



BAIL SLIP

The Petitioner/Accused namely Balu S/o.Kandasamy was released on bail as per order of this Court dated 09.02.2016 and made in Cr1.MP(MD).No.1175 of 2016 in Cr1.RC.(MD)No.59 of 2016 on the file of this Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.RC. (MD)No.59 of 2016

Balu

... Petitioner/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Vengamedu Police Station,
Karur.

Cr.No.296/2012

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records in Cr1.A.No.49 of 2014 dated 09.12.2015, on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Karur, in C.C.No.208 of 2012, dated 16.10.2014 and set aside the same.

For Petitioner

: Mr.K.Balasubramani

For Respondent

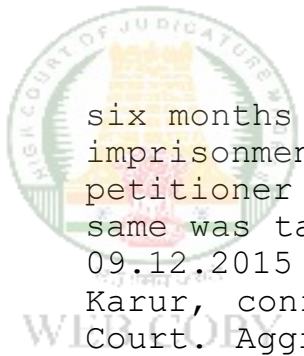
: Mr.A.Robinson,

Government Advocate (Cr1. Side)

O R D E R

This Criminal Revision Case is filed by the petitioner / accused as against the conviction and sentence passed by the learned Judicial Magistrate No.I, Karur, in C.C.No.208 of 2012, dated 16.10.2014, confirmed by the learned Sessions Judge, Fast Track Mahila Court, Karur, in C.A.No.49 of 2014, dated 09.12.2015.

2. The revision petitioner was tried for the offence under Section 304(A) IPC before the learned Judicial Magistrate No.I, Karur and the trial Court, in conclusion of the trial, found him guilty, convicted and sentenced to undergo simple imprisonment for



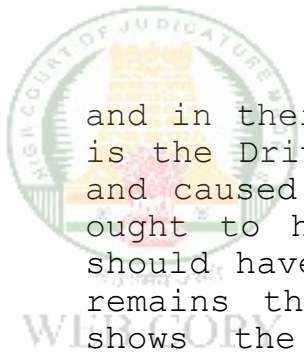
six months with a fine of Rs.1000/-, in default, to undergo simple imprisonment for one month for the offence he was stood charged. The petitioner preferred an appeal before the Court of Sessions and the same was taken in C.A.No.49 of 2014 and was dismissed by order dated 09.12.2015 by the learned Sessions Judge, Mahalir Neethimandram, Karur, confirming the conviction and sentence imposed by the trial Court. Aggrieved by the orders of the Courts below, the petitioner has preferred this revision case.

3. The brief fact of the case is that on 23.07.2012, at about 04.30 pm, in Karur-Wangal Main Road, near Balammalpuram Bus Stop, when the deceased girl, Charumathi, was walking from North to South in the left side of the road, a Maruthi Swift Car, bearing Reg.No.TN-42-E-2442, drove by the petitioner / accused, came in a rash and negligent manner and dashed against the deceased girl. In the said accident, the victim child sustained injuries and was taken to a Private Hospital, Karur and thereafter, to another Hospital at Coimbatore. Based on the complaint given by PW1, the case in Crime No.296 of 2012 was registered by the respondent Police for the offence under Sections 279 & 337 IPC. Despite the best treatment, the victim succumbed to the injuries. The respondent Police, after investigation, has filed the final report and both the Courts below have convicted the petitioner / accused as stated supra.

4. According to the learned Counsel for the revision petitioner, the victim girl was aged about seven years at the time of occurrence and the occurrence took place, while she was suddenly crossing the road. The occurrence place is a busy road and there cannot be any possibility of rash and negligent driving and it is the victim, who has negligently crossed the road, without seeing the vehicle and on account of that, the occurrence had taken place. The learned Counsel would submit that pursuant to the accident, it is this petitioner, who took the victim to a Private Hospital at Karur and thereafter, taken the child to another Hospital at Coimbatore and also provided the best treatment.

5. The learned Counsel for the petitioner would further submit that there is no evidence to show that the petitioner drove the vehicle in a rash and negligent manner on the date of occurrence and the damage in the bonnet of the car would also establish the case of the petitioner that it is due to the negligent act of the victim girl, on a sudden cross, the occurrence took place. The petitioner, though is not responsible for the accident, has taken the child to the Hospital, provided the treatment and despite the best efforts, the victim succumbed. He would further submit that the petitioner has paid a sum of Rs.1,25,000/- as compensation to the family of the victim, apart from the compensation amount of Rs.5,00,000/- paid by the Insurance Company.

6. Per contra, the learned Government Advocate (Cr1. Side) would submit that PWs.1, 4 & 5 are eye witnesses to the occurrence



and in their evidence, they have clearly stated that the petitioner is the Driver of the vehicle and the vehicle came in a rash manner and caused the occurrence. Even if it is the child, the petitioner ought to have driven the vehicle in a careful manner so that he should have applied the brake and prevented the accident. The fact remains that the petitioner has not averted the accident and it shows the rash and negligent driving of the petitioner and therefore, he prays for dismissal.

7. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

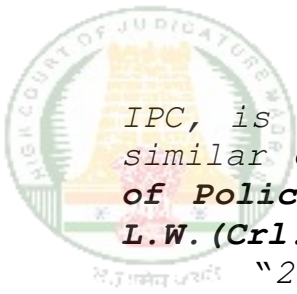
8. Perusal of record shows that PWs.1, 4 & 5 were examined as eye witnesses to the occurrence. PWs.3 & 6 are the parents of the deceased girl. As per the evidence of PW5, the occurrence place is in the Karur-Wangal Main Road, near Balammalpuram Bus Stop in a busy area, with residential and commercial establishments and also a School. The occurrence was taken place at about 04.30 pm. As per the evidence of PW3, the mother of the deceased child, the child was sent to a shop to purchase something and at that time, this petitioner / accused, who came in a Maruthi Shift Car, hit the child and caused the accident. PW4 in his evidence admits that while the child was about to cross the road, the occurrence had taken place. But all these eye witnesses, namely, PWs.1, 4 & 5, have stated that they have witnessed the incident after hearing the sound raised out of the accident.

9. PW6, the father of the deceased child, has also admitted that his child went for purchasing something from a shop and at that time, she met with the accident. As per the available evidence of PWs.3 & 6, the parents of the deceased child, the child aged about seven years was sent for purchasing certain goods from a nearby shop, without any assistance. The victim girl was aged about seven years at the time of occurrence and the occurrence place is a Highway, connecting Karur and Wangal.

10. Though the eye witnesses have stated that the vehicle of the petitioner came with speed and hit the victim child, they have not stated that the petitioner drove the vehicle in a rash and negligent manner and caused the accident. Moreover, these eye witnesses have also stated that they have witnessed the occurrence after hearing the noise from the accident.

11. In this regard, this Court in the case of Vivek @ Karvin Vivek v. Inspector of Police, in Cr1.R.C. (MD) No.320 of 2014, decided on 22.11.2019, has observed as follows:

"12. Perusal of record shows that the witnesses PWs 1 to 3 & 5 have stated that the petitioner / accused drove the vehicle in a high speed, without blowing any horn. Whether this would satisfy the requirement that the driver has driven the vehicle in a rash and negligent manner, as required under Section 304-A



IPC, is the question that arose in the minds of this Court. In similar circumstances, this Court, in **M.Subramani vs. Inspector of Police, Edapadi Police Station, Salem**, reported in **2017-1-L.W.(Cr1.)-160**, has held as follows:

"20. In this respect, the following observations made by the Hon'ble Supreme Court in *State of Karnataka vs. Sathish*, [(1998) 8 SCC 493] 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."

... ..

24. Except a word 'fastly' from the mouth of PW-7, there is no indication from him that the accused came driven the



bus at what speed and whether it was in a rash and negligent manner. Further, there is no material to decide what was the speed in which the bus driver came driven the bus. In this case, the eye-witnesses did not depose that the bus driver had driven the bus in a rash and negligent manner.""

WEB COPY

12. PW4, an eye witness to the occurrence, has clearly stated that the victim girl was attempting to cross the road and suddenly the occurrence had taken place. Admittedly, a seven year old child was sent by the parents for purchasing some articles from a nearby shop, that too, in a public road and while suddenly crossing the road, unexpectedly, the accident had taken place.

13. No doubt, the petitioner is expected to drive the vehicle in a careful manner to avoid any untoward incident. But, considering the totality of the case that the victim child, aged about seven years, suddenly crossed the road in a Highway, where the petitioner drove the vehicle, this Court is of the opinion that the rash and negligence cannot be fixed on the petitioner alone. That apart, after the occurrence, the petitioner took the child in his car to a Private Hospital at Karur, provided medical treatment and thereafter, took the child to another Private Hospital at Coimbatore and provided best treatment. He has also paid a sum of Rs.1,25,000/- to the family of the deceased child, apart from the compensation amount of Rs.5,00,000/- ordered in MCOP proceedings and this fact has also been affirmed by the learned Government Advocate (Cr1. Side).

14. In view of the foregoing discussions and considering the totality of the circumstances, this Court is of the view that the conviction and sentence on the petitioner / accused cannot be sustained and the same warrants interference. Accordingly, the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Karur, in C.A.No.49 of 2014, dated 09.12.2015, confirming the judgment passed by the learned Judicial Magistrate No.I, Karur, in C.C.No.208 of 2012, dated 16.10.2014, is set aside and the petitioner / accused is acquitted of the charge framed against him. Fine amount, if any paid, shall be refunded and bail bonds, if any executed, shall stand terminated.

In fine, this Criminal Revision Case is allowed.

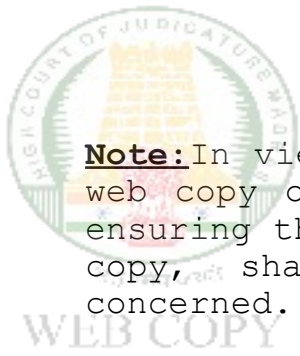
Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court),
Karur.
- 2.The Judicial Magistrate No.I,
Karur.
- 3.The Chief Judicial Magistrate,
Karur District.
- 4.The Inspector of Police,
Vengamedu Police Station,
Karur.

Copy to: 1.The Record Keeper / Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2)

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

+1cc to Mr.K.Balasubramani, Advocate, SR.No.16430.

Cr1.RC. (MD) No.59 of 2016
09.09.2020

CS (16.09.2020) 6P 9C