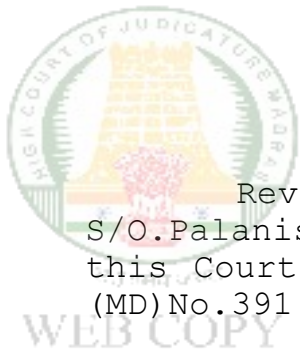




Bail Slip

Revision Petitioner/Accused, namely, Sivakumar, S/O.Palanisamy was directed to be released on bail by the order of this Court, dated 14.09.2015 made in M.P(MD)No.1 of 2015 in Crl RC (MD)No.391 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 21.02.2020

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Crl.RC (MD)No.391 of 2015

Sivakumar : Petitioner/Appellant/
Sole Accused

Vs.

State represented by
The Inspector of Police,
Manapparai Police Station,
Trichy District.
(Crime No.565 of 2006)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the judgment of the I Additional District Judge, (PCR), Tiruchirappalli, passed in Crl.A.No.38 of 2015, dated 10.07.2015, confirming the judgment of the Judicial Magistrate, Manapparai, passed in C.C.No.139 of 2008, dated 08.04.2015.

For Petitioner : Mr.V.Janakiramulu

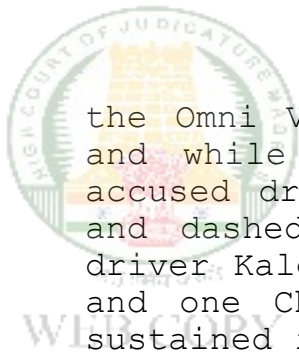
For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)

J U D G M E N T

This criminal revision is directed against the judgment of the I Additional District Judge (PCR), Tiruchirappalli, passed in Crl.A No.38 of 2015 dated 10.07.2015, confirming the judgment of the Judicial Magistrate, Manapparai, passed in C.C.No.139 of 2008, dated 08.04.2015.

2.The short facts of the case is that on 31.12.2006 at 7.00 am, on Trichy-Dindigul National Highways, one Kaleeswaran driving

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



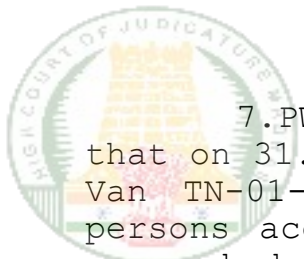
the Omni Van TN-01-L-9513 and five persons accompanied in the Car and while the Van proceeding near Sikkandar Thavittu Mill, the accused drove the lorry TN-34-4363 in a rash and negligent manner and dashed against the Omni van. In that process, the Omni Van driver Kaleeswaran and his daughter Arunadevi were died on the spot and one Chellathai died in the hospital and other three persons sustained injuries. In this regard, the Inspector of Police attached to Manapparai Police Station has filed a final report against the accused examining the witnesses.

3.The trial court, after considering entire materials available on record, has convicted the petitioner/accused and sentenced him to pay a fine of Rs.500/-, in default to undergo one month SI for the offence under section 279 IPC: for the offence under section 337 IPC, imposed a fine of 500/-, in default to undergo one month SI; for the offence under section 338 IPC(2 counts), imposed a fine of Rs.500/- for each count, in default to undergo each one month SI and sentenced him to undergo each one year RI and also to pay a sum of Rs.1,000/- each, in default to undergo each 3 months SI for the offence under section 304(A) IPC (3 counts) and all the sentences were directed to run concurrently. Aggrieved over the same, appeal has been preferred before the first appellate court namely the I Additional District Judge (PCR), Tiruchirappalli, which was also confirmed the findings of the trial court. Feeling aggrieved by the concurrent findings of the courts below, the petitioner is before this court with this criminal revision.

4.The learned counsel for the petitioner/accused submitted that the prosecution has failed to establish the ingredients required for 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 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 offences, 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.PW1 gave Ex.P1 complaint to the respondent police stating that on 31.12.2006 at 7.00 am, when they were proceeding in the Omni Van TN-01-L-9513, which was driven by one Kaleeswaran and five persons accompanied in the car, near Sikkandar Thavittu Mill, the accused drove the lorry TN-34-4363 in a speedy manner and dashed against the Omni Van on its front side and due to which, the Omni Van driver Kaleeswaran and his daughter Arunadevi died on the spot and one Chellathai died in the hospital and he sustained injuries on his face and others were also sustained injuries. PW1 has stated in his complaint and evidence that the accused drove the vehicle in a speedy manner. But he has not stated that the accused drove the vehicle in a rash and negligent manner.

8.PW2 Murugalakshi stated in her evidence that on 31.12.2006, when they were proceeding in the Omni Van near Sikkandar Thavittu Mill, the accused drove the lorry in a speedy manner and hit against her vehicle and due to it, her husband and daughter died on the spot and her mother sustained injuries and on seeing the occurrence, she became unconscious and they were taken to the hospital.

9.PW3 Nandhini stated in her evidence that on 31.12.2006, they were proceeding in the Omni Van, in the opposite side, a lorry came and hit against the Omni Van and due to it, her mother and one Rajadurai sustained injuries and her father and elder sister died on the spot and her grand-mother died in the hospital.

10.PW4 is the hearsay witness and he deposed that he knew PW1 to PW3 and he was informed the occurrence over phone. PW5 is the mahazar witness and he deposed that at the time of preparing mahazar, he is present in the occurrence place and he singed as one of the witnesses in the observation mahazar.

11.It is to be noted that PW1 to PW3 have not stated that at the time of occurrence, the accused drove the vehicle in a rash and negligent manner.

12.In this case, the Motor Vehicle Inspector was examined as PW6. PW6 stated that the accident had not occurred due to mechanical defect. Further, it is to be noted that PW6 has not inspected the lorry on the date of alleged occurrence I.e., on 31.12.2006, but he inspected the alleged lorry only on 03.01.2007. 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 an accident took place.



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 driver 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.

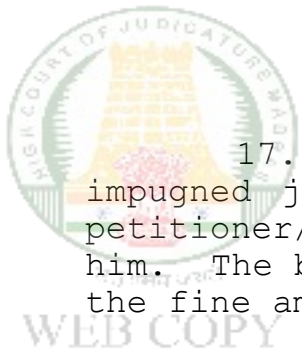
22.In *State vs. Avadh Kishore* {Crl.L.P. No.213 of 2007 dated 30.1.2009 (Delhi High Court)}, the Delhi High Court reiterated its earlier view in *ABDUL SUBHAN* (supra).

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."

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 failed to prove 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 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 (CRL SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

To

1. The I Additional District Judge (PCR),
Tiruchirappalli.
2. The Judicial Magistrate,
Manapparai.
3. -do- Thro The Chief Judicial Magistrate,
Trichy District.
4. The Inspector of Police,
Manapparai Police Station,
Trichy District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy To:

The Section Officer,
Criminal Section (Records) 2 copies,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-7662[F] dated
21/02/2020)

Crl.RC (MD) No.391 of 2015
21.02.2020

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TK/12.05.2020/6P/9C