



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C. (MD)No.872 of 2017

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R.Perumal : Revision Petitioner/Appellant
/Accused

Vs.

The State rep. by
The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli. :Revision Respondent/Respondent
/Complainant

PRAYER: The Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgment, dated 20.09.2017 in C.A.No.34/2017 on the file of the learned IV-Additional District Court, Tirunelveli confirming the conviction and sentence made in C.C.No.352/2014, dated 09.04.2017 on the file of the learned Judicial Magistrate No.3, Tirunelveli and set aside the same by allowing this Revision and pass such further or other orders.

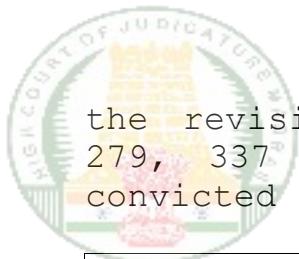
For Petitioner : Mr.C.Jeganathan
For Respondent : Mr.E.Antony Sahaya Prabhakar
Counsel for Government of
Tamil Nadu (Crl.side)

ORDER

Aggrieved over the concurrent findings, dated 20.09.2017 made in C.A.No. 34/2017, on the file of the IV Additional District Court, Tirunelveli and in C.C.No.352/2017, dated 09.04.2017 on the file of Judicial Magistrate No.3, Tirunelveli, the petitioner, who is the appellant in the above referred appeal, is before this Court by filing this Criminal Revision Case to check the correctness of the judgments rendered by the Courts below.

2. The revision petitioner herein is the sole accused in C.C.No.352 of 2017 on the file of Judicial Magistrate Court No.3, Tirunelveli. Before the said Court the petitioner herein tried for the offences punishable under Sections 279, 337(5 counts), 338 and 304(A) of IPC.

<https://hcservices.ecourts.gov.in/hcservices/> After full-fledged trial, the learned trial Judge found



the revision petitioner guilty for the offences under Sections 279, 337 (5 counts), 338 and 304(A) of IPC and accordingly, convicted and sentenced him as follows:-

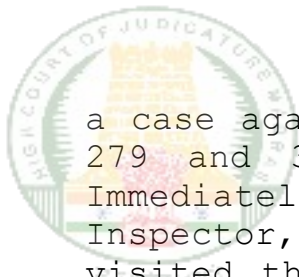
Accused	Section	Sentence
Sole accused/ Revision Petitioner	337 (5 counts) IPC	Imposed a fine of Rs.500/- each, in default to undergo Simple Imprisonment for 1 month.
	338 of IPC	Imposed a fine of Rs.1000/-, in default to undergo Simple Imprisonment for 2 months.
	304(A) of IPC	Convicted and sentenced to undergo Simple imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default, to undergo Simple imprisonment for a period of three months.

4. Challenging the said conviction and sentence, the revision petitioner preferred an appeal in C.A.No.352/2017 before the IV Additional District Court, Tirunelveli, wherein, the learned IV Additional District Judge, Tirunelveli, affirmed the findings arrived at by the trial Court and dismissed the appeal. Aggrieved over the same, the petitioner is before this Court with the present Criminal Revision Case.

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

(i) P.W.1-Mallika is the mother of P.W.2-Tina Esther. They are residing in K.Kailasampuram, Thoothukudi. The deceased Packiyam, P.W.3-Chellathai, P.W.4-Savariyammal, P.W.5-Arulmani and P.W.6-Mariyakeerthiyai, are also residing in the same Village. On 01.06.2014, around 14.30 hours, all the injured persons and the deceased, in order to attend the marriage, travelled in an auto bearing Registration No.TN-69-AK-9748, while at the time, the revision petitioner herein, being the owner of the said auto, drove the vehicle in a high speed and also in a rash and negligent manner and as a result of which, the auto was got upset. Due to the same, P.W.1 to P.W.6 and the deceased sustained injuries and afterwards, all are admitted in the hospital for taking treatment. In the hospital P.W.10-Aasmi gave treatment to P.W1 to P.W.6.

