



BAIL SLIP

The Criminal Revision Petitioner/Accused was directed to be released on Bail vide order dated 07.06.2017 in Crl MP(MD) No.4600/2017 in Crl RC(MD)No.443 of 2017 on the file of the Madurai Bench of Madras High Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.443 of 2017

G.Vellaichamy : Revision Petitioner/
Appellant/Single Accused

Vs.

The State represented by
The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.
(Crime No.429 of 2005)

: 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 Principal District and Sessions Judge, Ramanathapuram, in Crl.A.No.27 of 2015, dated 14.02.2017, confirming the judgment of the Chief Judicial Magistrate, Ramanathapuram, in C.C.No.17 of 2014, dated 14.08.2015.

For Revision Petitioner : Mr.S.Ravi

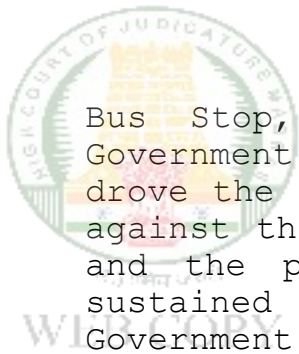
For Respondent : Mr.APG Ohm Chairma Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Revision is directed against the judgment passed by the Principal District and Sessions Judge, Ramanathapuram, in Crl.A.No.27 of 2015, dated 14.02.2017, confirming the judgment of the Chief Judicial Magistrate, Ramanathapuram, in C.C.No.17 of 2014, dated 14.08.2015.

2.The case of the prosecution is that on 11.09.2005 at about 1.15 pm, at Ramanathapuram-Rameshwaram Highways near Kumariah Koil

<https://hcservices.ecourts.gov.in/hcservices/>

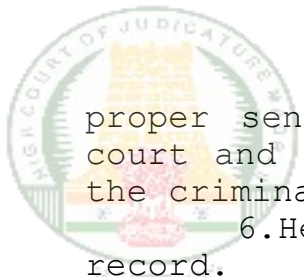


Bus Stop, the deceased Ravichandran proceeded in TN-65-G-0183 Government Jeep from west to east and at that time, the accused drove the lorry TN-65-A-9426 in a rash and negligent manner and hit against the Jeep. In that process, the deceased and one Jeyamohan and the persons who were travelling in the lorry as load men sustained injuries. The deceased Ravichandran died in the Madurai Government Hospital, while he was taking treatment. The Inspector of Police attached to Kenikarai Police Station has filed a final report under Sections 279, 337(2 counts) 338 and 304(A) IPC against the accused examining the witnesses.

3.In the trial court, 20 witnesses were examined and 17 Exhibits and 1 material object 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 279 IPC and sentenced him to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment; for the offence under Section 337 IPC (2 counts), sentenced him to pay a fine of Rs.250/-, in default to undergo one month simple imprisonment for each count; for the offence under Section 338 IPC, sentenced him to pay a fine of Rs.500/-, in default to undergo two months of simple imprisonment and for the offence under Section 304 (A) IPC, sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months simple imprisonment. Aggrieved by the judgment of the trial court, the revision petitioner filed an appeal in C.A.No.27 of 2015, which was heard by the Principal District and Sessions Judge, Ramanathapuram. The first appellate Court modified the judgment of conviction and sentence passed by the trial court into one month SI for the offence under Section 304(A) IPC and confirmed in respect of other offences. 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 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 may be dismissed.

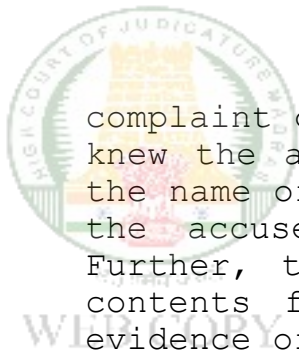
6. Heard both sides and perused the materials available on record.

7. The main contention raised on the side of the petitioner is that there was no evidence of rash and negligent on the part of the accused and when there was no evidence for rash and negligent driving, the accused is entitled to acquittal and further, the learned counsel appearing for the petitioner/accused argued that PW1 is a chance witness and in his evidence, he categorically stated that the Jeep drove by the deceased came from west to east and the lorry drove by the accused came from east to west and the lorry dashed against the Jeep. But the rough sketch shows that lorry came from north to south which clearly established that he would not have witnessed the occurrence. Further, in chief examination, PW1 stated that he went to his house in a two wheeler, but during investigation, he stated that he went to house by foot. PW1 stated that the deceased Ravichandran is not his relative. But PW19 the Investigating Officer admitted that PW1 during investigation stated that the deceased Ravichandran is his Uncle. Therefore, PW1 informant in this case is not a reliable and trustful witness and his evidence cannot be relied upon and hence, prays for allowing the criminal revision.

8. PW1 is the complainant and he gave Ex.P1 complaint. PW1 in his complaint stated that on 11.09.2005 at 1.15 pm, he proceeded on the Rameswaran National Highways and when he reached Kumariah Koil Bus Stop, at that time, the accused drove his lorry in a rash and negligent manner and dashed against the Jeep, which was proceeded from west to east and the driver of the Jeep and Jeyamohan, who travelled in the Jeep sustained injury and two load men travelling in the lorry also sustained injury and then, he took the injured to the hospital and then, the driver of the Jeep died.

9. PW1 during his evidence stated that on 11.09.2005 at 1.15 pm, he proceeded to his house in his two wheeler and when he reached Senthil Petrol Bunk, he saw that one Jeep proceeded from west to east and at that time, the accused drove his lorry and dashed against the Jeep and two persons travelled in the Jeep sustained injury and he took the injured to the Madurai Government Hospital and the driver of the Jeep died. PW1 has not stated during his evidence that the accused drove his lorry in a rash and negligent manner.

10. PW1 in his complaint stated that at the time of occurrence, he proceeded on the road by walk. But during his evidence he stated that at the time of occurrence, he proceeded to his house in a two wheeler. PW1 during his cross examination stated that he is not the relative of the deceased Ravichandran. But during his investigation by the Investigating Officer, he stated



complaint or in his evidence stated that prior to the occurrence, he knew the accused. But on perusal of the complaint, he has stated the name of the accused. PW1 has not stated now he knew the name of the accused. Hence, it creates doubt about Ex.P1 (Complaint). Further, there are contradictions in the evidence of PW1 and the contents found in Ex.P1 Complaint. Hence, it is held that the evidence of PW1 cannot be relied upon.

11.In this case, PW2, PW3, PW6 and PW7 are cited as eye witnesses. PW2 and PW3, PW6 and PW7 deposed that the accused drove his vehicle in a speedy manner. But they have not deposed that the accused drive his vehicle in a rash and negligent manner.

12.PW4, PW5, PW8 and PW9 are cited as hearsay witnesses. PW4, PW5, PW8 and PW9 went to the place of occurrence after they heard the occurrence. Hence, much importance cannot be given to the evidence of PW4, PW5, PW8 and PW9.

13.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 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 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).

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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.

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

17.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 (CS II)

// True Copy //

Sub Assistant Registrar (CS)



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To,

1.The Judicial Magistrate, Ramanathapuram.

2.The Chief Judicial Magistrate,
Ramanathapuram.

3.The Principal Sessions Judge,
Ramanathapuram.

4.The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.

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

Copy to:

The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.(2 COPIES)

+1 CC to M/s.S. RAVI, Advocate (SR-83411[F] dated 26/08/2019)

Judgment made in
Crl.R.C (MD) No.443 of 2017
21.08.2019

KK/SAR/14.10.2019/7P-9C/