



BAIL SLIP

Ashok, S/o.Ganesan Petitioner/Sole Accused is released on Bail vide Court Order dated 12.10.2015 made in MP(MD)No.1 of 2015 in CRL RC (MD)No.498 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrl.R.C (MD)No.498 of 2015

Ashok : Revision Petitioner/
Appellant/Accused

Vs.

State of Tamilnadu,
rep. by the Sub Inspector of Police,
Ethamozhi Police Station,
Kanyakumari District.
(Crime No.46 of 2007)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under section 397 r/w 401 of Criminal Procedure Code, against the judgment passed in C.A.No.60 of 2009, dated 24.03.2015 by the Fast Track Mahila Court (Sessions Judge), Nagercoil, confirming the judgment passed in STC No.2220 of 2007, dated 06.11.2009 by the Judicial Magistrate No.3, Nageroil and set aside the same.

For Revision Petitioner : Mr.K.Vamanan

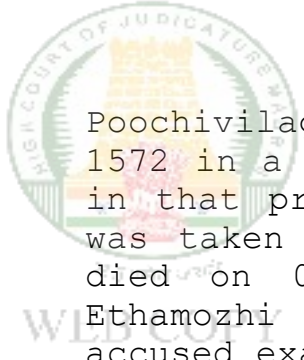
For Respondent : Mr.V.Neelakandan
Additional Public Prosector

J U D G M E N T

This Criminal Revision is directed against the judgment passed in C.A.No.60 of 2009, dated 24.03.2015 by the Fast Track Mahila Court (Sessions Judge), Nagercoil, confirming the judgment passed in STC No.2220 of 2007, dated 06.11.2009 by the Judicial Magistrate No.3, Nageroil.

2.The case of the prosecution is that on 08.03.2007 at 2.00 pm, when the deceased woman namely Selvam was standing in the

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Poochivilagam Bus stop, the accused drove the two wheeler TN-74-L-1572 in a rash and negligent manner and dashed against Selvam and in that process, she sustained head injury and subsequently, she was taken to the hospital and ins-pite of better treatment, she died on 09.04.2007. The Sub Inspector of Police attached to Ethamozhi Police Station has filed a final report against the accused examining the witnesses.

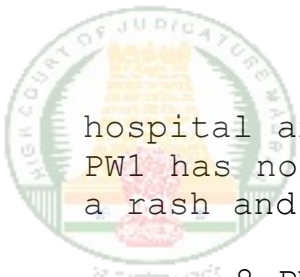
3.The trial court, on proper appreciation of the entire materials on record, both oral and documentary convicted the petitioner and sentenced him to undergo three months of simple imprisonment and to pay a fine of Rs.3,000/-, in default to undergo two weeks simple imprisonment. Aggrieved by the judgment of the trial court, the petitioner preferred appeal before the first appellate court. 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 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 Additional Public Prosecutor 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 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.PW1 is the complainant and he gave Ex.P1 complaint to the police. PW1 in his complaint as well as in his evidence stated that on 08.03.2007 at 2.00 pm, when he along with his deceased mother Selvam were standing in the Poochivilagam Bus stop, the accused the drove the two wheeler TN-74-L-1572 in a speedy manner and dashed against his mother Selvam and in that process, she sustained head injury and subsequently, she was taken to the



hospital and ins-pite of better treatment, she died on 09.04.2007. PW1 has not stated that the accused drove the offending vehicle in a rash and negligent manner.

8.PW2 and PW3 deposed that on 08.03.2007 when they were standing in Poochivilagam Bus stop along with PW1 and the deceased, the accused drove his two vehicle from south to north side and hit against the deceased Selvam and he and PW1 taken to the hospital. But they have not stated that the accused drove the vehicle in a rash and negligent manner.

9.PW4 is the Magazar witness and he deposed that on 08.03.2007 at 10.30 pm, the police came and inspected the place of occurrence and prepared Mahazar and he signed in the mahazar as one of the witnesses. PW6 is a hearsay witness. PW6 deposed that he heard that his sister Selvem sustained injury and he went to the hospital to see her sister Selvam. PW17 is the Motor Vehicle Inspector. PW17 deposed that he inspected the alleged vehicle and opined that the accident was not occurred due to any mechanical defect.

10.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.

11.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

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

12. 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.

13. 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 (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



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To,

1.The Fast Track Court,
Mahila Court, Nagercoil.

2.The Judicial Magistrate No.III,
Nagercoil.

3. The Sub Inspector of Police,
Ethamozhi Police Station,
Kanyakumari District.

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

+1 CC to M/s.K.VAMANAN, Advocate (SR-3940[F] dated 30/01/2020)

Judgment made in
Crl.R.C (MD) No.498 of 2015
30.01.2020

DB(CO)
TR(13.05.2020) 6P 6C