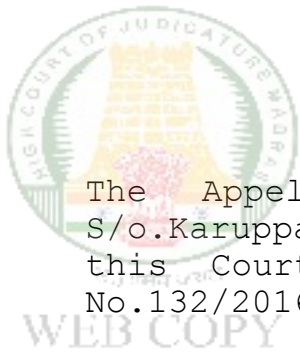




Bail Slip

The Appellant/Accused viz., Kalimuthu aged about 47 years S/o.Karuppannan was directed to be released on bail as per order of this Court dated 21.03.2016 in Crl.MP.2074/2016 in Crl.RC(MD) No.132/2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 23.12.2020
PRONOUNCED ON : 04.01.2021
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl.R.C.(MD)No.132 of 2016

Kalimuthu .. Petitioner/Appellant/
Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Aravakuruchi police station,
Karur District.
(Crime No.602 of 2009)

.. Respondent/Respondent/
Complainant

Prayer : This Criminal Revision petition is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records relating to the Judgment made in C.C.No.98 of 2012 on the file of the Chief Judicial Magistrate, Karur, dated 28.02.2014 confirming in Crl.A.No.11 of 2014 on the file of the Mahalir Neethimandram, Fast Track Mahila Court, Karur, dated 05.01.2016 and set aside the same.

For Petitioner : Mr.T.Antony Arul Raj
For Respondent : Mr.A.Robinson,
Government Advocate(Crl. Side).

ORDER

Heard the learned counsel on either side.

2. The revision petitioner was driving the lorry bearing Registration No.TN 38-AU-0589 in Salem-Rameswaram Highways on 15.12.2009 at about 12.00 a.m. mid night. It hit the State Transport Corporation bus bearing registration No.TN 01-N-6511 from behind. As a result of this collision, five persons died, four persons suffered simple injuries and three persons suffered grievous injuries. In this regard, Crime No.602 of 2009 was registered on the file of Aravakuruchi police station. The case was investigated and final report was filed before the jurisdictional Court for the offences under Sections 279, 337(4 counts), 338(3 counts) and 304(A) (5 counts) of I.P.C. Cognizance of the offences was taken and the case



was taken up for trial in C.C. No.98 of 2012 on the file of the Chief Judicial Magistrate, Karur. Charges were framed and the accused was questioned. The accused denied the charges and claimed to be tried. In order to establish its case, the prosecution examined as many as 27 witnesses and marked Ex.P.1 to Ex.P.29. On the side of the accused, no evidence was adduced. The learned trial Magistrate by Judgment dated 28.02.2014, found the accused guilty of the offences with which he was charged. However, the accused was sentenced to undergo two years Simple Imprisonment only for the offence under Section 304(A) of I.P.C. Questioning the same, the revision petitioner filed C.A.No.11 of 2014 before the Sessions Judge/Fast Track Court, Karur. By Judgment dated 05.01.2016, the appellate Court dismissed the appeal and confirmed the Judgment of the learned trial Magistrate. Challenging the same, this criminal revision case came to be filed.

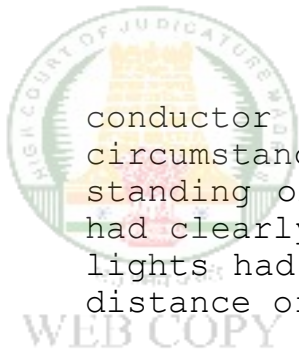
3. The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned Judgments passed by the Courts below.

4. Per contra, the learned Government Advocate(Crl. Side) submitted that the impugned Judgments do not call for any interference and wanted this Court to dismiss the revision petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is the case of the prosecution that the State Transport Corporation bus when plying on Salem-Rameswaram Highways suffered a break down near Venjamangudalur. The prosecution would claim that the bus was parked on the left side of the road and the danger lights were also switched on. The driver of the bus also claimed to have put a stone at 10 feet distance from the backside of the bus. It was then, the accident had occurred. According to the prosecution, the petitioner had driven the lorry in a rash and negligent manner and hit the stationary bus from behind and leading to loss of lives and causing of injuries. P.W.1 Marimuthu, bus driver gave a complaint at 6.00 a.m. P.W.3 to P.W.7 and P.W.10 to P.W.13 had travelled in the ill-fated bus as passengers and they spoke about the occurrence. P.W.2 was the conductor of the bus. P.W.8 and P.W.9 are the Observation Mahazar witnesses. P.W.15 is the Motor Vehicle Inspector. P.W.17 to P.W.20 and P.W.23 to P.W.25 are the medical witnesses. P.W.26 and P.W.27 are the investigation officers.

