



BAIL SLIP

The Petitioner/Accused/Viz., Selvamani, aged 46 years, S/o.Thangarasu was released on Bail as per the Order of this Court dated 03/07/2014 in M.P.No.1 of 2014 in CRL.R.C.No.632 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2021

PRONOUNCED ON : 25.11.2021

CORAM:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.632 OF 2014

Selvamani

... Petitioner

Versus

The State Rep. By
The Inspector of Police,
Perambure Police Station,
(Crime No.71 of 2007)

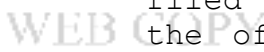
... Respondent

PRAYER:-

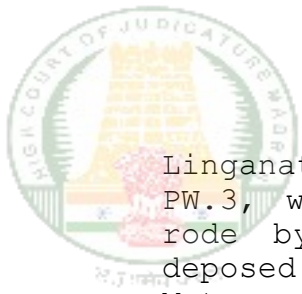
Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the conviction imposed in the Judgment dated 04.06.2014 made in Crl.A.No.84 of 2011 on the file of the District and Sessions Judge, Nagapattinam, confirming the conviction imposed in Judgment dated 21.11.2011 made in C.C.No.415 of 2007, on the file of the Judicial Magistrate No.2, Mayiladuthurai, by allowing this revision.

For Petitioner : Mr.Conscious Ilango
For Mr.D.Arun

For Respondent : Mr.L.Bhaskaran
Government Advocate
(Crl. Side)



ORDER



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Linganathan (the deceased). One Thamizharasan was examined as PW.3, who was riding the pillion rider in the bike which was rode by PW.2 and who also witnessed the accident. He also deposed that the Government Bus came fast and hit against the Motorcycle of Linganthan. One Karunanithi was examined as PW.4, he was a resident of Parasaloor Village. According to PW4, immediately after hearing about the accident, he went to the spot and saw Linganathan lying injured and dead in front of the Bus. One Sankar was examined as PW.5, who is the brother of the deceased, who went to the spot after hearing about the accident. One Karunanithi, S/o.Pichaikannu, was examined as PW.6. He was the conductor of the Bus and he was actually issuing tickets at the rear side of the Bus when the Bus was going near Kadali Angadi. He heard a noise and immediately the Bus was stopped and he went down and saw a man and a woman lying down injured with their Motorcycle in front of the Bus and that a person, who rode the Motorcycle died on the spot. He did not know how the accident happened.

5. One Ramachandiran, was examined as PW.7, who heard about the accident and came to the spot and witnessed the Observation Mahazar. Dr.Sheik Alaudin, was examined as PW.8. He conducted Post-mortem and gave an opinion that the deceased died due to head injuries. One Ravi, was examined as PW.9. He was an Assistant Engineer in Mayiladuthurai, Depot. He confirmed that the petitioner/accused was on duty in the said Bus and he took the bus for the said trip at the relevant point of time. Dr.Thiyagarajan was examined as PW.10, who has treated PW.1. According to him, PW.1 suffered two simple injuries. The third injury is a fracture in the hip bone, which is a grievous injury. He issued a wound certificate to that effect, which was marked as Ex.P4. One Vijayaraghavan, Head Constable, attached to Mayiladuthurai, Police Station, who handled the body of the deceased was examined and he deposed about the transportation of mortal remains of the deceased to the Hospital and after Post-mortem he handed over it to the relatives for final rites. One S.Nagarajan, was examined as PW.12, who was the Inspector of Police. He recorded the earlier complaint and registered the case and conducted the investigation and laid a final report. He deposed about the details of his investigation.

6. On behalf of the prosecution, the complaint given by PW.1 is marked as Ex.P1, the Observation Mahazar is marked as Ex.P2, the Post-mortem report is marked as Ex.P3, the Wound Certificate of PW.1 is marked as Ex.P4, the First Information Report is marked as Ex.P5, the Rough sketch is marked as Ex.P6, the Inquest Report is marked as Ex.P7 and the Motor Vehicle Inspector Report is marked as Ex.P8 over which the Prosecution rested its case.



7. Upon being questioned under Section 313 of Cr.P.C., about the evidence let against and the incriminating circumstances appearing against him, the accused denied the same as false evidence. No evidence was let in on behalf of the defence.

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8. After hearing the Learned Government Advocate (crl. side) and the learned Counsel for the accused, the Trial Court rejected the contention about the first information being suppressed by the Police and that some part of the investigation being done prior to the recording of the first information report. Further, on the strength of the submissions of the eyewitnesses viz., the victim/ PW.1, PW.2 and PW.3 and upon finding the initial statement of PW.1 is in consonance with her evidence before the Court, the trial court came to the conclusion that the accused had driven the vehicle in a high speed and negligent manner and found the accused guilty. However, since X-ray report was not marked, the grievous injuries of PW.1 alone were held not proved. Therefore, instead of the offence under Section 338, the Trial Court found the petitioner/accused guilty of the lesser offence for Section 337 of IPC., along with Section 279 and 304(A) of IPC., and imposed the above mentioned sentences.

9. The petitioner/accused preferred the above CrI.A.No.84 of 2011 and the Learned Appellate Court, considered the evidence of PW.1, PW.2 & PW.3 and held that since all the three witnesses have deposed that the Bus was driven fastly and held their statements to mean the Bus was driven by rash and negligent manner as mentioned in Section 279 of IPC., and reasoned that it cannot be excepted of every witness to use the words 'rash and negligent manner' and confirmed the conviction and sentence imposed by the Trial Court.

