



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Cr1.R.C(MD)No.89 of 2018

Subburam

: Revision Petitioner/
Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
(Crime No.288 of 2005)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under section 397 r/w 401 of Criminal Procedure Code, against the judgment, dated 20.07.2017 made in Cr1.A No.43 of 2016 on the file of the Additional Sessions Judge, Dindigul, confirming the conviction and sentence imposed by the Judicial Magistrate No.1, Dindigul, in CC No.669 of 2005, dated 20.09.2016.

For Petitioner : Mr.J.Lawrance

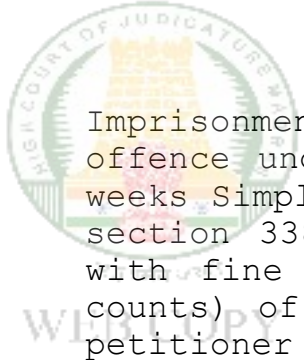
For Respondent : Mr.RMS.Sethuraman
Counsel for State (Cr1. Side)

J U D G M E N T

This Criminal Revision is directed against the judgment, dated 20.07.2017 made in Cr1.A No.43 of 2016 on the file of the Additional Sessions Judge, Dindigul, confirming the conviction and sentence imposed by the Judicial Magistrate No.1, Dindigul, in CC No.669 of 2005, dated 20.09.2016.

2.The case of the prosecution is that on 17.04.2005, the accused drove the Mahendra Van TN-55-A-0611 on Dindigul-Batlagundu Road and when he was attempted to overtake the Bus TN-57-D-1819, dashed against the bus, thereby caused simple injuries, grievous injuries and death of two persons. The Inspector of Police, attached to Taluk Police Station, Dindigul has filed a final report against the accused examining the witnesses.

3.The trial court on proper appreciation of the entire materials on record both oral and documentary, convicted the petitioner and sentenced him to undergo 3 months Rigorous



Imprisonment under section 279 IPC; total fine of Rs.4,800/- for the offence under section 337 (16 counts) of IPC, in default each two weeks Simple Imprisonment; each 3 months Rigorous Imprisonment under section 338 (12 Counts) of IPC and 6 months Rigorous Imprisonment with fine of Rs.1,000/- for the offence under section 304(A) (2 counts) of IPC. Aggrieved by the judgment of the trial court, the petitioner preferred appeal before the First Appellate Court and the First Appellate Court confirmed the findings of the trial court. Aggrieved by the concurrent findings of both the Courts below, the petitioner is before this Court with this revision.

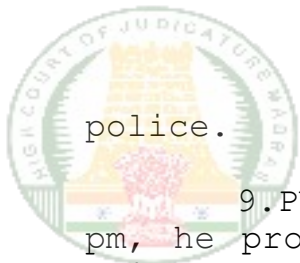
4.The learned counsel for the petitioner/accused submitted that the prosecution has failed to establish the ingredients required for all the offences with which he stood charged and convicted him for the said offences and none of the witnesses have spoken that the accused has driven the vehicle either rashly or negligently and there is no specific allegation of negligence as against the accused in driving the vehicle and the eye witnesses are interested witnesses and the prosecution has failed to prove the case beyond reasonable doubt and the accused is entitled to acquittal and prays that the criminal revision may be allowed.

5.On the other hand, the learned Standing Counsel (Criminal side) appearing for the respondent/State submitted that both the courts below appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offences, convicted the petitioner for rash and negligent driving of the vehicle and passed proper sentence, which does not require any interference by this Court and the accused is not entitled for acquittal and prays that the Criminal Revision may be dismissed.

6.Heard both sides and perused the materials available on record.

7.The main contention raised on the side of the petitioner/accused is that there was no evidence for rash and negligent driving of the accused and when there was no evidence for rash and negligent driving on the part of the accused, the accused is entitled to the benefit of acquittal. For that, the learned counsel appearing for the submitted the decisions reported in **(2019) 4 MLJ (Cr1.) 508 (J.Pugalendhi Vs. State) and (2020) 1 MLJ (Cr1.) 406 (Saravanan Vs. State) .**

8.In this case, PW1 is the complainant and he gave Ex.P1 complaint. PW1 in his complaint stated that on 17.04.2005 at 17.00 hours, he proceeded to Dindigul and when he reached Krishna Wrapper Company, at that time, the accused over took a Government Bus and drove his vehicle in a rash and negligent manner and dashed against his vehicle and due to it, he and several persons in the offending vehicle sustained injuries and two persons died on the spot and he was taken to the Hospital and then, he gave Ex.P1 complaint to the



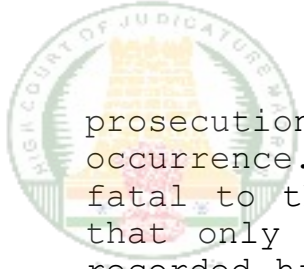
police.

9. PW1 during his evidence stated that on 17.04.2005 at 4.55 pm, he proceeded towards Dindigul and when he reached Kuttyappatti Krishna Wrapper Company, at that time, the accused over took the Government bus and dashed against his vehicle and he and several persons in the offending vehicle sustained injuries and two persons died and he was taken to the Hospital and then, he gave the complaint statement to the police. PW1 has not stated during his evidence that the accused drove his vehicle in a rash and negligent manner.

