

**BAIL SLIP**

Appellant/Accused namely Balakrishnan, aged about 38 years S/o. V.Sangu was directed to be released on bail as per order of this court dated 18.06.2015 made in MP(MD)No.1 of 2015 in CrI.R.C (MD)No.222 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	21.06.2019
Date of Judgment	27.09.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

CrI.R.C (MD)No.222 of 2015

Balakrishnan : Revision Petitioner/
Appellant/Accused

Vs.

State rep by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(Crime No.991 of 2008)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under Sections 397 and 401 of Criminal Procedure Code, against the judgment passed in CrI.A.No.38 of 2013, dated 20.04.2015 by the Principal Sessions Judge, Karur, confirming the Judgment of the Judicial Magistrate No.2, Kulithalai, passed in C.C.No.1 of 2009, dated 07.08.2009.

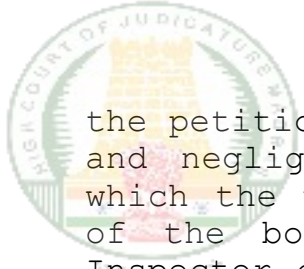
For Petitioner : Mr.K.Vinayagan

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 in CrI.A.No.38 of 2013, dated 20.04.2015 by the Principal Sessions Judge, Karur, confirming the Judgment of the Judicial Magistrate No.2, Kulithalai, passed in C.C.No.1 of 2009, dated 07.08.2009.

2.The case of the prosecution is that on 09.10.2008 at about 9.30 am, when the victim Tajudeen riding his Hero Honda motor cycle TN-47-N-4971 on Trichy-Kulithalai Main Road towards west to east,



the petitioner drove the TNSTC Bus TN-63-N-1246 behind him in a rash and negligent manner and hit against the motor cycle, resulting which the victim fell down and sustained injuries on several parts of the body and after five days, he succumbed to injury. The Inspector of Police attached to Kulithalai Police Station has filed a final report under Sections 279 and 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 and sentenced him to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment for the offence under Section 279 IPC and sentenced him to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 3 months of rigorous imprisonment. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.38 of 2013, which was heard by the Principal Sessions Judge, Karur. 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 drove 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 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. PW1 is the son of the deceased. PW1 gave Ex.P1 complaint. PW1 in his complaint stated that on 09.10.2001 at about 9.30 am, when the victim Tajudeen was riding his Hero Honda motor cycle TN-47-N-4971 on Trichy-Kulithalai main road towards west to east, at that time, the accused came behind him by driving TNSTC bus in a rash and negligent manner and dashed against the victim and due to



it, the victim fell down and sustained injuries and after five days of the occurrence, he died in the hospital.

8. In this case, PW1 is not an eye witness. He is only hearsay witness. Hence, much importance cannot be given to the evidence of PW1. PW2 to PW4 are cited as eye witnesses. PW2 deposed that 3 years prior to the occurrence to make shoba and cot he proceeded in his two wheeler from Kulithalai to Petavaithalai and when he reached Kumaramangalam, he saw that the deceased proceeded in his two wheeler 50 feet in front of him, at that time the accused drove the bus behind him in a speedy and zigzag manner and dashed against the vehicle of the deceased, who was proceeding in front of him.

9. It is to be noted that PW2 has only stated that the accused drove his vehicle in a speedy and zigzag manner. Further, PW2 stated during his cross examination that he and the passengers, who were travelling in the offending bus only saw the occurrence. He has not deposed that PW3 and PW4 saw the occurrence. Further, PW2 deposed that the stair case on the back side of the bus dashed against the vehicle of the deceased. PW2 further stated that he only took the deceased to Hospital. But during his cross examination, he has stated that he did not know in which vehicle he took the deceased.

10. Further, PW2 stated during his evidence that he informed the accident to the son of the deceased from the Visiting Card, which was kept in the pocket of the deceased. But the Visiting Card was not produced in this case. PW2 during his cross examination stated that two hours after the occurrence, he was examined by the police. Hence, it reveals that before the registration of the case, PW2 was examined by the police. On careful perusal of the evidence of PW2 it reveals that PW2 is the interested witness. Hence, no much importance can be given to the evidence of PW2.

11. PW3 deposed that prior to three years from the date of occurrence, when he was proceeding on the road by his two wheeler to purchase materials, the deceased was proceeding 50 feet behind him and at that time, the accused drove his vehicle from west to east and dashed against the two wheeler, in which the victim was travelling and due to it, the victim sustained injuries and he took steps to send the victim to the Hospital. PW3 has not stated that the accused drove his vehicle in a rash and negligent manner and dashed against the victim.

12. Further, PW3 during his cross examination stated that front and back side of the bus dashed against the vehicle of the deceased and he did not know whether some other persons saw the occurrence.

13. PW4 deposed that prior to three years of the occurrence, when he was proceeding in his cycle, at that time one person travelling in a two wheeler, at that time, a Government Bus came in a speedy manner and dashed against the person, who was travelling in



the two wheeler and due to it, he sustained injuries and then, the injured was taken to the hospital and he came to know that he is the practising Advocate. PW4 has not stated that the accused drove his vehicle in a rash and negligent manner.

14. Further, on perusal of the evidence of PW4, he has stated that he is the client of the deceased. Hence, this court is of the considered view that he is only an interested witness and therefore, no importance can be given to his evidence.

15. It is argued on the side of the petitioner/accused that there are contradictions between the evidence of the witnesses with regard to hitting of the offending vehicle and hence, the petitioner is entitled to acquittal.

16. PW2 during his evidence stated that only the back side of the stair case of the bus dashed against the vehicle of the deceased. PW4 stated that only the back side of the bus dashed against the vehicle of the deceased and not front side of the portion. On perusal of the above evidence, there are contradictions in respect of hitting of the offending vehicle against the vehicle of the deceased.

17. Further, on perusal of the evidence of PW2, it reveals that the accused drove his vehicle behind him and since the Government bus came in a speedy manner, it dashed against the victim. From the evidence of PW2, it is clear that at first he was riding his two wheeler behind the vehicle of the victim and hence, there is a chance at first hit against his vehicle and then only it will hit against the vehicle of the deceased. Hence, the evidence of PW2 stating that the vehicle, which was coming behind him about 50 feet in a speedy manner and dashed against the vehicle, in which the victim was travelling is not at all acceptable. Hence, this court is of the considered view that PW2 and PW4 are the occurrence and interested witnesses and therefore, their evidence cannot be relied on.

18. 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.

19. 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."

20. 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.

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

22. 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.

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Sd/-

Assistant Registrar (CS-III)

/ /2020

Sub Assistant Registrar (CS)

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To,

1.The Principal Sessions Judge,
Karur.

2.The Judicial Magistrate No.2,
Kulithalai.

3.-Do- Thro The Chief Judicial Magistrate, Karur.

4. The Inspector of Police,
Kulithalai Police Station,
Karur District.

5.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)

Judgment made in
Cr1.R.C (MD) No.222 of 2015
27.09.2018

VB(28.01.2020) 7P 8C