



BAIL SLIP

The Petitioner/Accused V.Ravi, Male, aged 41 Years S/o.Velu @ Velappan was directed to be released on bail vide order dated 15.10.2019 in Crl.M.P.No.14273 of 2019 in Crl.R.C.No.1040 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.1040 of 2019

V.Ravi

... Petitioner

Versus

State by
The Inspector of Police,
Sivagiri Police Station,
Erode District,
Crime No.221 of 2012.

... Respondent

Criminal Revision Case filed under Section 397 and 401 Criminal Procedure Code, to call for the records relating to the conviction imposed in the judgment dated 01.08.2019 made in C.A.No.278 of 2017 on the file of the learned First Additional District and Sessions Court, Erode confirming the conviction imposed in the judgment dated 09.10.2017 made in C.C.No.139 of 2012 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed against the order dated 01.08.2019 passed in C.A.No.278 of 2017 by the learned First Additional District and Sessions Judge, Erode.



2.The case of the prosecution is that on 09.09.2012 at about 8.45 p.m the deceased one Senthil, was walking on the left side of the road from Kodumudi to Arachalur Road and when he was nearing Chinniyampalayam New Bharathi Timber Saw Mill, Bajaj Discover vehicle bearing Registration No.TN 33 BA 3142 driven by the petitioner from west to east direction came in a rash and negligent manner and dashed against the deceased Senthil. Due to the said impact, the deceased sustained grievous injuries and succumbed to death. At the time of accident, the accused drove the vehicle without having valid driving licence. Hence, the complaint.

3.The respondent police registered a case in Crime No.221 of 2012 against the petitioner for the offence under Sections 279 and 337 IPC and subsequently, altered into Sections 279 and 304(A) IPC. On completion of the investigation, the respondent police filed a charge sheet against the petitioner for the offence under Sections 279 and 304(A) IPC and Section 3 r/w 181 of Motor Vehicle Act before the learned District Munsif-cum-Judicial Magistrate, Kodumudi and the same was taken on file in C.C.No.139 of 2012.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 13 witnesses were examined as P.W.1 to P.W.13 and marked 8 documents as Exs.P1 to P8 and no material object was exhibited. On the side of the defence, no oral and no documentary evidence was produced.

5.The trial Court, after hearing the arguments advanced on either side and also considering the materials available on record, found that the petitioner is guilty for the following offences :

i. For the offence punishable under Section 304(A) IPC the petitioner was convicted and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of one month;

ii. For the offence punishable under Section 3 r/w 181 of Motor Vehicle Act, the petitioner was convicted and sentenced to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month;

iii Since the petitioner was convicted and sentenced for the offence under Section 304(A) IPC, no separate sentence was imposed for the offence under Section 279 IPC.

6. Challenging the above said conviction and sentences, the



petitioner preferred an appeal before the learned Principal District and Sessions Judge, Erode and the same was taken on file in C.A.No.278 of 2017 and made over to the learned First Additional District and Sessions Judge, Erode. The learned Sessions Judge, after hearing the arguments advanced on either side and perused the materials, dismissed the appeal and confirmed the conviction and sentence passed by the learned Magistrate. Aggrieved over the same, the petitioner is before this Court by way of Criminal Revision Case.

7.The learned counsel for the petitioner would submit that the accident had occurred in the middle of the road. The deceased came across the road from left to right without noticing the vehicle coming behind him and due to his own negligence the accident had taken place. He would further submit that no oral and documentary evidence would show that due to the rash and negligent driving of the petitioner the accident had taken place. Though P.W.1, who is said to be an eye witness to the said accident, has stated that the said vehicle hit both the deceased and P.W.1 and thereby, he himself sustained injuries on his left leg, but, no wound certificate was produced by the prosecution to establish the said fact, which itself proves that P.W.1 was not an eye witness to the said occurrence. The prosecution failed to establish its case by way of documentary evidence that the deceased died only due to accidental injuries sustained by him. Further, the accident has taken place on 09.09.2012 at about 8.45 p.m. whereas, the deceased died on 14.09.2012.

8. In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in State of Karnataka vs.Satish (reported in 1998 (8) SCC 493) wherein, it is held that in the absence of any material on record, no presumption of 'rashness' or 'negligence' could be drawn by invoking the maxim 'res ipsa loquitur'. In the present case, there being no evidence on record to establish 'negligence' or 'rashness' in driving the two wheeler on the part of the petitioner and due to the said impact the accident had taken place.

9.The learned counsel for the petitioner would further submit that P.Ws.1, 7 and 8, who were said to be eye witnesses to the said occurrence are interested witnesses, since they worked along with the deceased and no independent witnesses were examined. Therefore, the prosecution has miserably failed to prove the case by direct evidence. He would further submit that the learned trial Judge failed to appreciate the entire evidence and erroneously convicted and sentenced the petitioner for rash and negligent driving without driving licence and caused the death of deceased Senthil. Further, the appellate Court as a



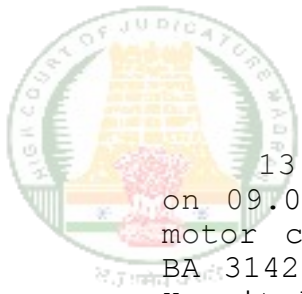
fact finding Court failed to re-appreciate the entire evidence and only relied upon the judgments of the Apex Court as well as this Court had dismissed the appeal. Therefore, the judgments of both the Courts below are liable to be set aside.

