

**Bail Slip**

Mr. Sathees Babu, S/o.Navaneetha Krishnan, age 43 years is released on bail vide Court order dated 27.03.2015 in CrI MP(MD)No.11 of 2015 in CrI RC(MD)No.140/2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrI.R.C(MD)No.140 of 2015

Sathees Babu

: Revision Petitioner/
Appellant/Accused

Vs.

The State rep. through the Inspector of Police,
Theni.: Respondent/Respondent /
Complainant

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Cr.P.C. To call for the records relating to the Judgment and Conviction in CC.No.24/2009 dated 17.01.2014 on the file of the learned Judicial Magistrate, Theni confirmed Judgment and Conviction in CrI.A.No.10 of 2014 dated 30.01.2015 on the file of the learned Additional District and Sessions Judge, Theni at Periyakulam set aside the same.

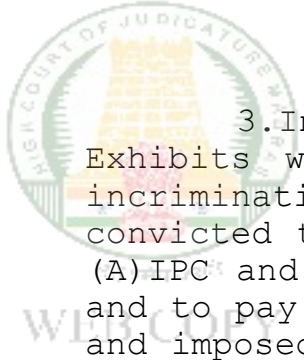
For Revision Petitioner : Mr.J.Anandkumar

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 30.01.2015 made in CrI.A.No.10 of 2014, confirming the judgment of the Judicial Magistrate, Theni, in C.C.No.24 of 2009, dated 17.01.2014.

2.The case of the prosecution is that on 20.11.2005 the deceased Srinivasan was proceeding in his Bajaj Motor Cycle TN-38-Q-4785, while one Kani Raj was travelling as pillion rider, on Madurai-Theni road, the accused drove the bus in a rash and negligent manner and dashed against the Motor Cycle. In that process, both the rider and pillion rider of the motor cycle sustained injuries. The rider of the motor cycle had succumbed to injury on the way to the hospital, while the pillion rider sustained injuries. The Inspector of Police attached to Theni Police Station has filed a final report against the accused examining the witnesses.



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 304 (A) IPC and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month RI and imposed a fine of Rs.1,000/-, for the offence under Section 279 IPC in default to undergo one month RI and imposed a fine of Rs.500/- for the offence under Section 337 IPC, in default to undergo 2 weeks SI. Aggrieved by the judgment of the trial court, the revision petitioner filed an appeal in C.A.No.10 of 2014, which was heard by the Additional District and Sessions Judge, Theni. The first appellate Court had also confirmed the findings of the trial court. Hence, this criminal revision.

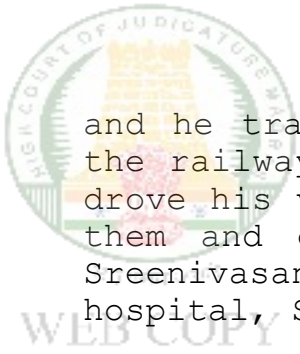
4. The learned counsel for the revision petitioner/accused submitted that the prosecution has failed to establish the ingredients required for all the offences with which he stood charged and convicted him for the said offences and none of the witnesses have spoken that the accused has driven the vehicle 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 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. The main contention raised on the side of the petitioner/accused is that there was no evidence for rash and negligent driving of the accused and the only evidence available is that the driver of the offending vehicle drove the vehicle in a speedy manner and when there was no evidence for rash and negligent driving on the part of the driver of the offending vehicle, the accused is entitled to acquittal.

8. In this case, PW1 is the injured and he gave Ex.P1 complaint. PW1 in his complaint stated that he is working as a Plumber under the Contractor Sreenivasan and he and Sreenivasan on 20.11.2008 at 7.45 am came to Theni in a two wheeler (TN-58-Q-4785)



and he travelled as a pillion rider and when the vehicle crossing the railway crossing near Aranmanaiputhur, at that time the accused drove his vehicle in a rash and negligent manner and dashed against them and due to it, both of them were thrown away and he and Sreenivasan were taken to the Theni Government Hospital and in the hospital, Sreenivasan died.

9.PW1 during his evidence stated that he is working as a Plumber under the Contractor Sreenivasan and he and Sreenivasan on 20.11.2008 at 7.45 am came to Theni in a two wheeler (TN-58-Q-4785), while he was travelling as a pillion rider and when the vehicle cross the railway crossing near Aranmanaiputhur, at that time the accused drove his vehicle in a speedy manner and dashed against them and both of them were thrown out and he and Sreenivasan were taken to the Theni Government Hospital and in the hospital, Sreenivasan died. PW1 has not stated that the driver of the offending vehicle drove the vehicle in a rash and negligent manner.

10.In this case, PW2 to PW4 are the hearsay witnesses. Hence, no much importance can be given to their evidence.

11.In this case, the Motor Vehicle Inspector was examined as PW9. PW9 stated that the accident was not occurred due to the mechanical defect. It is to be noted that PW9 has not inspected the offending vehicle on the date of the occurrence, but he inspected the vehicle only on the next day. Hence, it is not possible for him to come to the conclusion that by whose negligence, the accident was occurred.

12.At this juncture, it is necessary to refer the cross examination of PW9. PW9 during his cross examination stated as follows:-

“விபத்து நடந்த மறுநாள் தான் வாகனத்தை ஆய்வு செய்தேன் என்றால் சரிதான். சம்பவ இடம் ஆய்வு செய்யவில்லை என்றால் சரிதான். சம்பவ இடம் ஆய்வு செய்யாததால் விபத்தின் உண்மை தன்மை எனக்கு அறிந்திருக்க வாய்ப்பில்லை என்றால் சரிதான். சம்பவ இடம் நேரில் சென்று ஆய்வு செய்திருந்தால் யாருடைய கவனக்குறைவு என்று சொல்ல முடியும் என்றால் சரிதான்”.

13.Further, 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 pertinent to refer the decision of this Court reported in **2017-1-LW.(Cr1.)160 (M.Subramani Vs. State 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 witnesses 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 motor 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 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.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar(CS)

To

1. The Additional District and Sessions Judge,
Theni at Periyakulam.
2. The Judicial Magistrate, Theni.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.ANANDKUMAR, Advocate (SR-80848[F] dated 09/08/2019)

Cr1.RC(MD)No.140 of 2015
08.08.2019

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MK (27.08.2019) 6P 5C