



BAIL SLIP

The Criminal Revision Peititioner/Petitioner Francis Xavier S/o.Arockiam Fernando was enlarged on bail on the file of this Court in MP(MD).1 of 2015 in CRL RC(MD)NO.618 of 2015 dated 18.02.2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrl.R.C(MD)No.618 of 2015

Francis Xavier

: Revision Petitioner/
Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Muthiahpuram Police Station,
Thoothukudi.
(Crime No.100 of 2009)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under section 397 r/w 401 of Criminal Procedure Code, against the judgment passed by the I Additional Sessions Judge, Thoothukudi, passed in C.A.No.40 of 2015, dated 20.11.2015, confirming the judgment of the Chief Judicial Magistrate, Thoothukudi, passed in C.C.o.43 of 2011, dated 16.07.2015.

For Revision Petitioner : Mr.Antony S Prabahar

For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor**J U D G M E N T**

This Criminal Revision is directed against the judgment passed by the I Additional Sessions Judge, Thoothukudi, passed in C.A.No.40 of 2015, dated 20.11.2015, confirming the judgment of the Chief Judicial Magistrate, Thoothukudi, passed in C.C.No.43 of 2011, dated 16.07.2015.



2.The case of the prosecution is that on 04.03.2009 at about 6.30 am, on Thoothukudi-Thiruchendur main road, near Mullakadu, when Mandirammoorthy, Alagu Sekar and Suresh were proceeding in their bicycle, the accused drove the TATA INDICO TN-69-L-9300 in a rash and negligent manner and hit against the above persons and due to which, Mandirammoorthy sustained grievous injuries, resulting which, he died on the spot and two others sustained injuries. The Inspector of Police attache to Muthiahpuram Police Station has filed a final report against the accused examining the witnesses.

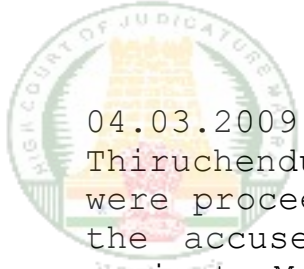
3.The trial court, on proper appreciation of the entire materials available on record both oral and documentary, convicted the petitioner and sentenced him to undergo two years rigorous imprisonment for the offence under section 304(A) IPC and one month rigorous imprisonment for the offence under section 337 IPC (2 counts). Aggrieved by the judgment of the trial court, the petitioner preferred appeal before the first appellate court and the first appellate court confirmed the findings of the trial court. Against which, the petitioner is before this court with this revision.

4.The learned counsel for the 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 Additional Public Prosecutor appearing for the respondent/State submitted that both 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 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 complainant and he gave Ex.P1 complaint to the police station. PW1 is his complaint and evidence stated that on



04.03.2009 at 6.00 am, when he was proceeding on Thoothukudi-Thiruchendur main road, the deceased Mandiramoorthy and two others were proceeding in their bicycle in front of him and at that time, the accused drove the Maruthi Car in a speedy manner and hit against Mandiramoorthy and two others namely Alagu Sekar and Suresh and due to which, the said Mandiramoorthy died on the spot and two others sustained injuries and he gave Ex.P1 complaint. PW1 has not stated during his evidence that the accused drove his vehicle in a rash and negligent manner.

8.PW2 is the auto driver and he deposed that on 04.03.2009 at 6.00 am, when he was proceeding on Thoothukudi-Thiruchendur main road, one Mandiramoorthy and two others were proceeding in their bicycle and at that time, the accused drove the Maruthi Car in a speedy manner and hit against Mandiramoorthy and two others namely Alagu Sekar and Suresh and due to which, the said Mandiramoorthy died on the spot and two others sustained injuries and they were taken to the hospital and PW1 gave Ex.P1 complaint. PW2 has not stated during his evidence that the accused drove his vehicle in a rash and negligent manner.

9.PW3 is the wife of the deceased Mandiramoorthy. She has stated that she heard the news that her husband was met with an accident. Hence, she was treated as hearsay witness. PW6 is the hearsay witnesses, who has also deposed that he heard the accident.

10.PW4 and PW5 are injured witnesses. They have stated that due to the speedy driving of the accused, the alleged accident has occurred. But they have not stated the rash and negligent driver of the accused. PW7 is the magazar witness and he deposed that on 04.03.2009 at 07.00 am, the police came and inspected the place of occurrence and prepared Mahazar.

11.It is mainly argued on the side of the 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.

12.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 sudden 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."

13. 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.



14. In the result, this Criminal Revision is **allowed**. The impugned judgment of conviction and sentence are set aside. The 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.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1. The Chief Judicial Magistrate, Thoothukudi.

2. The I Additional Sessions Judge,
Thoothukudi.

3. Do through the Principal Sessions Judge, Thoothukudi.

4. The Judicial Magistrate, Thoothukudi.

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

6. The Inspector of Police, Muthiahpuram Police Station,
Thoothukudi.

copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s. ANTONY. S. PRABAHAR, Advocate (SR-104626[F] dated
12/12/2019)

Judgment made in
Crl.R.C (MD) No. 618 of 2015
12.12.2019

SVN (CO)

TR (19.03.2020) 6P 10C