



BAIL SLIP

The Appellant/accused namely Murugan(47/15) S/o.Perumal was directed to be released on bail as per order of this Court dated 03/02/2015 in MP(MD).No.1/2015 in CRL RC(MD).NO.34/2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:14.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.34 of 2015

Murugan : Revision Petitioner/Appellant/ Sole Accused

Vs.

State represented by
The Inspector of Police,
South Police Station,
Thoothukudi,
Thoothukudi District. : Respondent/Respondent/Complainant

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, against the judgment of the I Additional Sessions Judge, Thoothukudi, passed in C.A.No.30 of 2014, dated 10.09.14, confirming the judgment of the Chief Judicial Magistrate, Thoothukudi, passed in C.C.No.12 of 2013, dated 08.03.2014.

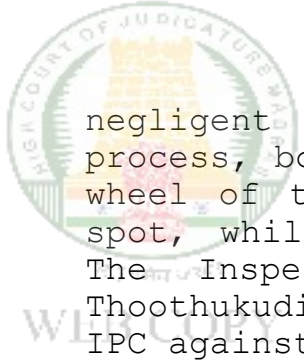
For Revision Petitioner : Mr.S.Siva Ilayaraja

For Respondent : Mr.APG.Ohm Chairma Prabhu
Government Advocate
(Criminal side)

O R D E R

This Criminal Revision is directed against the judgment of the I Additional Sessions Judge, Thoothukudi, passed in C.A.No.30 of 2014, dated 10.09.2014, confirming the judgment of the Chief Judicial Magistrate, Thoothukudi, passed in C.C.No.12 of 2013, dated 08.03.2014.

2.The case of the prosecution is that on 07.09.2011 at 10.15 pm, when PW2 Vijayaraj riding his Hero Honda motor cycle, while one Murugan was riding as a pillion rider towards east of Kamarajar Salai in Thoothukudi in front of R.R stores, the accused drove the Tipper Lorry TN-69-AC-9831 in the opposite direction in a rash and



negligent manner and dashed against the two wheeler. In that process, both of them fell down on the road and the right side back wheel of the lorry ran over the said Murugan and he died on the spot, while Vijayaraj sustained simple injury on his right foot. The Inspector of Police attached to South Police Station, Thoothukudi has a final report under Sections, 279, 337 and 304(A) IPC against the accused examining the witnesses.

3. In the trial court, 13 witnesses were examined and 10 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 and 304(A) IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo 3 months simple imprisonment; for the offence under section 279 IPC, sentenced him to undergo 6 months rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment and for the offence under Section 337 IPC sentenced him to undergo 3 months rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.30 of 2014, which was heard by the Principal Sessions Judge, Thoothukudi. 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 record.

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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 accused and there is no corroborative evidence to show that the accused drove the vehicle in rash and negligent manner and prays that the criminal revision has to be allowed.

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8. PW1 is the complainant and he gave Ex.P.1 complaint. He has not witnessed the occurrence. PW1 in his complaint stated that on 07.09.2011 at 9.15 pm, his friend Vijayaraj was riding Hero Honda motor bike TN-69-B-0512 along with one Murugan as pillion rider in Thoothukudi, Kamarajar Salai towards east and while they were going in front of R.R. Rice Shop, at that time the accused drove his vehicle in the opposite direction in a rash and negligent manner and dashed against the two wheeler and as a result of which, the rider of the motor cycle Vijayaraj and the pillion rider Murugan fell down on the road and the right side back wheel of the lorry climbed over the body of the Murugan and he died on the spot and Vijayaraj informed him about the accident through phone and then, he went to the police station and gave a complaint.

9. It is to be noted here that PW1 has not seen the occurrence and he is only a hearsay witness. Hence, much importance can not be given to the evidence of PW1.

10. PW2 is the injured. PW2 deposed that on 07.09.2011 at 9.15 pm, he and the deceased Murugan were proceeding in the Hero Honda motor bike TN-69-B-0512 in Thoothukudi-Kamarajar Salai towards east and while they were going in front of R.R. Rice Shop, at that time, the accused drove his vehicle in the opposite direction in a rash and negligent manner and dashed against the two wheeler and as a result of which, he and the pillion rider Murugan fell down on the road and the right side back wheel of the lorry climbed over the body of the Murugan and he died on the spot and he informed his friend Vigneswaran about the accident through phone and his friend went to the police station and gave the complaint.

11. PW2 has not stated during his evidence that the accused drove his vehicle in a rash and negligent manner. PW2 during his chief examination stated that he informed the occurrence to his friend Vigneswaran and Vigneswaran went to the police station and gave the a complaint. But during his cross examination, PW2 stated as follows:-

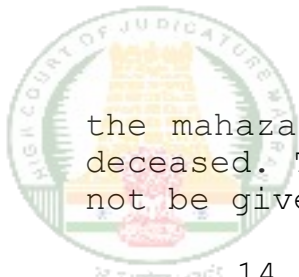
“புகாரில் நான் சொல்லசொல்லதான் எழுதினார்கள். நான் தான் நேரில் பார்த்த சாட்சி.

12. In this case, PW2 is the injured witness, but he has not chosen to give the complaint to the police. No proper explanation was given on the side of the prosecution, why PW2 has not chosen to give the complaint to the police. Further, PW2 stated during his chief examination that the police came to the place of occurrence before giving the complaint. Hence, it is held that whether the complaint was given by PW1 or PW2 in respect of the occurrence .

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therefore, it creates doubt about the complaint (Ex.P1).

13. PW3 and PW4 are cited as eye witnesses. PW3 and PW4 are



the mahazar witnesses. PW3 and PW4 are the close relatives of the deceased. They are interested witnesses. Hence, much importance can not be given to the evidence of PW3 and PW4.

14. In this case, the Motor Vehicle Inspector was examined as PW10. PW10 deposed that he inspected the offending vehicle only in the office. No explanation was given by PW10, why he has not gone to the place of occurrence to inspect the offending vehicle and hence, there is a chance for making repair in the offending vehicle. Hence, it creates doubt about the prosecution case.

15. 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.

16. 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."

17. 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.

18. 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-I)

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Sub Assistant Registrar (CS)

To,

1. The Additional Sessions Judge, Thoothukudi.
2. The Principal Sessions Judge, Thoothukudi.
3. The Chief Judicial Magistrate,
Thoothukudi.
4. The Inspector of Police,
South Police Station,
Thoothukudi,
Thoothukudi District.



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

+1 CC to M/s.S.SIVA ILAYARAJA, Advocate (SR-81588[F] dated
14/08/2019)

Judgment made in
Crl.R.C (MD) No.34 of 2015
14.08.2019

MS/13.11.2019/7P/7C