



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2020

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Cr1.R.C(MD)No.396 of 2016

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: Petitioner/Appellant

Vs.

The State rep by
The Inspector of Police,
Sathankulam Police Station,
Tuticorin District.
(Crime No.166 of 2008)

: Respondent/Complainant

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, to call for the records pertaining to the judgment dated 05.02.2016 made in C.A.No.32 of 2015 on the file of the II Additional District and Sessions Judge, Tuticorin, confirming the judgment dated 04.06.2015 made in C.C.No.43 of 2009 on the file of the Judicial Magistrate, Santhankulam, Tuticorin District and set aside the conviction and sentence by allowing this revision.

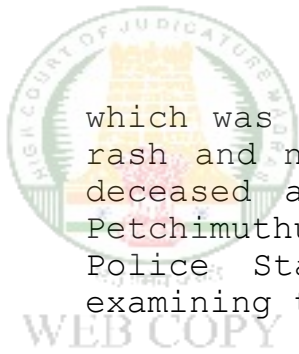
For Revision Petitioner : Mr.S.R.Anbarasu

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 05.02.2016 passed by the II Additional District and Sessions Judge, Tuticorin, in C.A.No.32 of 2015, confirming the judgment, dated 04.06.2015 passed by the Judicial Magistrate, Santhankulam, Tuticorin District, in C.C.No.43 of 2009 .

2.The case of the prosecution is that on 09.08.2008 at about 1.00 p.m, the deceased Petchimuthu was walking on the side of the road and when he was proceeding near Tiruchenthur-Sathankulam road, which is under the Oorani Bridge situated at Eastern side of the Pannamparai Village, a Indico Car bearing Reg.No.TN-72-A2-3006,



which was driven by the accused came in the opposite direction in a rash and negligent manner without applying horn dashed against the deceased and caused the accident and as a result of which, the Petchimuthu died. The Inspector of Police attache to Sathankuulam Police Station has filed a final report against the accused examining the witnesses.

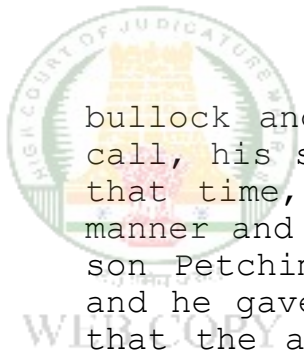
3.The trial court on proper appreciation of the entire materials on record both oral and documentary, convicted the revision petitioner for the offence under Section 304 (A) IPC and sentenced him to undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for a period of two months. 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 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 first appellate court 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 record.

7.PW1 is the complainant and he gave Ex.P1 complaint to the police. PW1 in his complaint stated that on 09.08.2008, he and his family members went to the house of one Sudalai, who is residing at Pannamparai Village for attending temple festival. At about 1.00 p.m, he and his son were proceeding near Oorani, his son went to attend his natural call and he went to the tank to wash bullock, and there one Ramaiah and one Velmurugan were washing their



bullock and he was talking with them. After finishing the natural call, his son was proceeding near Tiruchenthur-Sathankulam road, at that time, the accused drove his vehicle in a rash and negligent manner and dashed against the deceased and as a result of which, his son Petchimuthu died due to the injuries sustained in the accident and he gave Ex.P1 complaint. PW1 has not stated during his evidence that the accused drove his vehicle in a rash and negligent manner and deposed that the accused drove his vehicle in a speedy manner.

8.PW2 & PW3 were cited as eye witness. But they turned hostile and did not support the case of the prosecution.

9.PW4 is a hearsay witness. PW4 deposed that he heard that Petchimuthu sustained injuries and died due to the injuries sustained in the accident and then he went to the accident spot. PW5 and PW6 are Mahazar witness. PW5 and PW6 deposed that on 09.08.2008, the police came and inspected the place of occurrence and prepared Mahazar. PW10 is the Motor Vehicle Inspector. PW10 deposed that he inspected the offending vehicle and the vehicle in which the deceased travelled and opined that the accident was not occurred due to any mechanical defects.

10.It is mainly argued on the side of the revision petitioner/accused that the oral evidence of the prosecution witnesses was not proved that 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.(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 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."

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 ()

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Sub Assistant Registrar(CS)



1.The II Additional District and Sessions Judge,
Thoothukudi.

2.The Judicial Magistrate, Sathankulam.

3.The Chief Judicial Magistrate, Tuticorin District.

4.The Inspector of Police,
Sathankulam Police Station,
Tuticorin District.

Copy to:

The Additional Public Prosecutor, Madurai Bench.

Judgment made in

Crl.R.C(MD)No.396 of 2016

28.01.2020

NR(09.06.2020) 6P 6C