



BAIL SLIP

The Appellant/Accused viz N.Krishnasamy, S/o. Natchiyappa Gounder, was released on bail(Accused Not in Jail) granted as per order dated 19.01.2017 made in CRL MP(MD)16 of 2017 in CRL RC(MD) No.2 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.2 of 2017

and

Crl.MP(MD)No.4979 of 2018

N.Krishnasamy

: Revision Petitioner/
Appellant/Single Accused

Vs.

The State represented by
the Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.
(Crime No.503 of 2009)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment of the Principal Sessions Judge, Ramanathapuram, passed in Crl.A.No.21 of 2015, dated 29.11.2016, confirming the judgment of the Chief Judicial Magistrate, Ramanathapuram, in C.C.No.15 of 2014, dated 01.06.2015.

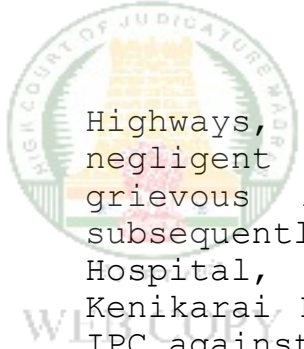
For Revision Petitioner : Mr.S.Ravi

For Respondent : Mr.R.Anandha Raj
Additional Public Prosecutor

J U D G M E N T

This Criminal Revision is directed against the judgment of the Principal Sessions Judge, Ramanathapuram, passed in Crl.A.No.21 of 2015, dated 29.11.2016, confirming the judgment of the Chief Judicial Magistrate, Ramanathapuram, in C.C.No.15 of 2014, dated 01.06.2015.

2.The case of the prosecution is that on 21.10.2009 at 8.30 pm, when the deceased along with his son (PW1) and relatives waiting on the left side of the road at Ramanathapuram District Collectorate Bus Stand, which is situated at Ramanathapuram-Rameshwaram National



Highways, the accused drove the bus TN-01-N-7187 in a rash and negligent manner and dashed against the deceased, thereby caused grievous injury over the left back side of his head and subsequently, he was taken to the Ramanathapuram Government Hospital, where he died. The Inspector of Police attached to Kenikarai Police Station filed a final report under Section 304(A) IPC against the accused examining the witnesses.

3. In the trial court, 12 witnesses were examined and 8 Exhibits were marked and on the side of the accused, one witness was examined and one document was 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 two years SI and imposed a fine of Rs.5,000/-, in default to undergo 3 months SI. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.21 of 2015, which was heard by the Principal District and Sessions Judge, Ramanathapuram. The first appellate Court 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 the offence with which he stood charged and convicted him for the said offence 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 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 offence, 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 has to be dismissed.

6. Heard both sides and perused the materials available on record.

7. The contention raised on the side of the revision petitioner/accused is that none of the eye witnesses stated that the accused drove the vehicle in a rash and negligence manner and caused the accident, which is basic ingredient to attract the offence punishable under Section 304(A) IPC and PW1 and PW2 are not witnessed the occurrence and they have been put up as eye witnesses by the prosecution and the deceased had poor eye sight, which was



confirmed by PW3 in his evidence and hence, the petitioner is no way responsible for the death of the deceased and prays that the accused is entitled to acquittal.

8. In this case, PW1 is the complainant and he is the son of the deceased. PW1 in his complaint stated that on 21.10.2009 at 7.00 pm, he, his father and some of his relatives went to Kenikarai Police Station for enquiry and for proceeding to their native place, they stood on the southern side of the National Highways, at that time, the accused drove his vehicle in a rash and negligent manner and dashed against his father and his father died in the hospital. But PW1 during his evidence stated that on 21.10.2009 at 7.00 pm, he, his father and some of his relatives went to Kenikarai Police Station for enquiry and for proceeding to their native place, they stood on the southern side of the National Highways, at that time, the accused drove his vehicle in a speedy manner and dashed against his father and due to which his father died in the hospital. PW1 has not stated during his evidence that the accused drove his vehicle in a rash and negligent manner.

9. PW2 to PW4 are cited as eye witnesses. PW2 to PW4 stated during their evidence that on 21.10.2009 when they and the deceased stood on the southern side of the National Highways, the accused drove the vehicle in a speedy manner and dashed against the deceased, due to which, he died in the hospital. PW2 to PW4 have not deposed that the accused drove his vehicle in a rash and negligent manner.

10. 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.

11. 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."



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."

12. 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.

13. 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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