



BAIL SLIP

The Petitioner/Accused namely Kandasamy, S/o.Manickam was directed to be released on bail as per order of this court dated 23.09.2014 and made in Crl.M.P.No.1 of 2014 in Crl.R.C.No.973 of 2014 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2021

PRONOUNCED ON : 06.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.973 of 2014

Kandasamy

...Petitioner

Versus

State rep.by
The Inspector of Police,
Mallasamudram Police Station,
Namakkal District.
(Crime No.61 of 2012)

...Respondent

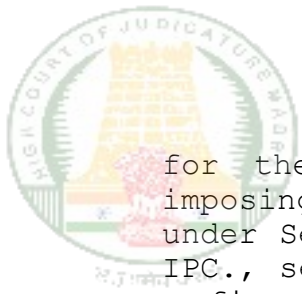
Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the judgment dated 20.08.2014 made in Crl.A.No.50 of 2013 on the file of the Principal Sessions Judge, Namakkal, in confirming the Judgment dated 20.11.2013 made in 332 of 2012, on the file of the Judicial Magistrate Court, Tiruchengode and allow the above Criminal Revision.

For Petitioner : Mr.J.Jayan

For Respondent : Mr.L. Bhaskaran
Govt. Advocate, Crl. Side

ORDER

This Criminal revision case is filed by the petitioner/accused, aggrieved by the Judgment of the Learned Principal Sessions Judge, Namakkal in Crl.A.No.50 of 2013, dated 20.08.2014, thereby confirming the conviction and sentence imposed by the Learned Judicial Magistrate, Thiruchengodu, dated 20.11.2013 in C.C.No.332 of 2012, whereby, he was found guilty



for the offences under Sections 279 & 304(A) of IPC., and imposing a sentenced to pay fine of Rs.500/- for the offence under Section 279 IPC., and for the offence under Section 304(A) IPC., sentenced to undergo rigorous imprisonment of one year and a fine amount of Rs.500/-, in default to undergo three months imprisonment.

2.On 03.10.2012, after completing the investigation in Crime No.61 of 2012, the Inspector of Police, Mallasamudiram Police Station, laid a final report before the Learned Judicial Magistrate, Thiruchengodu, charging the accused that on 22.02.2012 morning at about 6.30 a.m., within the jurisdiction limits of Mallasamudiram Police Station in Karukkalur, Kumaranallipalayam, KuttaKadu, when the first informant viz., Senthil Kumar was leveling the field along with his father Chelladurai, a Tipper Lorry bearing Registration No.TMK 4737 was brought to load and remove the waste stones in the field. The accused being a driver suddenly started driving the lorry, thereby, causing the rear wheel run over on Chelladurai, who was keeping stones in the rear tyre and died on the spot. Therefore, the petitioner/accused was charged for having committed the offences under Sections 279 & 304(A) of IPC.,

3.Upon being questioned, the accused denied the charges. One Senthil Kumar, son of the deceased was examined as PW.1; One Palaniammal, wife of the deceased was examined as PW.2; One Kandasamy, who learnt about the incident and went to the field, was examined as PW.3; One Chinnannan, Mahazar witness was examined as PW.4; One Manikkam, Head Constable, who registered the case by filing the first information was examined as PW.5; and One Sellamuthu, Inspector of Police, who is the Investigation Officer in this case, was examined as PW.6. On behalf of the prosecution, the complaint was marked as Ex.P1; Observation Mahazar is marked as Ex.P2; the First Information Report as Ex.P3; the rough sketch as Ex.P4; the Inquest Report as Ex.P5; the Postmortem Report as Ex.P6; the Motor Vehicle Inspection Report as Ex.P7.

4.Upon being questioned about the evidence and incriminating circumstances against the accused under Section 313 of Cr.P.C., the accused denied them as false. There was no evidence let in on behalf of the accused.

5.Upon hearing the Learned Assistant Public Prosecutor and the Learned Counsel for the petitioner/accused, the Trial Court found that PW.1, PW.2 viz., son and the wife of the deceased, are the eye witnesses to the accident and based on their evidence, even though there is no independent evidence, the charges can be proved. The Trial Court found that the defence that because the field was slushy, the victim accidentally fell



down in the rear tyre, while keeping the stone is unbelievable, because, PW.1 and PW.2 did not say so. The Trial Court found that Ex.P7/Motor Vehicle Inspection Report says that there is no mechanical fault, the accident happened only because of the rash and negligence driving of the accused and convicted the accused and imposed the sentences as stated supra.

6. Upon the appeal being filed, the Learned Appellate Court again relied upon the evidence of PW.1 and PW.2, who are the eyewitnesses of the occurrence and held that they have clearly deposed that the accident happened only because of the rash and negligence driving of the driver and therefore held that their evidence are enough to hold that the appellant/accused is guilty of the offence and confirmed the conviction and sentence of the Learned Judicial Magistrate.

