



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.04.2021
CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI
Crl.R.C(MD)No.547 of 2018

J.Joshua Kiruban : Revision Petitioner/ Appellant/Accused

Vs.

State rep. through
The Inspector of Police,
Fort Police Station,
Traffic North Investigation,
Trichy.

(Crime No.165 of 2012) : Respondent/Respondent/Complainant

Prayer: Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, against the judgment passed in C.A No.81 of 2017 by the Principal Sessions Judge, Trichy, dated 07.07.2018, confirming the judgment passed in C.C No.173 of 2012, dated 19.08.2017, by the Judicial Magistrate No.1, Trichy.

For Revision Petitioner : Mr.C.Vakeeswaran

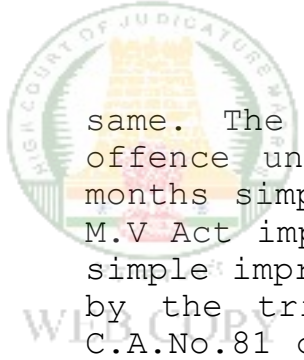
For Respondent : Mr.A.Robinson
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Revision is directed against the judgment passed in C.A No.81 of 2017 by the Principal Sessions Judge, Trichy, dated 07.07.2018, confirming the judgment passed in C.C No.173 of 2012, dated 19.08.2017, by the Judicial Magistrate No.1, Trichy.

2.The case of the prosecution is that on 02.06.2012 at about 0.45 hours in the early morning, the deceased Saranraj was walking towards west to east, on the left side of Vayalur Road, near Ladies hostel, at that time, the accused drive the Hero Honda Passion Two Wheeler TN-45-AS-3596 in a rash and negligent manner and dashed behind the said Saranraj. In that process, the deceased Saranraj fell down and sustained grievous injuries on his head and right leg and despite of treatment, he died at the Government Hospital, Trichy. In this connection, the Inspector of Police, Traffic North Investigation Police Station, Trichy has filed a final report against the accused for the offence punishable under section 304(A) IPC and Section 196 of M.V Act.

3.In the trial court, 4 witnesses were examined and 10 Exhibits were marked on the side of the prosecution. When the accused was questioned about the incriminating circumstances, he denied the



same. The trial court convicted the revision petitioner for the offence under Section 304(A) IPC and sentenced him to undergo 4 months simple imprisonment and for the offence under section 196 of M.V Act imposed a fine of Rs.1,000/-, in default to undergo 1 month simple imprisonment. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.81 of 2017, which was heard by the Principal Sessions Judge, Trichy. The first appellate Court also confirmed the judgment of conviction and sentence passed by the trial court. Aggrieved over the same, the petitioner is before this court.

4.The learned counsel for the revision 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.

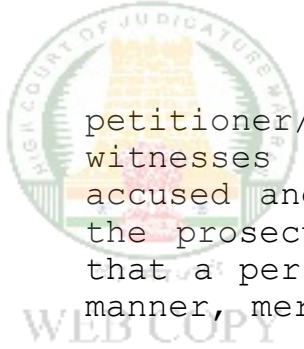
5.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that the both the courts below appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offences, convicted the revision 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.PW1 is the complainant and he gave the complaint statement Ex.P1. PW2 is accompanied with the deceased Saranraj. PW1 and PW2 categorically deposed that at the time of accident, they were walking along with deceased Saranraj on the left side of the road, at that time, the accused has drove his two wheeler TN-45-AS-3596 in a speedy manner and hit against the deceased.

8.In this case, PW1 and PW2 are cited as eye witness and they deposed in their evidence that the driver of the vehicle drove his vehicle in a speed manner, but they have not stated that the driver of the vehicle drove his vehicle in a rash and negligent manner. Further, PW2 categorically admitted during his cross examination that he did not know about the manner of accident and he has also fairly admitted that he has not made any signature in the Mahazar.

9.It is mainly argued on the side of the revision



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.

10. 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* {Cr1.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* {Cr1. 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."

11. 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.

12. For all the reasons stated above, this court is of the considered view that the prosecution has not proved the case beyond reasonable doubt.

13. 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 III)

// True Copy //

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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 Principal Sessions Judge,
Trichy.

2. The Judicial Magistrate No.1, Trichy.

3. -do-through The Chief Judicial Magistrate,
Trichy

4. The Inspector of Police,
Fort Police Station,
Traffic North Investigation,
Trichy.

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

Cr1.R.C (MD) No.547 of 2018
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