,
Tuticorin.

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

2. The II Additional District & Sessions Judge,
Thoothukudi.



3. The Inspector of Police,
Thalamuthu Nagar Police Station,
Thoothukudi District.

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

+1 CC to Mr.C.VAKEESWARAN, Advocate (SR-74423[F] dated 10/07/2019)

Judgment made in
Crl.R.C(MD)No.134 of 2014
10.07.2019

ER

MK (07.08.2019) 6P 6C