



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.RC (MD)No.526 of 2017

and

Crl.M.P(MD) Nos.5883 and 5884 of 2017

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Shanmugasundaram : Petitioner/Appellant/Sole Accused

Vs.

State Rep by
The Inspector of Police,
Cyber Crime,
Fort North Traffic Investigation Wing Police Station Incharge,
Trichy District.
(Crime No.341 of 2014) : Respondent/Respondent/Complainant

PRAYER: The Criminal Revision case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgment dated 10.02.2017 in C.A.No.48 of 2016 on the file of the Principal Sessions Judge, Tiruchirappalli confirming the conviction and sentence in C.C.No.141 of 2015 on the file of the Judicial Magistrate No.I, Trichy, dated 30.09.2016 and set aside the same.

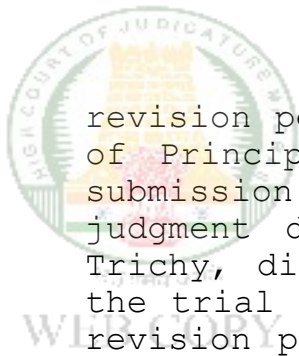
For Petitioner : Mr.S.Ramakrishnan
For Respondent : Mr.E.Antony Sahaya Prabahar
Government Advocate (crl.side)

ORDER

This Criminal Revision Case has been filed to check the correctness of the judgment dated 10.02.2017 made in C.A.No.48 of 2016 on the file of the Principal Sessions Court, Tiruchirappalli, confirming the conviction and sentence in C.C.No.141 of 2015 on the file of the Judicial Magistrate's Court No.I, Trichy, dated 30.09.2016.

2.The accused in C.C.No.141 of 2015 on the file of the Judicial Magistrate's Court No.1, Trichy, is the revision petitioner. Before the trial Court, the respondent filed the final report against the revision petitioner alleging that the revision petitioner herein committed an offence under Section 304(A) of I.P.C (2counts).

3.After full fledged trial, the learned Judicial Magistrate No.1, Trichy, found the accused guilty for offence under Section 304 (A) of I.P.C (2 counts) and sentenced to undergo Simple Imprisonment for one year for each count. Challenging the same, the present



revision petitioner prepared an appeal in C.A.No.48 of on the file of Principal Sessions Court, Trichy. After hearing the elaborate submission made by the learned counsel appearing on either side, by judgment dated 10.02.2017, the learned Principal Sessions Judge, Trichy, dismissed the appeal by confirming the sentence awarded by the trial Court. Challenging the said conviction and sentence, the revision petitioner is before this Court with the present criminal revision case.

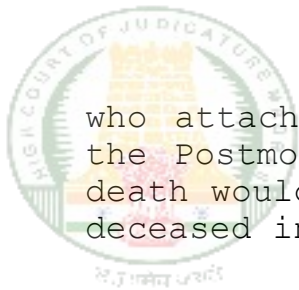
4.The case of the prosecution in brief is as follows:-

(i) On 27.04.2014 around 04.30 p.m., near to Veterinary Hospital in Trichy-Palakarai road opposite to Five Star Marble Stone, both the deceased traveled in a bicycle from south to north. While such a time, the revision petitioner/accused drove his lorry bearing registration No.TAX-9002 in a rash and negligent manner without blowing the horn and dashed against the bicycle in which the deceased were traveled and as a result of which, both the deceased sustained multiple fatal injuries. After seeing the accident, PW1-Raj Mohammed, brought the both injured to the Government Hospital, Trichy, wherein the Doctor declared the death of both deceased. In this regard, PW1 lodged the complaint under Ex.P1 and on receipt of the said complaint, one Ramakrishnan, the Special Sub Inspector of Police, Traffic Investigation Wing Police Station registered the case against the accused in Crime No.341 of 2011 under Sections 279 and 304(A) of I.P.C. The printed FIR was marked as Ex.P4. After registration of the case, he handed over the case records to PW11-Baskaran for investigation.

(ii) On receipt of the case records, PW11-Baskaran the then Inspector on the same date, visited the scene of occurrence and in the presence of witnesses, he prepared an Observation Mahazar under Ex.P2. He drew the Rough Sketch and the same has been marked as Ex.P9. He examined the witnesses and recorded their statements. Further, he arrested the accused and after making enquiry, he recovered the lorry and sent the same for inspection.

(iii) PW10- Umamaheswari the then Motor Vehicle Inspector Grade-I on 31.12.2014 received the requisition given by PW11 and in view of the same, she examined the offending vehicle and after making inspection, she issued the certificate under Ex.P3 stating that the accident was not happened due to the mechanical defect of the vehicle.

(iv) In continuation of investigation, after receipt of the certificate issued by PW10, PW-11 handed over the case records to PW12-Anbuselvan, the then Inspector of Police, Traffic Investigation Wing, for further investigation. PW12 held inquest and prepared the inquest report under Ex.P6 and Ex.P7. He sent the requisition to the Doctor attached with Government Hospital, Trichy, for conducting



who attached with Government Hospital conducted autopsy and issued the Postmortem Certificates under Ex.P8 and Ex.P9 stating that the death would occur due to the multiple injuries sustained by the both deceased in the road accident.

