

Bail Slip

The Petitioner/Accused herein namely Selvam @ Selvaraj S/o.Kailasam was directed to be released on bail as per order of this Court dt.24/07/2015 made in MP.1/15 in CrI.R.C.No.248/15 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.R.C.No.248 of 2015

Selvam @ Selvaraj
S/o. Kailasam Petitioner/Accused

Vs

State of Tamilnadu
Rep. by Inspector of Police
Kilvelur Police Station
Nagapattinam Respondent/Complainant

Prayer: Criminal Revision Case under Section 397 (1) r/w Section 401 Cr.PC, to set aside the conviction and sentence confirmed dated 04.08.2014 awarded in C.A.No.25 of 2012 on the file of the District & Sessions Judge, Nagapattinam, confirming the trial Court (viz., Judicial Magistrate No.1, Nagapattinam) judgment dated 29.06.2012 in C.C.No.315 of 2010 and acquit the petitioner.

For Petitioner : Mr.Swami Subramaniam

For Respondent : Mr.T.Shunmugarajeswaran,
Government Advocate (CrI.Side)

ORDER

(The case has been heard through video conference)

The Criminal Revision Case has been filed by the Petitioner/Accused, seeking to set aside the conviction and sentence passed by the learned Judicial Magistrate No.I, Nagapattinam vide order dated 29.06.2012 in C.C.No.315 of 2010 and confirmed by the learned District & Sessions Judge, Nagapattinam vide order dated 04.08.2014 in C.A.No.25 of 2012 and acquit the petitioner.

2.The Revision Petitioner is the sole accused in this case. He was found guilty and convicted for the offence u/s.279 and 304(A) IPC and sentenced to undergo simple imprisonment for one year u/s.255(2) Cr.P.C. and no separate sentence was ordered for the offence u/s.279 IPC.

3.The brief facts of the prosecution case is that on 30.01.2008 at about 8.00 p.m. when the deceased viz. Ganesan, along with P.W.1, P.W.3 and P.W.4 was coming near Matiyullan River Bridge at Adamangalam, the petitioner who was driving the tractor bearing Reg.No.TN51/D/6487 in a rash and negligent manner had dashed against the deceased Ganesan. As a result, the deceased Ganesan fell down and rear wheel of the tractor ran over the deceased and caused his death. Immediately, PW2 had taken the deceased to the Government Hospital for treatment, where he was declared brought dead and thereby, P.W.1 preferred a police complaint, based on which, PW11, the Sub Inspector of Police, received a complaint and the same has been marked as Ex.P1 and registered a case in Crime No.38 of 2008 for the offence u/s.279 & 304(A) IPC. On registration of F.I.R. P.W.11 took up the investigation and arrested the accused / Revision Petitioner, examined the witnesses and handed over the case to P.W.12, the Inspector of Police. PW12, conducted further investigation and filed the final report against the accused for the offence u/s.279 and 304(A) IPC before the learned Judicial Magistrate No.I, Nagapattinam. On receipt of the final report along with the relevant documents, a case was taken on file in C.C.No.315 of 2010 by the learned Judicial Magistrate No.1, Nagapattinam and on the appearance of the petitioner /accused, he was furnished copies of the relevant documents u/s. 207 Cr.P.C.

4.The substance of the case was explained to the Petitioner/Accused and the Petitioner/Accused had denied the allegations and claimed to be tried. In the trial, the prosecution in order to prove the guilt of the Petitioner/Accused, examined witnesses P.W1 to PW12 on its side and marked documents Ex.P1 to Ex.P7. On the side of the defence no oral or documentary evidence was adduced and no material object was produced on either side. The trial Court found that the petitioner / accused guilty for the offence u/s.279 and 304 (A) IPC and convicted him as stated above. Against which, the petitioner preferred a Criminal Appeal No.25 of 2012 before the learned District and Sessions Judge, Nagapattinam and the Appellate Court vide judgment and order dated 04.08.2014 had dismissed the Appeal and confirmed the judgment of conviction and sentence dated 29.06.2012, against which, the present Revision has been filed.