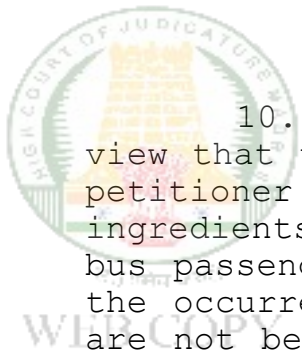
7. If the occurrence had taken place during day time or the evening hours, then there would be no difficulty in fastening culpability on the revision petitioner. But, admittedly the accident had taken place a little past mid night. The bus had suffered a break down, when it was plying in the middle of the Highways. P.W.1 driver claims that he had got down to explain the situation to a police officer who was passing by while on his patrol duty. P.W.2



conductor was inside in the vehicle issuing tickets. In such circumstances, the driver and the conductor should have been standing on the road in order to alert the incoming vehicles. They had clearly not done so. Instead it has been claimed that the danger lights had been switched on and that the stone was also placed at a distance of 10 feet from the backside of the bus.

8. The pointed contention of the learned counsel appearing for the revision petitioner is that the safety measures set out in Rule 138 of the Central Motor Vehicles Rules, 1989 were not followed. Rule 138(4)(c) of the Central Motor Vehicles Rules, 1989 envisages that the driver of every vehicle shall ensure that the triangles of size 150 mm with a red reflecting surface are carried in the vehicle, for keeping in front and rear of the vehicle in case the vehicle is stranded on the road. It is not the case of the prosecution that this safety measure was adopted in the instant case. It has also been suggested in the cross examination that there was a bend in the road at the accident spot. The reply of the witness(P.W.1) is that there was a slight slump. It is admitted by the prosecution witnesses that the front right wheel of the bus had developed puncture and that was the cause for the break down. The lorry was coming from north to south.

9. Both the vehicles were inspected by P.W.15. The rear right side of the bus had suffered damage. Likewise the front left side of the lorry had suffered damage. If the bus had been parked on the extreme left side of the Highways, there was no possibility for the accident to occur at all. Since the road in question was a Highway, the lorry would have obviously been coming only in the middle of the road. What must have been happened is that the bus was lying in a stationary condition after it suffered a break down. Since there was a slump in the road itself and since the driver(P.W.1) and P.W.2 had not taken any precautionary steps, the revision petitioner would not have noticed the bus from a distance. Only after he had come fairly close, he had noticed that the bus was standing right in front and that too in the middle of the road. He had taken efforts to swerve the lorry to the right. That is why, the front left side of the lorry and the rear right side of the bus had suffered damage. As a result of this collision, none of the occupants had suffered any fatality. Of course some four had suffered simple injuries and three had suffered grievous injuries. Only the persons who were standing on the road on the front side of the bus had died because they were mowed down by the bus. This could have been avoided, if only P.W.1 and P.W.2 had duly cautioned them. P.W.1 had recklessly abandoned the vehicle and claims that when he was talking to a police officer when the accident took place. P.W.2 conductor states that he was issuing tickets to the other passengers. It is not the case of the prosecution that the precautionary measures laid down in Central Motor Vehicles Rules, 1989 were followed in this case. The accident itself took place at the dead of the night.



10. Therefore, taking into account these aspects, I am of the view that the prosecution has not established beyond doubt that the petitioner was culpably rash or negligent so as to attract the ingredients set out in Section 304(A) of I.P.C. The testimony of the bus passengers cannot be believed as they could not have witnessed the occurrence at all. The testimony of the so called eyewitnesses are not believable at all. They have attempted to reconstruct what might have happened from hindsight. The endeavour of P.W.1 and P.W.2 was obviously to extricate themselves from any responsibility whatsoever.

11. The Hon'ble Supreme Court in the decision reported in (2007) 3 SCC 474(Rathnashalvan Vs. State of Karnataka) held that "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.

12. Applying the aforesaid ratio to the facts of the case, I am unable to conclude that the prosecution had established the charge under Section 304(A) of I.P.C. beyond reasonable doubt. If five persons who died had been inside the bus and had not stood in front of the bus, the deaths could have clearly been averted. The Courts below have not taken note of these aspects. Merely because the offending vehicle had hit from behind, adverse conclusions could not have been drawn against the accused. The time of accident, the respective positions of the vehicles, failure to adopt safety measures by the other vehicle were relevant circumstances that ought to have been taken into account. The Courts below failed to do so and thereby misdirected themselves. The findings of the Courts below are thus vitiated by perversity or material irregularity, thereby warranting intervention in exercise of revisional jurisdiction.

13. In this view of the matter, the Judgments impugned in this criminal revision case are set aside. The revision petitioner is acquitted. This criminal revision case is allowed.

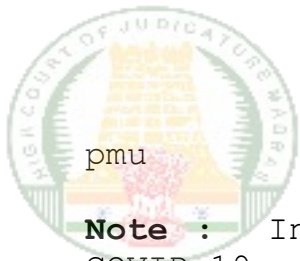
Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)



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 Chief Judicial Magistrate,
Karur.
- 2.The Judicial Magistrate No.II, Karur.
- 3.The Fast Track Mahila Judge,
Mahalir Neethimandram, Karur.
- 4.The Inspector of Police,
Aravakuruchi police station,
Karur District.
- 5.The Jail Superintendent,
Central Prison, Tiruchirappalli.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 Copies)

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-6[F] dated
04/01/2021)

Crl. R.C.(MD)No.132 of 2016

04.01.2021

SV2 (CO)

NR (03/02/2021) 5P : 10C