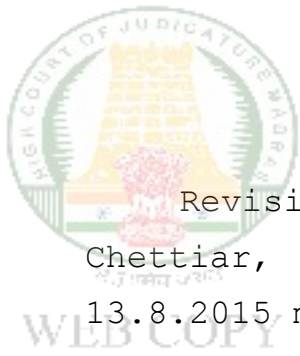


**BAIL SLIP**

Revision Petitioner/Accused viz., Subburam, S/o. Veluchamy Chettiar, was released on bail vide order of this Court dated 13.8.2015 made in MP(MD)No.1 of 2015 in CrI RC(MD)No.337 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.02.2020
CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

CrI.R.C(MD)No.337 of 2015

Subburam : Revision Petitioner/ Appellant/Accused

Vs.

The State by
The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District
(Crime No.216 of 2003) : Respondent/Respondent/ Complainant

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, against the judgment, dated 24.06.2015 made in C.A.No.166 of 2008 on the file of the Sessions Judge at Virudhunagar, Srivilliputhur, confirming the judgment of the Judicial Magistrate, Sivakasi, in C.C.No.848 of 2003, dated 08.08.2008.

For Revision Petitioner : Mrs.S.Prabha
for Mr.G.V.Vairam Santhosh

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, dated 24.06.2015 made in C.A.No.166 of 2008 on the file of the Sessions Judge, Virudhunagar @ Srivilliputhur, confirming the judgment of the Judicial Magistrate, Sivakasi, in C.C.No.848 of 2003, dated 08.08.2008.

<https://hcservices.equityrev.in/hcservices/> of the prosecution is that on 26.07.2003, the accused drove the mini bus TN-67-C-5655 in a rash and negligent manner and hit against the bicycle, which was driven by the deceased



Chinna Thevar, while his wife Kannikaimarry riding as pillion rider. In that process, both of the them sustained injuries. The Inspector of Police attache to Thiruthangal Police Station has filed a final report against the accused examining the witnesses.

3.The trial court, on proper appreciation of the entire materials on record both oral and documentary, convicted the petitioner and sentenced him to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one month for the offence under section 279 IPC; to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one month for the offence under section 337 and to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for 3 months for the offence under section 304-A IPC. 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 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 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.It is mainly argued on the side of the petitioner/accused that except PW11, none of the witnesses deposed that the accused drove the vehicle in a rash and negligent manner and therefore, the evidence of PW11 has not been corroborated by any other evidence relied on by the prosecution and 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.

8. On the other hand, the learned Government Advocate (Criminal side) submitted that both the courts below after considering the entire materials available on record, had given correct findings, which does not call for any interference by this court.

9. PW1 is the son of the deceased and he gave Ex.P1 complaint to the police. PW1 in his complaint stated that on 26.07.2003 at 7.45 am, his father and mother proceeded in a bicycle on Sivakasi to Errichanathan and when they reached Sathya Nagar, at that time the accused drove his vehicle TN-67-C-5655 in a rash and negligent manner and dashed against the bicycle in which his parents travelled and his parent sustained injuries and died on the spot and several persons sustained injuries and then he gave Ex.P1 complaint to the police.

10. PW1 during his evidence stated that on 26.07.2003 at 7.45 am, his father and mother proceeded in a bicycle on Sivakasi to Errichanathan and when they reached Sathya Nagar, at that time the accused drove his vehicle TN-67-C-5655 in a speedy manner and dashed against the bicycle in which his parents travelled. PW1 has not stated that the accused drove the vehicle in a rash and negligent manner.

11. PW2, PW3, PW6 to PW39 are cited as eye witnesses. PW2, PW3, PW6 to PW10, PW12 to PW35, PW38 and PW39 deposed that on 26.07.2003, the deceased travelled in a bicycle and the accused came in the opposite direction and dashed against the bicycle in which both the deceased travelled and they and the deceased sustained injuries and both the deceased died on the spot. PW2, PW3, PW6 to PW10, PW12 to PW35, PW37 to PW39 have not stated that the accused drove the vehicle in a rash and negligent manner..

12. PW11 deposed that on 26.07.2003 at 9.00 am, he and 63 persons travelled in the mini bus in which the accused is the driver and the accused drove the bus in a rash and negligent manner and dashed against the bicycle in which the deceased travelled. PW11 during his chief examination deposed that the accused drove his vehicle in a rash and negligent manner. But during his cross examination, he has stated that “நான் பஸ்ஸின் பின்னால் உட்கார்ந்திருந்தேன் சைக்கிளில் வந்த நபர்கள் மீது மோதியதை நான் பார்க்கவில்லை .. சற்று தள்ளியே பேருந்து வேகமாக வந்தது.”

13. On careful perusal of the evidence of PW1, it reveals that he has not seen the occurrence. PW36 deposed that prior to four years, he travelled in a mini bus, which was dashed against the persons travelled in the bicycle and the accident was only due to the rash and negligent driving of the driver of the mini bus, in which he travelled. But during his cross examination, PW36 stated as follows:-



“நான் டிரைவர் சீட்டுக்கு பின்னால் 4, 5 சீட்டுகள் தள்ளி
அமர்ந்திருந்தேன் வண்டி சாய்ந்து கீழே நான் அதன் பிறகு
வாகனத்திலிருந்து வெளியே வந்த பிறகுதான் விபத்து ஏற்பட்டு
இறந்துவிட்டதாக தெரிந்து கொண்டேன் விபத்து எப்படி நடந்தது
என்பது எனக்கு தெரியாது.

Hence, from the evidence of PW36, it reveals that he has not seen the occurrence.

14.PW37 stated during his chief examination that prior to 4-1/2 years, he travelled in a minibus and he sat behind the driver seat and he closed his eyes, after seeing the bus plying and he sustained injuries and he was admitted in the hospital. But PW37 during his cross examination stated as follows:-

“எனக்கு சுயநிகைவு மருத்துவனையில் வந்த பிறகுதான்
விபத்து ஏற்பட்டது போலீஸ் சொல்லி தெரிந்துகொண்டேன்
கண்ணைமூடி விட்டதால் விபத்து நடந்தது பற்றி தெரியாது.

Hence, from the evidence of PW37, it reveals that he has not seen the occurrence.

15.PW5 and PW6 are magazar witnesses. In this case, the Doctor, who conducted postmortem on the body of the deceased and the Doctors, who gave treatment to the injured are not examined. The above Doctors are material witnesses. Further, in this case, the Motor Vehicle Inspector was not examined. The above mentioned witnesses are material witnesses. No explanation was given for the non-examination of the above material witnesses. The non-examination of material witnesses is fatal to the prosecution.

16.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 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."

17. 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.

18. 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 (Crl Side)

// True Copy //



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To

1.The Principal Sessions Judge,
Virudhunagar District @ Srivilliputhur

2.The Judicial Magistrate,
Sivakasi.

3.The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.

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

5.The Superintendent,
Central Prison, Madurai.

+3 cc to Mr.G.V.Vairam Santhosé ,Advocate, SR No.8186,8458

Judgment made in
Cr1.R.C (MD) No.337 of 2015
25.02.2020

KK/17.03.2020/ 7P- 9C