10. Mr.Consious Ilango, Learned Counsel appearing for Mr.D.Arun, Learned Counsel for the petitioner primarily argued that this is a case where the eyewitnesses viz., PW.1 to PW.3 have only mentioned that the Bus was driven at a high speed and they have not imputed any rashness and negligence on the part of the accused in this case. He would rely upon the Judgment of the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Sathish¹ and the relevant portion in paragraph No.4, reads thus:-

"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

1 1998 8 SCC 493



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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... "

Learned Counsel also relied upon the Judgment of this Court in CrI.R.C.No.1069 of 2011, dated 14.11.2016 in Vijayendiran Vs. State² and another Judgment in CrI.R.C.No.565 of 2011, dated 15.11.2016 in the case of Renugopal Vs. State³, where, upon considering similar nature of evidence of the witnesses speaking about the high speed alone, this Court following the aforesaid Judgment of the Hon'ble Supreme Court of India, interfered in the revisional jurisdiction and acquitted the accused.

11. In this case, it is correct to state that PW.1 to PW.3 have mentioned only that the bus was driven in high speed and not spoken about rashness or negligence in driving the bus or attributed anything else against the accused. Therefore, the dictum of the Hon'ble Supreme Court of India in the Judgment of State of Karnataka Vs. Sathish is applicable and the finding of the Lower Appellate Court that witnesses have used different phrases is unsustainable. The statement of the witness has to be taken as such and giving any different meaning would amount to presumption and surmise. Both the Courts reading the evidence on record as if the witnesses have spoken about the rashness and negligence is a glaring aspect which may lead to miscarriage of justice. Therefore, this is a case for interference in revisional jurisdiction.

12. Be that as it may, the Hon'ble Supreme Court of India, in Raj Kapoor Vs. State of Rajasthan⁴ in detail explained the meaning of the phrase "rash and negligence driving". Further it was explained as to what constitutes the attendant circumstances to infer the rash and negligence driving. In paragraph No.15, the phrases "culpable rashness" and "culpable negligence" are explained, which reads thus:-

".....culpable rashness is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor

2 2016 SCC Online Mad 3066

3 2016 SCC Online Mad 30704

4 (2012) 9 SCC 284



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has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (luxuria). "Culpable negligence" is acting without consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty circumspection.....".

Again explaining the attendant circumstances and inference of rashness and negligence of driving in paragraph No.20, the elements of doctrine are broadly summarised as follows:-

" the elements of the doctrine may state 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.
- The accused was negligent and owed a duty of care towards the victim."

13. Thus, in this case, in the background of the statement of PW.1 to PW.3 that the Bus was driven fast, the above principles should have been borne in mind, while deciding the culpability. Admittedly, no negligence can be attributed in the instant case. However, the question is whether the driving of the Bus in a high speed amounted to culpable rashness. In this context, a perusal of Ex.P6/rough sketch, demonstrates that the width of the Thar road was 12 ft., and there was 5 ft., of Mud road on the eastern side of the road. In this context, PW.1 states that :

"நாங்கள் ரோட்டில் இடது பக்கமாக சென்றுக்கொண்டிருந்தோம். அந்த அரசு பஸ் வேகமாக வந்து நாங்கள் சென்ற மோட்டார் சைக்கிள் மீது மோதியது ரோட்டின் இடது பக்கத்தில் ஒதுங்க எங்களுக்கு இடம் இல்லை. "

It appears to be incorrect and as stated above in the Judgment of the Hon'ble Supreme Court of India, the evidence on record does not rule out the possibilities that the victim could have also been a reason for the accident. Further no tyre marks were also noted in the rough sketch. As held by the Hon'ble Supreme Court of India in the aforementioned Judgment of State of Karnataka Vs. Sathish, the phrase "high speed" is a relative term and the prosecution has not brought any other material on



record to establish what is meant by high speed. Further the manner of the accident that is the Bike got hit in the Bumper, impacting the number plate and the injuries mentioned in the Post-mortem report, viz., there was a cut on the nose, a lacerated injury up to the eye-brow region and right upper side lip a cut, split and contusion over the left cheek leading to the internal head injury, all cumulatively shows that the speed cannot be projected as a case of culpable rashness and as the evidence on record does not rule out the action of the victim would also be the reason behind the event, the finding of the Trial Court as well as the Lower Appellate Court is by an interpretation of the statement of the witnesses and therefore, this is a fit case for interference by this Court.

14. Accordingly, the Criminal Revision Case is allowed by setting aside the Judgment of the Learned Judicial Magistrate No.II, Mayiladuthurai, in C.C.No.415 of 2007, dated 21.11.2011 and the Judgment of the Learned District and Sessions Judge, Nagapattinam, dated 04.06.2014 in Crl.A.84 of 2011 and the accused is acquitted of all the charges, giving the benefit of doubt. Fine amount if any paid by the accused shall be refunded to him.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Judge,
Nagapattinam.
2. The Judicial Magistrate No.II,
Mayiladuthurai.
3. The Inspector of Police,
Perambur Police Station,
4. The Chief Judicial Magistrate,
Nagapattinam.
5. The Public Prosecutor,
High Court of Madras.



6. The Section Officer,
Criminal Section,
High Court, Madras.

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CRL.R.C.NO.632 OF 2014

SPD(CO)
PBS/10/12/2021