



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Cr1.RC(MD)No.287 of 2015

WEB COPY

P.Chellapandi

: Petitioner/Accused

Vs.

State represented by
The Sub Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District.
In Crime No.40 of 2009.

: Respondent/Complainant

Prayer: Criminal Revision filed under sections 397 R/W 401 of the Code of the Criminal Procedure against the judgment of the IV Additional District & Sessions Judge, Madurai, passed in C.A.No.17 of 2013, dated 09.04.2015, confirming the judgment of the Judicial Magistrate No.II, Usilampatti, passed in C.C.No.66 of 2009, dated 28.05.2013.

For Petitioner : Mr.S.Mahendrapathy

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Cr1.Side)

J U D G M E N T

This criminal revision is directed against the judgment of the IV Additional District Sessions Judge, Madurai, passed in C.A.No.17 of 2013, dated 09.04.2015, confirming the judgment of the Judicial Magistrate No.II, Usilampatti, passed in C.C.No.66 of 2009, dated 28.05.2013.

2.The case of the prosecution is that on 14.02.2009 at about 4.00 pm, while the deceased Iyar Thevar along with PW1 to PW3 namely Jayaperumal, Ramu and Periya Karruppan standing in front of Kuppanampatti bus stop, the accused drove the bus TN-59-AF-298 in a rash and negligent manner and dashed against the deceased Iyar Thevar and in that process, he died on the spot. In this regard, the Sub Inspector of Police, attached to Usilampatti Taluk Police Station has filed a final report against the accused examining the witnesses.

3.The trial court, after considering the entire materials available on record, has found the petitioner/accused guilty for the offence under section 304(A) IPC and sentenced him to undergo 6 months RI and to pay a fine of Rs.1,000/-, in default to undergo 2 weeks SI. Aggrieved by the same, the petitioner preferred appeal



before the first appellate court namely the IV Additional District and Sessions Judge, Madurai. The learned first appellate Court had also confirmed the findings of the trial court. Challenging 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 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.

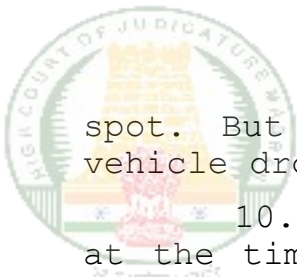
5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that both the courts below appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offence, convicted the petitioner/accused for rash and negligent driving of the vehicle and passed proper sentence, which 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 the learned counsel appearing on either and perused the entire materials available on record.

7. In this case, PW1 Jeyaperumal gave Ex.P1 complaint. He has stated in the complaint as well as in the evidence that on 14.02.2009 at about 4.00 pm, when he along with the deceased Iyar Thevar, Ramu and Periyakaruppan were standing in front of Kuppanampatti bus stop, the accused drove the bus TN-59-AF-298 from east to west direction and dashed against Iyar Thevar and in that process, he died on the spot. PW1 has not stated that the driver of the offending vehicle drove the vehicle in a rash and negligent manner.

8. PW2 Ramu has stated that before 3 years at 4.00 pm, when he along with the deceased Iyar Thevar, Jeyaperumal, Periyakaruppan and Veerathevar were standing in front of Kuppanampatti bus stop, at that time one Chokkan bus came from Madurai to Theni in a speedy manner and hit against Iyar Thevar and due to which, he died on the spot and thereafter, the deceased was taken to the Usilampatti Government Hospital and he does not know, who lodged the complaint. But PW2 has not stated in his evidence that the driver of the offending vehicle drove the vehicle in a rash and negligent manner.

9. PW3 Periyakaruppan deposed that before three and half years at about 3 to 4 hours in the evening, he, Ramu, Veerathevar, Jeyaperumal were standing in front of Kuppanampatti and the deceased Iyar Thevar was standing 2 feet away from them and at that time, Chokkan Bus came in a speedy manner and dashed against the Iyar Thevar and in that process, he sustained injuries and died on the



spot. But PW3 has not stated that the driver of the offending vehicle drove the vehicle in a rash and negligent manner.

10. PW4 and PW8 are mahazar witnesses and they deposed that at the time of preparing observation mahazar, they are present at the occurrence place and they also signed as witness in the observation mahazar.

11. In this case, PW5 is the hearsay witness. Hence, no much importance can be given to his evidence.

12. In this case, the Motor Vehicle Inspector was examined as PW7. PW7 stated that the accident had not occurred due to mechanical defect. It is to be noted that PW7 has not inspected the offending vehicle on the date of alleged occurrence, but he inspected the vehicle only on the next day. Hence, it is not possible for him to come to the conclusion that by whose negligence, the accident took place.

13. 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.

14. 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*



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. 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.

16. 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)

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Sub Assistant Registrar (CS)

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To,

1. The IV Additional District & Session Judge,
Madurai.

2. The District Munsif-cum-Judicial Magistrate No.1,

Usilampatti.



3. The Chief Judicial Magistrate, Madurai.

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

+1 CC to Mr.A.K.ALAGARSAMY, Advocate (SR-5978[F] dated 12/02/2020)

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