

BAIL SLIP

The Appellant/Accused viz Adaikalasamy, S/o. samikkannu Ambalam, was released on bail (Accused not in jail) order dated 26.10.2015 made in MP(MD).1 of 2015 in CRL RC(MD).513 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2020

CORAM

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

Cr1.R.C(MD)No.513 of 2015

Adaikalasamy : Revision Petitioner/
Appellant/Accused

Vs.

The State rep by
The Inspector of Police,
Thuvarankurichi Police Station,
Trichy District. : Respondent/Respondent/
Respondent

Prayer: Criminal Revision filed under Sections 397 & 401 of Criminal Procedure Code, against the judgment, dated 01.09.2015 passed by the I Additional District Judge (PCR), Tiruchirappalli, in C.A.No.56 of 2015, confirming the judgment, dated 25.06.2015 passed by the Judicial Magistrate, Manapparai, in C.C.No.300 of 2013.

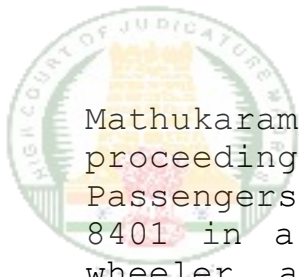
For Revision Petitioner : Mr.R.Boomi Rajan

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 01.09.2015 passed by the I Additional District Judge (PCR), Tiruchirappalli, in C.A.No.56 of 2015, confirming the judgment, dated 25.06.2015 passed by the Judicial Magistrate, Manapparai, in C.C.No.300 of 2013.

2.The case of the prosecution is that on 01.10.2012 at 11.15 am, the de-facto complainant riding his motor cycle TN-45-
AW-7571 with his father Elumalai as pillion rider to
<https://hcservices.courts.gov.in/hcservices>



Mathukarampatty to attend a funeral and at that time and they were proceeding on the left side of National Highways near Yagapuram Passengers Sun shade, the accused drove the Car TATA AC TN-45-K-8401 in a rash and negligent manner and dashed against the two wheeler, as a result of which, both the rider and pillion rider of the motor cycle sustained injuries and and the father of the de-facto complainant sustained grievous injury and he was taken to Government Hospital, Manapparai for treatment and subsequently, he was referred to Kauvery Hospital, Trichy, where he died on the next day. In this regard, a case in Crime No.226 of 2012 stands registered by Thuvarankurichi Police Station.

3.The trial court, on proper appreciation of the entire materials available on record both oral and documentary, found the petitioner/accused guilty, convicted and sentenced him to pay a sum of Rs.500/-, in default to undergo one month simple imprisonment for the offence under section 279 IPC and also convicted and sentenced to undergo one year rigorous imprisonment and to pay a sum of Rs.1,000/-, in default to undergo three months simple imprisonment 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. The first appellate court confirmed the findings of the trial court. Against which, the petitioner is before this court.

4.The learned counsel for the revision 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 the 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 revision 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



7.PW1 is the complainant and he gave Ex.P1 complaint to the police. PW1 in his complaint stated that on 01.10.2012 at 11.15 am, he along with his father deceased Elumalai were riding TVS Heavy Duty two wheeler TN-45-AW-7571 to Mathukarampatty to attend a funeral and when they were proceeding on the left side of National Highways near Yagapuram Passengers Sun Shade at 11.30 am, the accused drove TATA AC vehicle TN-45-K-8401 in a high speed without blowing horn and caused the accident and as a result of which, he and his father Elumalai sustained injuries and his father died in the hospital and he gave Ex.P1 complaint.

8.PW1 in his evidence stated that on 01.10.2012 at 11.15 am, he along with his father deceased Elumalai were riding in a TVS Heavy duty two wheeler bearing Registration No.TN-45-AW-7571 to Mathukarampatty to attend a funeral and when they were proceeding on the left side of National Highways near Yagapuram Passengers Sun Shade at 11.30 a.m. a TATA AC vehicle bearing Registration No.TN-45-K-8401, which was driven by the accused in a speedy manner and dashed against the two wheeler and caused the accident, as a result of which, due to the severe sustained his father Elumalai died in the hospital. PW1 has not stated that the accused drove the vehicle in a rash and negligent manner.

9.PW2 to PW4 are cited as eye witnesses. PW2 to PW4 in their evidence stated that the driver of the vehicle drove his vehicle in a speedy manner, but they have not stated that the driver of the vehicle drove his vehicle in a rash and negligent manner.

10.PW5 and PW6 are Magazar witnesses. But they turned hostile and did not support the case of the prosecution.

11.PW7 is the Special Sub Inspector of Police. PW7 deposed that he prepared observation magazar, rough sketch and enquiry report. PW8 is the Inspector of Police. PW8 deposed that he received the Motor Vehicle Inspection Reports Exs.P7 and P8 and in the MV reports, it is clearly stated that the accident was not occurred due to any mechanical defect.

12.It is mainly argued on the side of the revision 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.



13.At this juncture, it is relevant to refer the decision of this Court reported in **2017-1-LW.(CrI.)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 {CrI.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 {CrI. 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."



14. 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.

15. 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(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsd
TO

1. The I Additional District Judge, (PCR), Trichy.
2. The Judicial Magistrate, Manapparai.
3. Do through the Chief Judicial Magistrate, Trichy.
4. The Inspector of Police, Thuvrankurichi Police Station, Trichy District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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

+1 CC to M/s.PR.BOOMEERAJAN, Advocate (SR-1024[F] dated 09/01/2020)

Order made in
Cr1.R.C(MD)No.513 of 2015
08.01.2020

scr(CO)
TR(27.02.2020)6P 9C