5.The case of the prosecution as culled out from the evidence of the prosecution is that PW1 is the complainant and he had stated that on 30.01.2008 at about 7.45 p.m. while he along with the deceased and PW2 to PW4 was returning back to their house from the agricultural fields and when they were nearing the Matiyullan River Bridge at Adamangalam, a tractor bearing Reg.No.TN51D6847 dashed against the deceased Ganesan and the said Ganesan sustained injuries on his hip and stomach and he died. PW2 to PW4 have corroborated the evidence of PW1. PW5 had deposed having heard about the accident. PW6 & PW7 are the witnesses to the Observation Mahazar and Rough Sketch. They have deposed that they were present when the place of occurrence was visited by the police and the documents were prepared and they have attested the observation mahazar (Ex.P2) and rough sketch (Ex.P6). PW8 is the owner of the tractor and he had deposed that the accused is the driver who drove the tractor at the time of accident. PW9 is the Motor Vehicle Inspector, he had inspected the tractor bearing Reg.No.TN51D6487 on 04.02.2008 at about 20.00 hours and he has given the Motor Vehicle Inspection Report, which has been marked as Ex.P3. As per the evidence, there was no mechanical failure in the tractor. PW10 is the doctor who conducted autopsy on the body of the deceased Ganesan. He had noted the external and internal injuries on the body of the deceased Ganesan. Ex.P4 is the postmortem report. PW11 had deposed that based on the complaint given by PW1, he has registered a case in Crime No.38 of 2008 u/s.279 and 304 (A) IPC and he had gone to the place of occurrence and prepared observation mahazar and rough sketch in the presence of the witnesses. Ex.P5 is the F.I.R and Ex.P6 is the observation mahazar. Thereafter, he conducted inquest and Ex.P7 is the inquest report and he had sent the tractor for Motor Vehicle Inspection and thereafter handed over the investigation to PW12. PW12 had further investigated the case and after perusal of the records and statements filed the final report as against the petitioner / accused for the offence u/s.279 and 304(A) IPC. After completion of the prosecution side evidence, the petitioner / accused was questioned u/s.313 (1)(b) of Cr.P.C. about the incriminating materials found against him on the prosecution side and the petitioner totally denied the allegations against him and the learned trial Judge after perusing the entire materials on record and hearing the arguments of the counsels, found the petitioner / accused guilty as stated above and convicted him, however, no separate sentence was imposed on the accused for the offence u/s.279 IPC and the appeal was also dismissed. Against which, the present Revision has been filed.

6.Mr.Swami Subramaniam, learned counsel appearing for the Petitioner/Accused while assailing the judgments of Courts below would submit that the Courts below erred in convicting the

petitioner / accused without the prosecution proving the case beyond all reasonable doubts. None of the witnesses have deposed that the accused / petitioner had driven the tractor in a rash and negligent manner. In order to convict the petitioner for the offence u/s.304(A), the prosecution has to prove that the petitioner had driven the vehicle in a rash and negligent manner. Whereas, in this case, there is absolutely no evidence to show that the petitioner had driven the vehicle in a rash and negligent manner. He would further submit that the Courts below failed to take into consideration the contradictions in the evidence of witnesses with regard to the directions in which the tractor was alleged to be driven by the petitioner / accused. Further, even as per the evidence of eye witnesses, it is the deceased Ganesan who had negligently entered into the road in which the petitioner / accused was driving the tractor. Admittedly, the petitioner was driving the tractor on an elevated road which was narrow and the deceased along with others who was walking from the farm road had entered into the narrow road without noticing the tractor and the deceased Ganesan is the cause for the accident while he was getting into the elevated road.

7. In support of his contentions, learned counsel relied on the judgement of this Court in M.Subramani Vs. State represented by Inspector of Police, Edapadi Police Station, Salem District, reported in 2017-1-L.W.(Cri.) 160 wherein this Court placing reliance on the decision of the Hon'ble Apex Court in State of Karnataka Vs. Satish reported in (1998) 8 SCC 493 has held that merely because the vehicle was stated to be driven at high speed it does not mean that the vehicle was driven either rashly or negligently.

8. It is apposite to refer to the relevant paragraphs in M.Subramani Vs. State represented by Inspector of Police stated supra;

"19. In State of Karnataka Vs. Satish {(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 driver 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 SATHISH (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 loquitor to hold the respondent guilty."

"4. Merely because the truck was being driven at a "high speed" does not speak 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 record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitor".

Further in M. Subramani v. State, this Court had also referred to the decisions Puttaiah @ Mahes v. State by Rural Police (Crl. Review Petition No. 1317 of 2010, dated 04.03.2016 (Karnataka High Court),

9. Per contra, Mr. T. Shunmugarajeswaran, learned Government Advocate (Crl. Side) would submit that it is a case on Revision. Both Courts finding that the prosecution has proved its case beyond all reasonable doubt had found the petitioner / accused guilty for the offence u/s. 279 and 304(A) IPC. Admittedly, it is a narrow road and that the petitioner / accused who was riding the tractor ought to have exercised due care and caution. The accident itself would prove that the petitioner had been

