



Bail Slip

Mr.Manicka Vasagam, S/o.Velupillai, age 56 years is released on bail by order dated 21.01.2014 made in MP(MD)No.1 of 2014 in Crl.RC(MD)No.29 of 2014.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.29 of 2014

Manicka Vasagam : Revision Petitioner/Appellant/Sole Accused

Vs.

The State represented by
The Inspector of Police,
Pudukkottai Police Station,
Thoothukudi District.
(Crime No.264 of 2005)

: Respondent/Respondent/Complainant

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, against the judgment passed by the II Additional Sessions Judge, Thoothukudi, in C.A.No.94 of 2013, dated 13.12.2013 modifying the judgment passed by the Judicial Magistrate No.I, Thoothukudi, C.C.No.12 of 2006, dated 05.10.2013.

For Petitioner : Mr.R.Anand
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 Judge, Thoothukudi, in C.A.No.94 of 2013, dated 13.12.2013 modifying the judgment passed by the Judicial Magistrate No.I, Thoothukudi, C.C.No.12 of 2006, dated 05.10.2013.

2.The case of the prosecution is that on 29.03.2005 at 2.00 pm, the deceased Micheal Thangaraj was riding his motor cycle TN-69-X-8095 with one Donald Joe Anton as pillion rider in Deivasayalpuram to Thoothukudi main road and at Srivaikundam junction, the accused drove the TNSTC Bus TN-07-M-9408 in a rash and negligent manner and dashed against the motor cycle, as a result of which, both the rider as well as the pillion rider of the motor cycle died on the spot. The Inspector of Police attached to Puthukottai Police Station filed a final report under Sections 279 and 304(A) IPC against the accused examining the witnesses.

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



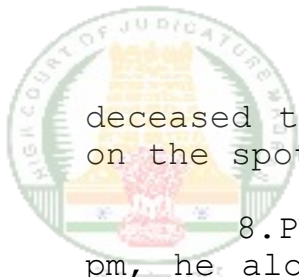
3. In the trial court, 11 witnesses were examined and 9 Exhibits were marked. When the accused was questioned about the incriminating circumstances, he denied the same. The trial court convicted the revision petitioner for the offence under Section 279 IPC and to undergo SI for one month and to undergo RI for one year and to pay a fine of Rs.5,000/-, in default SI for one month for the offence under Section 304(A) IPC. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.94 of 2013, which was heard by the Additional Sessions Judge, Thoothukudi,. The first appellate Court modified the judgment of conviction and sentence, by setting aside the conviction and sentenced for the offence under Section 279 IPC and confirmed the punishment imposed for the offence under Section 304(A) IPC. 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 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 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 accused is not entitled for acquittal and prays that the criminal revision has to be dismissed.

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

7. PW1 is the complainant and he gave Ex.P1 complaint. PW1 in his complaint stated that on 29.03.2005 at 2.00 pm, he along with Chinnadurai were going to Pulaiyampatti Antonyar Church through Thoothukudi to Deivasayapuram road and by that time, the deceased Micheal Thangaraj was riding his motor cycle TN-69-X-8095 with one Donald Joe Anton as pillion rider in Deivasayapuram to Thoothukudi main road in front of them and at Srivaikundam junction, the deceased Micheal Thangaraj turned towards Srivaikundam road by showing signal, at that time the accused drove his vehicle in a rash and negligent manner and dashed against the vehicle in which the



deceased travelled and Micheal Thangaraj and Donald Joe Anton died on the spot and he gave Ex.P1 complaint.

8.PW1 during his evidence stated that on 29.03.2005 at 2.00 pm, he along with Chinnadurai were going to Pulaiyampatti Antonyar Church through Thoothukudi to Deivasayapuram and by that time, the deceased Micheal Thangaraj was riding his motor cycle TN-69-X-8095 with one Donald Joe Anton as pillion rider in Deivasayapuram to Thoothukudi main road in front of them and at Srivaikundam junction the deceased Micheal Thangaraj turned towards Srivaikundam road by showing signal, at that time the accused drove his vehicle in a rash and negligent manner and dashed against the vehicle in which the deceased travelled and Micheal Thangaraj and Donald Joe Anton died on the spot and he gave Ex.P1 complaint. PW1 has not stated that the accused drove his vehicle in a rash and negligent manner.

9.PW2 is the person who travelled along with PW1. PW2 deposed that on 29.03.2005 at 2.00 pm, he went along with PW1 to Pulaiyampatti Antonyar Church on Thoothukudi to Deivasayapuram, at that time, the deceased Micheal Thangaraj was riding his motor cycle No.TN-69-X-8095 with one Donald Joe Anton as pillion rider in front of them in the said road and at Srivaikundam junction, the said Micheal Thangaraj by showing signal turned towards Srivaikundam road, the accused drove his vehicle in a speedy manner and dashed against the vehicle in which the deceased travelled and both died on the spot and hence, PW1 gave the complaint. PW2 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.PW5 is cited as eye witness. PW5 deposed that on 29.03.2005 at 2.00 pm, he travelled in the offending vehicle from Thoothukudi to Tirunelveli when their vehicle reached Deivasayapuram, at that time the accused drove his vehicle in a speedy manner and dashed against the vehicle in which the deceased travelled. PW5 has not stated that the accused drove his vehicle in a rash and negligent manner.

11.PW3 is the father of the deceased Micheal Thangaraj and PW4 is the father of the deceased Donald Joe Anton. PW3 and PW4 heard the occurrence and went to the place of occurrence. PW6 is the magazar witness. PW7 is the Motor vehicle Inspector. He deposed that the accident was not occurred due to the mechanical defects.

12.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



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

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"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



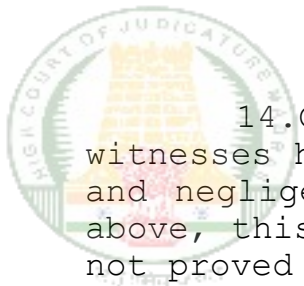
case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because 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."



14. 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.

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15. 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 (AD-II)

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Sub Assistant Registrar(CS)

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To

1. The II Additional Sessions Judge,
Thoothukudi.
2. The Judicial Magistrate No.1,
Thoothukudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.R.C (MD) No.29 of 2014
27.08.2019

MK (16.12.2019) 6P 4C