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10.The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the petitioner has not denied that during the accident he had not ridden the vehicle viz., Bajaj Discover bearing Registration No.TN 33 BA 3142. He would further submit that the deceased while walking on the left side of Kodumudi road from west to east direction, the petitioner came behind him in the said motor cycle in a rash and negligent manner and hit the deceased. Due to the said impact, the deceased sustained grievous injuries and he was admitted in the Hospital and after treatment, he succumbed to death on 14.09.2012. P.W.1, who is said to be an eye witness to the accident has categorically stated that the accident had taken place only due to the rash and negligent driving of the rider of the vehicle and he has also sustained injuries. He would further submit that the defence counsel has not denied that P.W.1 was not present at the time of accident and he was not an eye witness to the said accident. The evidence of P.W.1 is corroborated with the evidence of P.W.7 and P.W.8. Further the Doctor/P.W.11, who conducted postmortem of the deceased has clearly deposed that the injuries sustained by the deceased would have caused due to motor accident and Ex.P4/Postmortem report also reveals the same. Further, the prosecution has established its case that at the time of accident, the petitioner did not have valid licence to ride the two wheeler. The accident had taken place due to the rash and negligent driving of rider of the said vehicle and the deceased succumbed to injuries.

11.The learned Government Advocate (Crl.Side) would further submit that to prove the case of the prosecution, three witnesses viz. P.Ws.1, 7 and 8 were examined as eye witnesses and they clearly spoken about the said incident; P.W.11/Doctor, who conducted post-mortem of the body of deceased has clearly deposed that the injuries sustained by the deceased would have caused due to motor accident and given post mortem report/Ex.P8. Ex.P.5 is the First Information Report. Ex.P8 is the inquest report. Therefore, the trial Court as well as the lower appellate Court have rightly appreciated the entire evidence and convicted and sentence the petitioner and there is no merit in this revision and the same is liable to be dismissed.

12.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.



13. It is not in dispute that the accident had taken place on 09.09.2012 at about 8.45 p.m. and the petitioner was riding motor cycle viz., Bajaj Discover bearing Registration No.TN 33 BA 3142 and the deceased sustained injuries and admitted in the Hospital and died on 14.09.2012. It is also not in dispute that originally the respondent police registered the case against the petitioner for the offence under Sections 279 and 337 IPC, subsequently, after death of the deceased charge sheet, was filed for the offence under Sections 279 and 304(A) IPC and Section 3 r/w 181 of Motor Vehicle Act. The only question that has to be decided is, whether the accident had happened due to the rash and negligent driving of the petitioner. According to the learned counsel for the petitioner, the accident has not taken place due to rash and negligent driving of the rider of the motorcycle viz., the petitioner herein. Whereas, the prosecution has established its case that the accident has taken place only due to rash and negligent driving of the petitioner.

14. In criminal cases, the burden of proving 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. 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'. According to the prosecution, P.Ws.1, 7 and 8 are eye witnesses to the said accident and they clearly spoken about the accident and also the evidence of P.W.11/Doctor and Ex.P4/Postmortem Report proved that the accident had happened only due to the rash and negligent driving of rider of the motorcycle. Therefore, the prosecution has proved its case beyond all reasonable doubt.

15. The scope of revision is very limited. The Trial Court and the Appellate Court had already appreciated the entire evidence and given that findings. While exercising the revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the evidences on fact findings. This Court has to see only as to whether there is any perversity in appreciation of evidence in the judgment of the Courts below.

16. On a combined reading of the entire materials and judgments of both the Courts below, this Court finds that at time of accident, the petitioner did not have a valid driving licence to ride the motorcycle. According to the learned counsel for the petitioner, driving licence is not a deciding factor for fixing the negligence on the petitioner. In order to prove the case, the prosecution examined P.W.1, who walked along with the deceased and he has clearly deposed that the petitioner came



behind them in the motorcycle in a rash and negligent manner and hit them and he also sustained injury. However, the defence counsel has not taken any defence that P.W.1 was not present at the time of accident. The defence side focused only on the deceased stating that without noticing the vehicle, the deceased crossed the road from left to right and due to his negligence, the accident had taken place. The persons, who drive the vehicle on the road can maintain moderate speed and very cautious on their driving. As already stated above, the power of the revision Court is very limited. On combined reading of the entire oral and documentary evidence and judgments of both the Courts below, this Court does not find any perversity or infirmity in the judgments of both the Courts below and the revision is liable to be dismissed. As far as quantum of sentence is concerned, considering the mitigating circumstances that the petitioner did not hit the deceased intentionally. Under these circumstances, the sentence of imprisonment alone is modified from one year to six months.

With the above modification, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional District and Sessions Judge,
Erode.
2. The District Munsif-cum-
Judicial Magistrate,
Kodumudi.
3. The Chief Judicial Magistrate,
Erode.
4. The Inspector of Police,
Sivagiri Police Station,
Erode District.
5. The Public Prosecutor,
High Court, Madras.



Copy to:

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

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+1cc to Mr.N.Manokaran, Advocate, S.R.No.41003

Cr1.R.C.No.1040 of 2019

MT (CO)
SU (01/03/2022)