



Bail Slip

Mr.S.Pethuraj, S/o.Selvaraj, aged about 25 years Sole Accused was released on bail vide order of this Court dated 10.02.2015 made in MP(MD)No.1 of 2014 in Crl.RC(MD)No.431 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.431 of 2014

S.Pethuraj : Revision Petitioner/ Appellant/Accused

Vs.

State through the Inspector of Police,
Thermal Nagar Police Station,
Tuticorin.

: Respondent/Respondent/Complainant

Prayer: Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, against the judgment of the II Additional District and Sessions Judge, Tuticorin, in Cr.A.No.37 of 2014, dated 20.08.2014, confirming the Judgment of the Chief Judicial Magistrate, Tuticorin, in C.C.No.79 of 2012, dated 16.03.2014.

For Revision Petitioner	: Mr.B.N.Raja Mohamed
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 of the II Additional District and Sessions Judge, Tuticorin, in Cr.A.No.37 of 2014, dated 20.08.2014, confirming the judgment of the Chief Judicial Magistrate, Tuticorin, in C.C.No.79 of 2012, dated 16.03.2014.

2.The case of the prosecution is that on 03.09.2011 at 9.30 pm, when the de-facto complainant along with Ambika, Vijaya, Thamilarsi, Sathya, Kaleeswari and others were walking on the service road leading to the Harbour near Diomand Container Yard, the accused drove the Bajaj Pulser motor cycle TN-37-BC-1323, while one Arunkumar travelling as a pillion rider, in a rash and negligent manner and hit behind them. In that process, all got grievous injuries and after three days Thamilarsi died at Thiraviam Orthopaedic Hospital at Nagercoil. The Inspector of Police attached



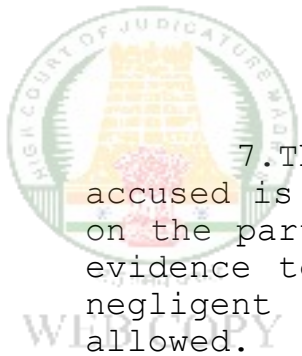
to Theremal Nagar Police Station, Tuticorin has a final report under Sections, 279, 337 (5 counts), 338 and 304(A) IPC against the accused examining the witnesses.

3. In the trial court, 16 witnesses were examined and 18 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 offences under Sections 279, 337 (5 counts), 338 and 304(A) IPC and sentenced him to undergo rigorous imprisonment for 6 months and imposed a fine of Rs.1,000/-, in default to undergo 1 month simple imprisonment for the offence under Section 279 IPC; for the offence under Section 337 IPC, sentenced him to undergo 6 months rigorous imprisonment for each count (5 counts) and imposed a fine of Rs.500/- for each count (5 counts); for the offence under Section 338 IPC, sentenced him to undergo 6 months of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 1 month simple imprisonment and for the offence under Section 304(A) IPC sentenced him to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment and the sentences were directed to run concurrently. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.37 of 2014, which was heard by the II Additional District and Sessions Judge, Tuticorin. The first appellate Court had also confirmed the judgment of conviction and sentence passed by the 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 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 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 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



7.The main contention raised on the side of the petitioner/accused is that there was no evidence for rash and negligent driving on the part of the petitioner/accused and there is no corroborative evidence to show that the accused drove the vehicle in a rash and negligent manner and prays that the criminal revision has to be allowed.

8.In this case, PW1 to PW5 are the injured persons. PW1 gave Ex.P1 complaint. PW1 in his complaint stated that on 03.09.2011 at 09.30 pm, when he along with Ambika, Vijaya, Thamilarasi, Sathya, Kaleeswari and others were walking on the Service Road leading to Harbour near Diamond Container Yard, the accused drove his vehicle in a rash and negligent manner and dashed against the above persons and as a result of which, they sustained injuries and then, he went to the police station and gave Ex.P1 complaint.

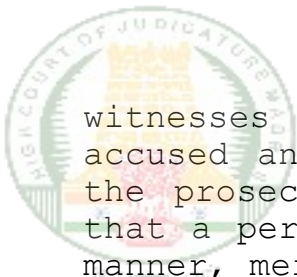
9.PW1 in his evidence stated that on 03.09.2011 at 09.30 pm, when he along with Ambika, Vijaya, Thamilarasi, Sathya, Kaleeswari and others walking on the Service Road leading to Harbour near Diamond Container Yard, the accused drove his vehicle in a speedy manner and dashed against the above persons and due to it, they sustained injuries and then, he went to the police station and gave Ex.P1 complaint.

10.PW2 to PW5 deposed that on 03.09.2011, when they were walking on the Service Road leading to Harbour near Diamond Container Yard, the accused drove his vehicle in a speedy manner and dashed against them and they sustained injuries. PW2 to PW5 have not stated that the accident had occurred due to the rash and negligent driving of the accused.

11.The learned counsel appearing for the petitioner/accused submitted that the accident occurred only due to the mechanical defects in the offending vehicle and hence, the accused is not responsible for the accident.

12.In this case, the Motor Vehicle Inspector was examined as PW6. PW6 deposed that the accident has not occurred due to the mechanical defect and the offending vehicle TN-37-BC-1323 was examined only on 25.11.2011 i.e., after the delay of 2-1/2 months from the date of accident. Further, PW6 in his cross examination stated that he did not specify the conditions of rear and front brakes separately. It is to be noted that PW6 has not inspected the offending vehicle on the date of the occurrence, but he inspected the vehicle after two and half months from the date of accident. Hence, it is not possible for him to come to the conclusion that by whose negligence, the accident was occurred.

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.

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14. 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:-

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

16. 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

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Chief Judicial Magistrate,
Thoothukudi.
2. The II Additional District and Sessions Judge,
Thoothukudi.
3. The Inspector of Police,
Thermal Nagar Police Station,
Tuticorin.
4. The Superintendent,
Central Prison,
Palayamkottai,
Tiruenelveli District
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.R.C (MD) No.431 of 2014
07.08.2019

MK (25.11.2019) 6P 6C