7. Heard Mr.J.Jayan, Learned Counsel for the petitioner and Mr.L.Bhaskaran, Learned Government Advocate (crl.side) appearing for the respondent.

8. The Learned Counsel for the petitioner submitted that absolutely there is no evidence to show the manner of the accident. The evidence of PW.1 and PW.2 are contradictory to the medical evidence on the record as to on which side the deceased got injured. The entire case of the prosecution is vague and bereft of particulars as to the manner of the accident. It is his further submission that even as per the version of PW.1 and PW.2, the Tipper Lorry, which was brought to the field started moving backwards, while the stones were being loaded and therefore, suddenly and voluntarily the deceased tried to stop the Lorry from moving backwards by attempting to put a stone on rear side of the rear tyre. While that being the case, he could have been caught under the tyre of the rear wheel, only by the rear motion of the Lorry. The entire charge that suddenly the petitioner took off the vehicle and thereby caused his death is absolutely ill-logical and unbelievable.

9. Mr.L.Bhaskaran, Learned Government Advocate (crl.side), on the other hand would submit that PW.1 and PW.2 have spoken about the manner of the accident. Even though they have not clearly stated in detail about the manner in which the accident happened, from their evidence coupled with the observation mahazar, it would be clear that on the principles of res ipsa loquitur that the accident happened only on the negligence of the petitioner/accused.

10. Upon considering the material evidence on record, I am unable to agree with the findings of the Trial Court and the First Appellate Court. According to me, the finding of guilt is perverse. First of all, the charge is that accused suddenly



started driving the vehicle, thereby the deceased went under the rear wheel and died, but, that is not supported by the evidence of PW.1 and PW.2. According to them, the Tipper Lorry was standing in the field and when they were loading the stones, the Lorry started moving rearwards, therefore, the victim/deceased had attempted to put a stone on the left-hand side, back wheel. If that being the case, he should have been run over only by the rear motion. Therefore, the very charge is laid without any particulars as to how exactly the accident happened. Further, it may be seen that the Lorry was facing the South and it was moved towards the North on the rear side, and the body was found on the West. According to the observation mahazar, it would have been natural, if the injuries on the person of the deceased on the right side of the body, but, however, the injuries are all on the left side of the Chest and Arm.

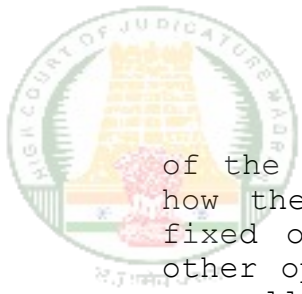
11. Leaving alone the defence of the accused, it is the bounden duty of the prosecution to lay a clear charge as to that what was the culpable rashness and culpable negligence of the accused, which resulted in the accident. Whether it was, not employing the hand brake or whether it was, starting the vehicle and moving it frontwards. The Hon'ble Supreme Court of India in the Judgement of Ravi Kapur Vs. State of Rajasthan¹, while holding that the principles of *res ipsa loquitur* is also applicable while deciding the guilt or otherwise of the driver, under Section 304(A) of IPC., categorically held that to draw the conclusion on the basis of said doctrine, the following elements should be there:

" 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 the 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."

12. In this case, it cannot be ruled out that the accident would have happened because of the action of the victim/deceased, especially, when the field was slippery and the victim suddenly in the spur of the movement attempted to stop the Tipper Lorry, which was moving backwards by putting stones in the rear wheel. It is also to be seen that it is not the case of the prosecution that the driver called or employed the deceased to do so. Under these circumstances, when the prosecution has not even laid a proper charge as to the manner

1. 2012 (9) SCC 284



of the accident and when there is no evidence whatsoever, as to how the accident happened and when the culpability cannot be fixed on the principles of res ipsa loquitur, I also have no other option except to hold that the finding of the Trial Court as well as the First Appellate Court, returning the finding of guilt as perverse and it leads to miscarriage of justice and therefore, it is liable to be interfered with in the exercise of the revisional jurisdiction.

13. In the result, this Criminal Revision Case is allowed and the Judgment of the Learned Judicial Magistrate, Thiruchengodu, dated 20.11.2013 in C.C.No.332 of 2012, and the Judgment of the Learned Principal Sessions Judge, Namakkal in Crl.A.No.50 of 2013, dated 20.08.2014 are set aside and the petitioner/accused is acquitted of the charges by giving him the benefit of doubt and fine amount, if any, paid by the accused is ordered to be refunded to him.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

klt

To

1. The learned Principal District and Sessions Judge, Namakkal.
2. The learned Judicial Magistrate, Tiruchengode.
3. The Chief Judicial Magistrate, Namakkal (For Information)
4. The Inspector of Police, Mallasamudram Police Station, Namakkal District.
5. The Public Prosecutor, High Court of Madras.

Copy To

The Section Officer, Crl Section, High Court, Madras

+1cc to Mr.W.Camyles Gandhi, Advocate, S.R.No.64023

Crl.R.C.No.973 of 2014

KG(CO)
RGA(14/12/2021)