(v) After receipt of the postmortem reports, PW12 came to the positive conclusion that the accused is liable to be convicted under Section 304(A) of I.P.C (2 counts) and filed the final report accordingly.

5.From the above materials, the learned Judicial Magistrate No.I, Trichy, in respect to the rash and negligent act of the accused, made questioning, for which the accused pleaded as not guilty. Therefore, the accused was put on trial.

6.During the course of trial proceedings, in order to prove their case, on the side of the prosecution, as many as 12 witnesses were examined as PW1 to PW12 and 9 documents were exhibited as Ex.P1 to Ex.P9.

7.Out of the above said witnesses, PW1-Raj Mohamed claims that during the time of occurrence, when he was in a store in which he was working, around 4.30 p.m both the deceased traveled in a bicycle from south to north. During such time, the revision petitioner in this case drove the lorry in high speed and dashed against the cycle and as a result of which, both the deceased fell down in the road and in turn back wheel of the lorry had run over on them. PW2-Lakshmanan is the Sweeper. He gave evidence as during the relevant point of time, he heard the news and made arrangements for admitting the deceased in the Hospital. PW3-Shekdaood is running the Steel Mart near to the occurrence place. According to him, he has also heard the news and thereafter, during the time of preparation of Observation Mahazar, he signed as witness. PW4-Mohamed Azharuddeen is also a witness attested in the Observation Mahazar.

(ii) PW5-Shekabdulla is the father of the deceased Shahanas. He claims that after hearing the news, he rushed into the Hospital and saw the dead body of the deceased. PW6-Abdulsalam is the father of the deceased Navbia Banu. He has also heard the occurrence and thereafter, he went to the hospital and saw the dead body of her daughter. PW7- Appas, PW8- RajaMohideen and PW9-Vellayutham are the residents of Trichy, they have stated before the trial Court as after the occurrence, they heard the news and thereafter, went to the hospital. PW10-Umamaheswari, the Motor Vehicle Inspector speaks about the inspection of offending vehicle. PW11-Baskaran and PW12-Anbuselvam are the Police Officers, speaks about the receipt of complaint, registration of the case, examination of witnesses and about the filing of final report.



8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused denied the same as false. However, he did not choose to examine any witness nor mark any document on his side.

9. Having considered all the above materials, the learned Judicial Magistrate No.I, Trichy, found the accused guilty under Section 304(A) of I.P.C (2 counts) and sentenced him as stated supra. Further, in the appeal preferred by the accused, the learned Principal Sessions Judge, Tiruchirappalli, has also confirmed the finding arrived at by the trial Court and dismissed the appeal. In the said circumstances, aggrieved by the said conviction and sentence, the revision petitioner is before this court with this revision case.

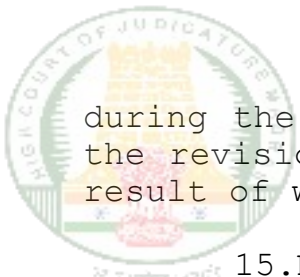
10. I have heard Mr.N.Anandakumar, learned counsel for the petitioner and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Crl.side) appearing for the state and also perused the records carefully.

11. The learned counsel for the petitioner would contend that the witnesses examined on the side of the prosecution as occurrence witnesses did not say about the rash or negligent act of the accused. In the absence of specific evidence in respect to the rashness or negligence, we cannot hold that the revision petitioner committed an offence as alleged by the prosecution. By submitting as above, he prayed to allow the revision case and to acquit the accused.

12. Per contra, the learned Government Advocate (crl.side) appearing for the revision petitioner would contend that the evidence given by PW1 is sufficient to hold that during the time of occurrence, the revision petitioner drove the vehicle in a negligent manner and dashed against the cycle wherein both the deceased were traveled and caused death to both. According to him, interference of this Court in the finding arrived at by the Court below does not require.

13. I have considered the rival submissions made by the learned counsel appearing on either side.

14. Primarily, in respect to the the cause of death, the case of the prosecution is that only due to the alleged accident Shahanas and Navbia Banu died. The said story put forth by the prosecution is not disputed on the side of the accused. Further the evidence given by the Motor Vehicle Inspector and the certificate issued by her under Ex.P3 establishes the fact that the alleged accident had not occurred due to the mechanical defect of the offending lorry. Therefore, it is necessary to find out whether at the time of accident, the revision petitioner herein drove his vehicle in a



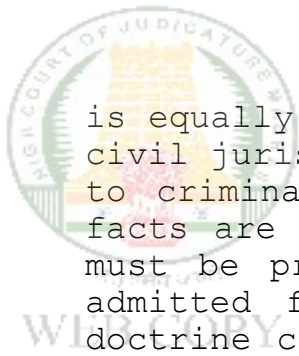
during the relevant point of time only due to the negligent act of the revision petitioner, the alleged accident had happened and as a result of which, two girls lost their life.

