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BAIL SLIP

Suresh, S/o. Balan, Appellant/Sole Accused is released on Bail vide court order dated 28.06.2016 made in CRL MP(MD) No. 5132 of 2016 in CRL RC(MD) No. 443 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.443 of 2016

Suresh : Revision Petitioner/ Appelleant/Accused

Vs.

The State through
The Inspector of Police,
Pasupathypalayam Police Station,
Karur District.
Crime No.322 of 2011 : Respondent/Respondent/ Complainant

Prayer: Criminal Revision has been filed under section 397 r/w 401 of Criminal Procedure Code, against the judgement of the Fast Track Mahila Court, Karur, passed in Crl.A.No.3 of 2015, dated 08.12.2015, confirming the judgment of the Judicial Magistrate No.1, Karur, in C.C.No.400 of 2011, dated 25.11.2014.

For Petitioner : Mr.A.Haja Mohidden

For Respondent : Mr.V.Neelakandan

Additional Public Prosecutor

J U D G M E N T

This Criminal Revision is directed against the judgement of the Fast Track Mahila Court, Karur, passed in Crl.A.No.3 of 2015, dated 08.12.2015, confirming the judgment of the Judicial Magistrate No.1, Karur, passed in C.C.No.400 of 2011, dated 25.11.2014.

2.The case of the prosecution is that on 21.05.2011 at 1.30 pm, on Karur-Madurai by-pass road on the souther side of Sukkaliyur Check Post, when the deceased Narayanan was proceeding in his two wheeler Bajaji M-80 TN-47-E-3538 from north to southern side, the accused drove the Mahendira Car TN-60-W-5002 in a rash and negligent manner and hit against the deceased and due to which, he sustained severe injuries and died on the spot. The Inspector of Police attached to Pasupathypalayam Police Station has filed a final report

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against the accused examining the witnesses.

3.The trial court, on proper appreciation of the entire materials available on record, both oral and documentary convicted the petitioner and sentenced him to undergo 6 months simple imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month 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 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 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 may be allowed.

5.On the other hand, the learned Additional Public Prosecutor appearing for the respondent/State submitted that both 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.PW1 is the son of the deceased Narayanan and he gave Ex.P1 complaint. PW1 in his complaint stated that he heard from one Murugesan that when his father came in his two wheeler and when he reached Karur-Madurai bypass road near V.K.G weighing station, at that time the accused drove his vehicle in a rash and negligent manner and dashed against his father and his father sustained injuries and died on the spot and then, he went to the police station and gave Ex.P1 complaint. In this case, PW1 is not an eye witness and he is only hearsay witness.

8.PW2, PW3, PW5 and PW6 are cited as eye witnesses. They have deposed that on 21.05.2011 at 1.30 pm, when they were talking together near the check post, at that time they saw that the deceased came in his two wheeler and the accused drove his vehicle in a speedy manner and dashed against the two wheeler and due to it, the deceased sustained injuries and died on the spot. PW2, PW3, PW5 an PW6 have not deposed that the accused drove his vehicle in a rash

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and negligent manner. The place of occurrence is a public place. But no independent witness was examined. No explanation was given on the side of the prosecution as to why independent witness was not examined. Hence, it creates doubt about the prosecution case. Further it is pertinent to note that in this case, PW2, PW3, PW5 and PW6 are all interested witnesses and hence, much importance cannot be given to their evidence.

9.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.

10.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*

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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

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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."

11.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.

12.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 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(CO)

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SUB ASSISTANT REGISTRAR(CS)

er
To,
1.The Sessions Judge,
Mahila Court (FTC),
Karur

2.The Judicial Magistrate No.1,
Karur.

3.The Inspector of police
Pasupathy palayam Police station
Karur District.

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

+1 CC to M/s.A.HAJAMOHIDEEN, Advocate (SR-2990[F] dated 24/01/2020)

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