



Bail Slip

The Petitioner/Accused viz., Rayappan aged 29 years S/o.Kulandaivel was directed to be released on bail vide order in M.P.No.1 of 2015 in CrI.R.C.No.610 of 2015 dated 24.06.2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 22.06.2021	Date of Pronouncing Order 24.09.2021
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.610 of 2015

Rayappan

...Petitioner/Accused

Vs.

State by

The Inspector of Police,
P. Puliampatti Police Station,
Erode District.

(Crime No.157 of 2009)

...Respondent/Complainant

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records relating to the conviction imposed in the judgment dated 18.06.2015 made in C.A.No.62 of 2014 on the file of the learned Special Judge, Full Additional Charge of Third Additional Sessions Court, Gobichettipalayam, confirming the judgment dated 25.08.2014 made in C.C.No.152 of 2009 on the file of the learned Judicial Magistrate, Sathyamangalam and set aside the same.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Vinoth Raja,
Government Advocate

O R D E R

The matter is heard through "Video Conference".

2. This criminal revision case is filed against the conviction imposed in the judgment dated 18.06.2015 made in C.A.No.62 of 2014 on the file of the learned Special Judge, Full Additional Charge of Third Additional Sessions Court, Gobichettipalayam, confirming the judgment dated 25.08.2014 made



in C.C.No.152 of 2009 on the file of the learned Judicial Magistrate, Sathyamangalam, for the offences under Section 279 and 304(A) of IPC to undergo six months rigorous imprisonment and fine of Rs.1,000/- in default to undergo three months simple imprisonment and to undergo one year rigorous imprisonment and fine of Rs.5,000/- in default to undergo six months simple imprisonment.

3. The revision petitioner as the driver in TATA Ace bearing Registration No.TN-38-AW-2705, while so on 29.05.2009, the respondent police registered case in Crime No.157 of 2009 against the petitioner for the alleged offence under Sections 279 and 304(A) of IPC, on the basis of complaint given by one Balakrishnan, brother of one Ramasamy who came in his two wheeler bearing Registration No.TN-48-W-0473 and died in the alleged accident. According to the prosecution, the petitioner being the driver of TATA Ace came against the deceased and dashed against the two wheeler. After the investigation, the respondent-police filed final report in C.C.No.152 of 2009 on the file of the learned Judicial Magistrate, Sathyamangalam.

4. During the course of trial, the prosecution has examined P.W.1 to P.W.10 and marked Exs.P1 to P7 and M.O.1 Series. The petitioner had received copies of the documents and denied his complicity and thereby defended the case. However, the trial Court has rejected his defence theory and convicted him in the judgment dated 25.08.2014. On appeal, the same has been confirmed in C.A.No.62 of 2015.

5. The learned counsel for the revision petitioner would contend that the last opportunity to avoid the accident does not call upon the accused since it is the deceased who had invited the accident and P.W.6, who was projected as chance witness and his evidence does not pass the test of credibility, in view of the answer elicited in the cross examination.

6. The case of the prosecution in brief is that

(i) on 29.05.2009 at 11.30 am in the NH 209 road Government Girls Higher Secondary School at Puliyampatty, the deceased viz., Ramasamy, while overtaking the bus moving towards South from North in his motorbike namely Bajaj Pulsar bearing registration number TN-40-W-0473, the accused namely Rayappan, drove in a rash and negligent manner, his vehicle namely TATA Ace bearing registration number TN-38-AW-2705 coming from South to North collided with the deceased vehicle and on complaint, police registered the FIR under Section 279 and 304(A) of IPC.

7. The learned counsel for the revision petitioner would contend that the accused who has driving his TATA Ace vehicle in

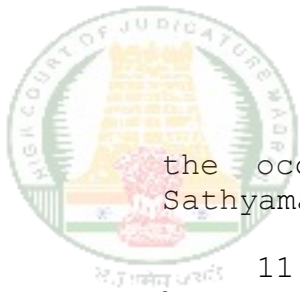


a slow speed on a left hand side of the road. While in the opposite direction, a Government bus was moving and from the behind the deceased was riding the two wheeler and trying to overtake by coming to the extreme left to his side and hence, it is due to the fault of the deceased the accident has taken place and draw my attention S.O.S marked in the rough sketch and based upon the rough sketch would contend that more than 50% on the left hand side of the road went on the opposite vehicle namely for the line of driving of the accused the deceased have crossed over the half line marked and hence, the accident has occurred and therefore, the last opportunity to avoid the accident do not arise and further contended that the evidence of P.W.6 as a chance witness could not be believed since he has admitted in the cross examination that he had witnessed the accident while he was coming out of the Saravana Bakery. However, under Ex.P7/Rough Sketch, no such Saravana Bakery existing in the vicinity also relied upon the factual finding rendered upon the Sessions Court that there is no such bakery is situated near the scene of the occurrence.

8. The learned Government Advocate (Crl.side) for the respondent would contend that both the Courts below have rightly come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the accused and the accused having driving to four wheeler ought to have been more responsible on the road than the two wheeler in which the deceased was travelling.