10. In this case, PW2, PW4 to PW8, PW13 to PW17 are injured. But they turned hostile and did not support the case of the prosecution. PW9 to PW11 are the injured, who travelled in the offending vehicle. PW9 to PW11 deposed that on 17.04.2005, they travelled in the offending vehicle and when the Van reached near Krishna Wrapper Company, at that time, one RTMC private bus and one Palani Murugan Private bus, came in the opposite direction and the Van dashed against the Palani Murugan private bus. PW9 to PW11 have not stated during their evidence that the accused over took the Government bus and drove his vehicle in a rash and negligent manner and dashed against the private bus. PW9 during his cross examination stated that only after hearing the sound, he came to understand that there was an accident. Hence, it reveals that he has not seen the occurrence. There is contradiction in the evidence of PW1, PW9 to PW11 in respect of the occurrence.

11. PW22 is the Conductor of the Palani Murugan private bus. PW22 deposed that on the date of the occurrence, he was working as Conductor in the above private bus and when their bus reached Krishna Wrapper Company, one Government bus came and the accused drove his vehicle in a speedy manner and dashed against their bus and due to it, PW1 and several persons in the Van sustained injuries and two persons died on the spot and he and PW1 gave complaint before the police station. PW22 has not stated during his evidence that the accused over took the Government bus and dashed against their bus. PW22 during his cross examination stated that at the time of accident, he was in the back side. Hence, there is no chance for him to see the occurrence. PW22 has not specifically stated that the accused drove his vehicle in a rash and negligent manner.

12. In this case, it is admitted that except PW1, all other injured and the deceased persons travelled in the offending vehicle. But except PW1, no other persons travelled in the private bus sustained injuries. The main contention of the petitioner/accused is that only after getting signal to overtake the Government Bus, the accused overtook the Government bus. To disprove it, no steps were taken on the side of the prosecution to examine the driver or the passengers travelled in the Government bus. The driver of the Government bus is the material witness. Further, no persons nearby the place of occurrence were examined on the side of the



prosecution. They are the material witnesses to speak about the occurrence. Hence, the non-examination of material witnesses is fatal to the prosecution. Further, PW1 during his evidence stated that only after he was admitted in the hospital, police came and recorded his statement. But PW22 stated during his evidence that he and PW1 went to the police station and gave the complaint. Hence, there are contradictions in respect of giving the complaint. Hence, it creates doubt about the genuineness of Ex.P1 complaint. Further, in this case, there was no evidence of rash and negligent driving on the part of the accused. When there was no evidence for rash and negligent driving, the accused is entitled to acquittal.

13.It is mainly argued on the side of the petitioner/accused that the oral evidence of the prosecution witnesses was not proved the rash and negligent driving of the accused and there are contradictions between the oral evidence of the prosecution witnesses and there can be no general presumption that a person should have driven a vehicle in a rash and negligent manner, merely because there was an accident.

14.At this juncture, it is relevant to refer the decision of this Court reported in **2017-1-LW.(Cr1.)160** (M.Subramani Vs. State rep. By Inspector of Police, Edapadi Police Station, Salem District), wherein this court has held as follows:-

"19.In State of Karnataka vs. Sathish (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 drive 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 SATISH (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 loquitur* to hold the respondent guilty.



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 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 the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.

21. Subsequently, in *Abdul Subhan vs. State (NCT of Delhi)* {2007 Cri.L.J. 1089}, in a road accident case for an offence under Section 304-A IPC, the only available evidence of an Head Constable is that the bus driver had driven the bus fastly. The Delhi High Court relying on the Hon'ble Apex Court decision in *SATISH* (supra) held that the bus driver cannot be held to have drove the bus in a rash and negligent manner.

22. In *State vs. Avadh Kishore* {Crl.L.P. No.213 of 2007 dated 30.1.2009 (Delhi High Court)}, the Delhi High Court reiterated its earlier view in *ABDUL SUBHAN* (supra).

23. Recently in *Puttaiah @ Mahesh vs. State by Rural Police* {Crl. Review Petition No.1317 of



2010 dated 4.3.2016 (Karnataka High Court)}, the Karnataka High Court held as under:

"In this view of the matter, both the Trial Court as well as the First Appellate Court have not assessed the oral and documentary evidence in right perspective. Both the Courts should have navigated through the evidence of material witnesses cautiously. Glaring inconsistencies have been brushed aside as minor variations. They have adopted wrong approach to the real state of affairs and have not properly scanned the evidence. Both the Courts have forgotten that the initial burden was on the prosecution to establish the charge of rashness or negligence beyond reasonable doubt. Thus, the judgments of both the Courts suffer from perversity and illegality. Hence, this Court is of the opinion that the revision petition is to be allowed."

15. On coming to the instant case on hand, the prosecution witnesses have not stated that the accident occurred due to the rash and negligent driving of the accused. For all the reasons stated above, this court is of the considered view that the prosecution has not proved the case beyond reasonable doubt.

16. In the result, this Criminal Revision is **allowed**. The impugned judgment of conviction and sentence are set aside. The revision petitioner/accused is acquitted of the charges levelled against him. The bail bond if any executed by him shall stand cancelled and the fine amount if any paid by him shall be refunded to him.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/ litigant concerned.



To,

1. The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.

2. The Additional Sessions Judge,
Dindigul.

3. The Judicial Magistrate No.1,
Dindigul

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.LAWRANCE, Advocate (SR-27927[F] dated 02/09/2021)

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