

**BAIL SLIP**

P.Rajarathinam, S/o. Rajagopal, male aged about (32/2019) is released on bail vide Court order dated 18/03/2019 made in CrI MP (MD)No.2145 of 2019 in CrI RC(MD)No.123 of 2019.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****CrI.RC(MD)No.123 of 2019****and****CrI.MP(MD)No.2146 of 2019**

P.Rajarathinam : Petitioner/Appellant/Respondent

Vs.

State represented by
The Inspector of Police,
Mathukur Police Station,
Thajavur District.

(Crime No.19 of 2012)

: Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under sections 397 and 401 of the Code of the Criminal Procedure against the judgment of the III Additional District & Sessions Judge, Thanjavur @ Pattukottai, passed in CrI.A.No.12 of 2018, dated 31.01.2019, confirming the judgment of the Judicial Magistrate, Pattukottai, passed in C.C.No.386 of 2013, dated 06.02.2018.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (CrI.Side)**J U D G M E N T**

This criminal revision is directed against the judgment of the III Additional District and Sessions Judge, Thanjavur @ Pattukottai, passed in CrI.A No.12 of 2018, dated 31.01.2019, confirming the judgment of the Judicial Magistrate, Pattukottai, passed in C.C.No.386 of 2013, dated 06.02.2018.

2.The case of the prosecution is that on 06.02.2012 at 10.15 am, on Mannarkudi road near Mela Theru junction, the accused drove the TVS-50 bearing No.TAO-9532 in a rash and negligent manner and
<https://hcservices.ecourts.gov.in/hcservices/> TVS XL Super TN-50-X-8703, in which the deceased Thangaraj was travelling as pillion rider and in that process, the deceased Thangaraj was thrown away and sustained head injury and



subsequently, he died. The Inspector of Police attached to Mathukur Police Station, Thanjavur District has filed a final report against the accused examining the witnesses.

3.The trial court, after properly analysing the entire materials on record, convicted the petitioner for the offence under section 304(A) IPC and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo two weeks simple imprisonment. Aggrieved by the conviction and sentence of the trial court, the petitioner preferred appeal in Crl.A.No.12 of 2018, which was heard by the III Additional District and Sessions Judge, Thanjavur @ Pattukottai. The first appellate court had also confirmed the judgment of conviction and sentence passed by the trial Court. Against the concurrent findings of the courts below, the petitioner/accused is before this court.

4.The learned counsel for the 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 in this case, PW1 is a deaf and he has not clearly stated regarding the registration number of the vehicle 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 has to be allowed.

5.On the other hand, the learned Government Advocate (Criminal side) 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 petitioner/accused for rash and negligent driving of the vehicle and passed proper sentence, which do 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 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 petitioner/accused and there is no corroborative evidence to show that the accused drove the vehicle in a rash and negligent manner and prays that the criminal revision has to be allowed.



8. In this case, PW1 in his complaint and evidence stated that on 06.02.2012 when he was proceeding on Mohur Four roads in his TVS XL Super TN-50-X- 8703, while the deceased Thangaraj was riding as a pillion rider, the accused drove his TVS-50 TAO-9532 in a speedy manner without blowing horn and hit against them. In that process, both of them were thrown away and the pillion rider Thangaraj had sustained severe head injuries and he was taken to Pattukottai Government Hospital, where the Doctor told that Thangaraj was reported to be dead. PW1 has not stated that the driver of the offending vehicle drove the vehicle in a rash and negligent manner.

9. PW2 deposed in his evidence that the deceased is his Uncle and he heard the news that on 06.02.2012 his Uncle Thangaraj was travelling in a TVS XL Super as pillion rider, which was driven by one Srinivasan and at 12.00 noon, when they were proceeding near Mohur Four roads, his Uncle met with an accident and he went to Pattukottai Government hospital, where he saw that his Uncle died.

10. PW3 deposed his evidence that he heard the news that on 06.02.2012, when the deceased Thangaraj was travelling in a two wheeler, he met with the accident near Mohur Four road and then, he went to the Pattukottai Government hospital and saw the deceased.

11. PW4 deposed in his evidence that on 06.02.2012 his Uncle Thangaraj met with an accident and he went to the Pattukottai Government hospital and saw the deceased. It is seen from the evidence of PW2 to PW4, they are only hearsay witnesses. Hence, no much importance can be given to their evidence.

I 12. In this case, the Motor Vehicle Inspector was examined as PW7. PW7 deposed that he inspected the offending vehicles only in his office. No explanation was given by PW7, why he has not gone to the place of occurrence to inspect the offending vehicles. Hence, it creates doubt about the prosecution case.

13. Further, in this case, PW1 has stated during cross examination that he is a deaf. PW1 is the driver of the vehicle, where the deceased was a pillion rider. Hence, it is held that PW1 is the interested witness.

14. It is mainly argued on the side of the petitioner/accused that the prosecution witnesses have not proved the rash and negligent driver 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 the vehicle in a rash and negligent manner, merely because there was an accident.



15. 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:-

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"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."



16. 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.

17. For all the reasons stated above, this court is of the considered view that the prosecution has failed to prove 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 petitioner/accused is acquitted of the charge(s) 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 (AS)

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Sub Assistant Registrar (CS)

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To

1. The III Additional District and Sessions Judge,
Thanjavur @ Pattukottai.

2. The Judicial Magistrate,
Pattukottai.

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

4. The Inspector of Police,
Mathukur Police Station,
Thajavur District.

Copy to:

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

+1 CC to M/s.R.MATHESWARAN, Advocate (SR-7725[F] dated 21/02/2020)

Crl.RC (MD) No.123 of 2019

21.02.2020

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