15.Now, on appraisal of the said findings, the Court below mainly relying on the evidence given by PW1, came to the conclusion that the revision petitioner is guilty. Now on go through the other circumstances, it is not in dispute that the accident had happened in a busy area, further, during the time of alleged accident, a number of people are available there. In the said circumstances, without examining the witnesses, who are present there as a eye witness, examination of the defacto complainant, who is working in the shop as eye witness would go to show that the Investigation Officer in this case, had lethargically conducted the investigation and filed the final report.

16.Initially, before the trial Court, the complaint said to have given by PW1 was marked Ex.P1. In the said complaint, it was alleged that during the time of occurrence both the deceased traveled in a bicycle from south to north. Further, it has been narrated that the offending vehicle has also been driven from south to north. After narrating the accident as above, PW1 while at the time of giving evidence stated as both vehicles are proceeded from north to south. In this regard, on considering the said evidence in whole, being the Labourer in a Steel Mart if he seen the occurrence really, it is obvious that he is having the through knowledge about the directions. Further if he really available in the occurrence place, there is no necessity for giving contra evidence in respect to the directions where the vehicles were proceeded.

17.In otherwise, the testimony of PW1 would go to show that the accident had taken place between the offending vehicle and the bicycle wherein the deceased were traveled and the same does not prove the factum of rash or negligent act on the part of the accused. The doing of a rash or negligent act, which causes, death is the essence of Section 304(A) of I.P.C. There is a slight distinction between a rash act and a negligent act. Rashness conveys the idea of recklessness or doing an act without due consideration and negligence connotes want of proper care. A rash act, therefore, implies on act done by a person with recklessness or indifference to its consequence. The doer, being conscious of the mischievous or illegal consequences, does the act knowing that his act may bring some undesirable or illegal results but without hoping or intending them to occur. A negligent act, on the other hand, refer to an act done by a person without taking sufficient precautions or reasonable precautions to avoid probable mischievous or illegal consequences.

18.In the light of the above, now we have to examine with the negligence in the case of accident can be gathered from the circumstances. No doubt, the doctrine of res ipsa loquitur



is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases, provided the attendant circumstances and basic facts are proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle, can be applied. Now, the doctrine comes to aid at a subsequent stage, where it is not clear as to how and due to whose negligence the accident occurred.

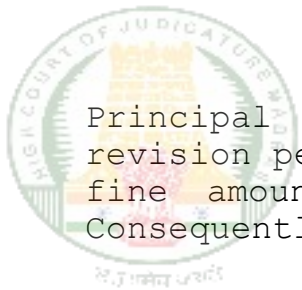
19. One other important thing in this case is that after giving contra evidence in respect to the directions in which the vehicles were traveled during the time of occurrence, he has stated during the time of cross examination that the front left of the lorry was dashed against bicycle which proceeded in front of the lorry. If the said evidence is true one, naturally the front wheel of the lorry has to run over the deceased. But in this regard, he has stated only the back wheel of the lorry has run over on the deceased. Furthermore, in respect to the rash and negligent act of the driver, he has not stated any single word as during the time of occurrence the revision petitioner drove the offending lorry in a negligent manner. It is the settled law that the driving the vehicle with high speed alone is not an offence under Section 304(A) of IPC. For proving the offence under Section 304(A) of IPC, it is necessary for the prosecution to show that when at time of occurrence the accused drove the vehicle in a rash or negligent manner. But in this case, the evidence given by PW1 did not constitute the ingredients which are required to prove the offence under Section 304(A) of IPC.

20. Another one aspect in this case is that PW11-Baskaran, who is the Investigation Officer stated in his cross examination as there was a speed-breaker on the northern side 20 feet away from the occurrence. If the said evidence is found correct, naturally when at the time of crossing the speed breaker, the driver of the lorry would slow down the vehicle and then only attempted to cross the same. In the said situation, there is no possibility for the revision petitioner to drive his vehicle in a high speed.

21. In this regard, PW1 gave evidence as during the time of occurrence, the petitioner drove his vehicle in high speed. Therefore, the said circumstances also create a doubt whether PW1 had seen the occurrence as stated before the trial Court or not. The said benefit of doubt will always go to the accused. The Court below without looking this aspect concluded that the revision petitioner is found guilty under Section 304(A) of IPC and the said finding is nothing, but perverse one.

22. In fine, this Criminal Revision Case is allowed and the conviction and sentence passed in C.C.No.141 of 2015, dated 30.09.2016, by the learned Judicial Magistrate No.I, Trichy, as

<https://hccs.court.gov.in/hccs/Cr.A.No.48 of 2016, dated 10.02.2017 by the learned>



Principal Sessions Judge, Tiruchirappalli, are set aside. The revision petitioner / accused is acquitted from all the charge. The fine amount, if any, paid by him, shall be refunded to him. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To:-

- 1.The Principal Sessions Judge, Tiruchirappalli.
- 2.The Chief Judicial Magistrate, Tiruchirappalli.
- 3.The Judicial Magistrate No.I, Trichy.
- 4.The Inspector of Police,
Cyber Crime,
Fort North Traffic Investigation Wing Police Station Incharge,
Trichy District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

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

**Crl.RC (MD)No.526 of 2017
13.08.2021**

RS (13.09.2021) 7P 8C