negligent, it is a narrow road and not a Highway. He would further submit that the Courts below finding that the petitioner had not exercised reasonable and due care and having acted in a negligent manner being responsible for the death of the victim, has rightly found him guilty. The petitioner who was driving in a narrow road ought to have exercised reasonable care. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and that the manner in which the accident had happened would prove that the petitioner was negligent. Further, PW1, PW3 and PW4 have clearly deposed that the driver of the tractor drove the tractor in a high speed and dashed against the victim, due to which, he fell down and he was ran over by the rear wheel due to which he sustained injuries and died. If he had been careful, the victim would have escaped with simple injuries, whereas, in this case after hitting the victim, the rear wheel had run over the abdomen of the victim causing his death. The Court has to look into the attended circumstances and the Courts below rightly taking into consideration the attended circumstances had found the accused guilty. He would submit that a case of M.Subramani Vs. State represented by Inspector of Police, Edapadi Police Station, Salem District, referred supra will not be applicable to the facts of the case. In that case, the bus was driven in a Highway and the Court finding that there was no evidence for rashness and negligence had acquitted the accused. As far as this case is concerned, it was a narrow road where the petitioner ought to have exercised reasonable and due care, whereas the petitioner in the narrow road without exercising reasonable and due care acted in a negligent manner and he had been responsible for the death of the victim. The witnesses have categorically spoken about the rashness and negligence and that the prosecution from the attended circumstances has clearly proved that the petitioner was a driver at that time and that he is responsible for the death of the victim. The Courts below have rightly found the petitioner / accused guilty for the offence and convicted him and there is no infirmity in the order passed by the Court.

10. In support of his contentions learned Government Advocate (Crl. Side) relied on the judgment of the Hon'ble Apex Court in Ravi Kapur vs. State Of Rajasthan reported in (2012) 9 SCC 284.

11. In order to examine the merit or otherwise of contentions (b) and (c) raised on behalf of the appellant, it is necessary for the Court to first and foremost examine (a) what is rash and negligent driving; and (b) whether it can be gathered from the attendant circumstances.

(A) Rash and negligent driving;

12. Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is

a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to 'rash and negligent driving' within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words 'manner so rash or negligent as to endanger human life'. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

13. 'Negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

14. The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happens to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

(B)Attendant circumstances and inference of rash and negligent driving;

20. In light of the above, now we have to examine if negligence in the case of an accident can be gathered from the attendant circumstances. We have already held that the doctrine of res ipsa loquitur is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the Court with the aid of proper evidence may take assistance of the attendant circumstances and apply the doctrine of res ipsa loquitur. The mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence. In cases where negligence is the primary cause, it may not always be that direct evidence to prove it exists. In such cases, the circumstantial evidence may be adduced to prove negligence. Circumstantial evidence consists of facts that necessarily point to negligence as a logical conclusion rather than providing an outright demonstration thereof. Elements of this doctrine may be stated as :

- The event would not have occurred but for someone's negligence.
- The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.
- Accused was negligent and owed a duty of care towards the victim.

He would further state that in this case, the prosecution has proved that the petitioner has acted in a rash and negligent manner and he is responsible for the death of the victim.

11. Now analysing the facts of the case in this case, the petitioner has driven the tractor in a narrow road and as per the evidence of PW1, he has deposed that the tractor had come in a speedy manner and dashed against the victim and the rear wheel of the tractor ran over the victim. PW3 and PW4 have corroborated the statement of PW1 that the tractor was driven in a speedy manner. Admittedly, it is a narrow road, the petitioner / accused while driving the tractor in a narrow road should have exercised due care and driven the vehicle with caution and he should have stopped the vehicle immediately,

after hitting the victim. Whereas, due to the speed, he had hit the victim and thereafter the rear wheel had ran over on the victim, causing the death of the victim. The Courts below have found that the petitioner / accused had driven the vehicle in a rash and negligent manner, causing the death of the victim convicted the petitioner / accused. This Court does not find any infirmity or illegality in the judgment and orders passed by the Courts below.

12.At this juncture, learned counsel for the petitioner would submit that the incident had happened in the night hours when the victim was returning from the agricultural fields and that the victim got into the road suddenly and admittedly, as per the evidence of PW11, the Sub Inspector of Police, he had stated that whenever the pedestrian enters into the road, he should have exercised caution and that somebody entering from the side road will not be visible to the driver and thereby the victim / deceased was also equally responsible for the incident and he would seek for modification and reduction of the sentence.

13.In the result, the Criminal Revision is partly allowed and while confirming the conviction, the sentence is modified and reduced to six months instead of one year u/s.255(2) Cr.P.C. The bail bond shall stand cancelled. The Trial Court is hereby directed to secure the accused and commit him to prison to undergo remaining period of sentence. The period of imprisonment undergone by the petitioner / accused if any shall be set off u/s.428 Cr.P.C. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The District and Sessions Judge,
Nagapattinam.
- 2.The Judicial Magistrate No.1
Nagapattinam.
- 3.The Chief Judicial Magistrate,
Nagapattinam(for information)

4.The Inspector of Police,
Kilvelur Police Station
Nagapattinam

5.The Superintendent,
Central Prison, Cuddalore.

6. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

Copy to:
The Section Officer,
Criminal Records Section,
Criminal Section, High Court,
Madras.

Cr1.RC.No.248 of 2015

UM(CO)
CB(13/07/2021)



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