9. P.W.1 to P.W.4, did not support the case of the prosecution. In fact P.W.1 evidence is to the fact that the accident took place due to the driving of the deceased and the deceased drove the vehicle at more than 70km of speed assumes significance. As per his evidence, he is driving the vehicle behind the bus which the deceased overtook and met with an accident. The charge is for Section 279, 304(A) IPC. Admittedly, the accident took place on the west side of the road. The case of the prosecution solely based upon P.W.6/Gopal.

10. P.W.6/Gopal, in his chief examination deposed that the TATA Ace vehicle came from south to north in a rash and negligent manner, hit deceased two wheeler and pulled the deceased to 15 feet distance. In his cross examination, he stated that he informed the police that he has seen the occurrence which took place at 11.30 am. He saw the occurrence which took place in the road of south to north while he was standing in front of Saravana Bakery. He is working at Tirupur and will go to Tirupur at 10.00 am and return by 4.00 pm. The accident took place on Friday, when he was on leave on that day. He has not signed at any paper with the police, he has only seen



the occurrence and not went to the Government Hospital at Sathyamangalam for post-mortem.

11. In his cross examination, he categorically stated that he was standing in front of Saravana Bakery and witnessed the accident. Admittedly, neither in Ex.P2/Observation Mahazar nor in Ex.P.7/Rough Sketch, no such Saravana Bakery or any other bakery is found as admitted by the Investigation Officer/P.W.10, assumes significance. It is the specific evidence of P.W.4 is that he had witnessed the incident, he came to know about the accident, after the incident.

12. The sum and substance of the case is that the accident took place when the deceased riding his two wheeler while trying to overtook the bus, going in front of him from north to south, at the time the vehicle, driven by the accused in the opposite direction dragged against him for some distance. The very similar issue was dealt with by the Hon'ble Apex Court, in the decisions reported in 2000 (7) SCC 72 (Mohammed Aynuddin @ Miyam Vs. State of Andhra Pradesh), and 2014 (6) SCC 173 (Sushil Ansal Vs. State through Central Bureau of Investigation). The relevant portion of the order passed by the Hon'ble Supreme Court in 2014 (6) SCC 173, reads as under:

"Causa causans distinguished from causa sine qua non - Act of the accused must be the causa causans i.e. proximate, immediate or efficient cause of the death of the victim without the intervention of any other person's negligence to attract liability under S. 304-A - Act of the accused must be proved to be the causa causans and not simply a causa sine qua non for the death of the victim in a case under S. 304-A.

While the rash or negligent act of the accused must be the causa causans for the death, the question whether and if so what was the causa causans in a given case, would depend upon the fact situation in which the occurrence has taken place and the question arises.

Section 304-A IPC makes any act causing death by a rash or negligent act not amounting to culpable homicide, punishable with imprisonment of either description for a term which may extend to two years or with fine or with both. It reads:

"304-A. Causing death by negligence.-Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either



description for a term which may extend to two years, or with fine, or with both."

57. The terms "rash" or "negligent" appearing in Section 304-A extracted above have not been defined in the Code. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. One of the earliest of these pronouncements was in *Empress of India v. Idu Beg*, where Straight, J. explained that in the case of a rash act, the criminality lies in running the risk of doing an act with recklessness or indifference as to consequences. A similar meaning was given to the term "rash" by the High Court of Madras in *Nidamarti Nagabhushanam*.

"48. We sum up our conclusions as under:

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304-A IPC has to be read as qualified by the word 'grossly', "

more important dimension of the offence punishable under Section 304-A IPC viz., that the act of the accused must be the proximate, immediate or efficient cause of the death of the victim without the intervention of any other person's negligence.

Kurban Hussein case³² accepted in unequivocal terms the correctness of the proposition that criminal liability under Section 304-A IPC shall arise only if the prosecution proves that the death of the victim was the result of a rash or negligent



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act of the accused and that such act was the proximate and efficient cause without the intervention of another person's negligence. A subsequent decision of this Court in Suleman Rahiman Mulani v. State of Maharashtra³³ has once again approved the view taken in Omkar Rampratap case³¹ that the act of the accused must be proved to be the causa causans and not simply a causa sine qua non for the death of the victim in a case under Section 304-A IPC.

82. To sum up: for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim."

13. On perusal of the evidence of P.W.4 who is projected as an eye witness and also P.W.6 who is projected as chance witness, in view of the answer elicited in the cross examination their evidence does not pass the test of credibility. It is pertinent to note that even P.W.2 did not depose that TATA Ace driven by the revision petitioner was in a rash and negligent manner hit upon the motorcycle and caused the accident and thus, the trial Court has also recorded a similar finding that neither P.W.1 nor P.W.4 is unable to say about the factum on whose negligence the accident has taken place.

14. Based upon the evidence of P.W.6, it appears that the lower appellate Court had convicted the accused. I have gone through the evidence of P.W.6. In the presence of P.W.6 is to the fact that he was standing in front of Saravana Bakery and had witnessed the scene. As stated supra, in the cross examination, he stated that only after the incident, he had come to the scene of the occurrence. Further, neither in Ex.P2/Observation Mahazar nor in Ex.P7/Rough sketch, relating to the place of occurrence or scene of occurrence, nothing is indicated regarding the existence of Saravana Bakery or any other bakery. Hence, the alleged presence of P.W.6 at the alleged place of Saravana Bakery, itself found to be under a cloud and sea of suspicion. P.W.7 has not deposed any thing regarding the manner of the accident.

15. The learned counsel for the revision petitioner drew my attention to Ex.P7/Rough sketch, as per Ex.P7/Rough Sketch, the width of the road is 30 feet. For argument sake if we accept as the deceased was overtaking an on going bus ahead of him, even then he need not go to the extreme end of his right side (i.e.) western side of the north-south main road but just west to the



middle portion of the road. At the same time, the appellant who came from the opposite direction to the deceased need not come to straight away to the deceased while there was sufficient space on his left side (i.e.) on western side.

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16. However, the finding rendered by the lower appellate Court that had the revision petitioner is vigilant enough, he could have moved the vehicle to the mud portion and the accident would have been averted. I am unable to subscribe the seal of approval, on his finding, on the ground that when the line of driving of the revision petitioner is as per established road driving practice as per rules, causing extra burden upon the driver, (who driving the vehicle in the proper manner) and draw an adverse inference as to the criminal culpability is not sustainable in law. The fact that since the revision petitioner have taken steps to prevent the accident by driving the vehicle towards the western side of the road, the vehicle has capsized on the side of the road goes to show that the revision petitioner has taken reasonable steps to prevent the accident.

17. From the narration of the incident by PW.1 to P.W.4 and also the rough sketch and observation mahazar, I find that the bus which is moving in front of the deceased vehicle and revision petitioner, drove the vehicle in the opposite direction and it appears that the deceased who drove his two wheeler in such a speed, over and above 70km as spoken to by P.W.1 and P.W.2 wanted to overtake the bus with a narrow margin in between the on going bus and the up-coming (revision petitioner's) vehicle and wanted to pierce through the small gap between the two on-going bus and up-coming vehicle and hence, for the act of the deceased, the revision petitioner could not be found fault with.

18. At the risk of repetition, however for the sake of clarity, it is to be stated that on combined reading of oral evidence of P.W.4, P.W.6 and Ex.P7, the occurrence road is Kovai to Sathy main road that runs north to south. As per Ex.P1, the deceased rode his motorcycle from north to south. So, the eastern side of the north-south main road is his left side. It is stated as he was overtaking an on-going bus ahead to him at the time of the accident, at the same time, the petitioner drove his TATA Ace vehicle from south to north. So, it is very clear that the western side of the north-south main road is the left side to the appellant. Now, the place of occurrence is found to be noted in Ex.P7 on the western side of the middle portion of north-south main road.

19. The occurrence road was a straight road in the place of occurrence is evidenced from Ex.P7. On seeing the deceased from the opposite direction by overtaking the bus, the revision



petitioner had made an attempt resulted thereby, the accused vehicle was went up to few feet to the eastern side from the place of occurrence and then capsized on the eastern side of the road and hence, applying the law laid down by the Hon'ble Supreme Court on the above said decision, I find that the charge under Section 304(A) against the accused is not made out for the reason that merely because some damages have been caused to the two wheeler, no presumption of negligence can be drawn against the driver of TATA Ace.

20. Furthermore, there is no evidence to prove either rashness or negligence. In the absence of any rashness, the petitioner cannot be held liable for culpable rashness. Mere driving the vehicle in a high speed as alleged by the police is not sufficient to bring the offence under Section 304(A) of IPC. P.W.1 who is the author of the FIR was not able to give account of rash and negligence driving of petitioner as stated in the FIR. Therefore, the variation between the FIR and evidence of P.W.1 would inure to the benefit of the petitioner.

21. The rough sketch marked as Ex.P7 would falsify the version of P.W.1. P.W.2 to P.W.6 would no way lend support to the case of prosecution and hence, the order of conviction passed by both the Courts below held to be unsustainable. Accordingly, the conviction order passed by the trial Court is set aside.

22. In the result, the criminal revision case is allowed. The conviction and sentence as against the petitioner/accused in the judgment dated 18.06.2015 in C.A.No.62 of 2014 passed by the learned Sessions Judge, Gobichettipalayam, Erode, is set aside. The petitioner is acquitted from the charges under Sections 279 and 304(A) of IPC. The fine amount, if any, paid by the petitioner/accused is ordered to be refunded to him. The bail bonds executed by him, shall stand terminated/discharged.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Special Judge,
Full Additional Charge of 3rd Additional Sessions Court,
Gobichettipalayam.



2. -do through- The Principal Sessions Judge,
Gobichettipalayam.

3. The Judicial Magistrate,
Sathyamangalam.

4. The Chief Judicial Magistrate,
Erode.

5. The Inspector of Police,
P.Puliampatti Police Station,
Erode District.

6. The District Munsif-Cum-Judicial Magistrate,
Sathyamangalam.

7. The Superintendent,
Central Prison,
Coimbatore.

8. The Public Prosecutor,
High Court, Madras - 104.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.49300

Cr1.R.C.No.610 of 2015

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