(ii) Thereafter, after receipt of an intimation from the hospital, P.W.9-Ganesan, the then Special Sub-Inspector of Police, went to the hospital and recorded the statement from P.W.1 under Ex.P1. Subsequent to that, upon the said complaint, he registered



a case against the accused in Crime No.169 of 2014 under Sections 279 and 337 of IPC. The printed FIR was marked as Ex.P4. Immediately, after the registration of the case, the Sub-Inspector, Vijayalakshmi took the case for investigation and visited the scene of occurrence and in the presence of Jayakumar and P.W.7-Kumar, she prepared an Observation Mahazar under Ex.P14. She drawn the Rough Sketch and the same has been marked as Ex.P15. She examined the witnesses and recorded their statements.

(iii) In continuation of investigation, she arrested the accused on 03.06.2014 and sent him to remand. In the mean time, on 07.06.2014 around 4.30 a.m., in spite of necessary treatment given to the injured Packiyam, she died in the hospital. Hence, after receipt of the death intimation, the Section of law has been altered from under Sections 279 and 337 of IPC to Sections 279, 337 (5 counts), 338 and 304 (A) of IPC. She conducted an inquest and prepared an inquest report under Ex.P16. After completing the process of inquest, she sent a requisition to the Doctor for conducting postmortem over the dead body of the deceased Packiyam.

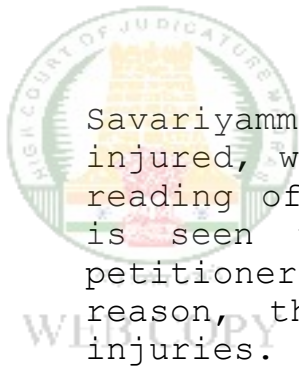
(iv) In turn, after receipt of the requisition given by the said Vijayalakshmi, P.W.12-Kaveri Mahalakshmi conducted the postmortem and issued a Postmortem Report under Ex.P13, wherein, she has stated that the deceased would appear to have died due to the multiple injuries sustained in the alleged accident.

(v) In continuation of investigation, P.W.13-Gurunathan, the then Inspector of Police, Tirunelveli Taluk Police Station, recovered the vehicle and sent the same to the Motor Vehicle Inspector with requisition to inspect and verify whether any mechanical defect is the reason for an accident. In turn, the Motor Vehicle Inspector inspected the vehicle and issued a report under Ex.P12 with an opinion that the accident had not occurred due to the mechanical defect of an offending vehicle. He examined the Doctor, who conducted postmortem and the doctor giving treatment to the injured, recorded his statement.

(vi) After concluding the investigation, he came to the positive conclusion that the appellant is liable to be convicted for the offences under Sections 279, 337, 338 and 304 (A) of IPC. He filed a final report accordingly

6. From the above materials, the trial Court examined the accused in terms of Sections 251 of Cr.P.C., for which, the accused pleaded not guilty. Hence, in order to prove their case, on the side of the prosecution, 13 witnesses have been examined as P.W.1 to P.W.13 and 16 documents were marked as Ex.P1 to Ex.P16.

(i) Out of the said witnesses, P.W.1-Mallika is the defacto complainant, and P.W.2-Tina Esther, P.W.3-Chellathai, P.W.4-



Savariyammal, P.W.5-Arulmani and P.W.6-Mariyakeerthiyal are all injured, who sustained injury in an alleged accident. On a careful reading of the evidence given by them before the trial Court, it is seen that during the time of occurrence, the revision petitioner drove the auto in a high speed and due to the said reason, the auto got upset and resultantly, all are sustained injuries. Further, death would occur to one Packiyam.

(ii) P.W.7-Kumar, though he has cited as a witness attested in an Observation Mahazar, he has not stated anything about the Observation Mahazar. Hence, he was treated as a hostile witness.

(iii) P.W.8-Ganesan is a Grade II Police Constable. He identified the dead body to the doctor for conducting postmortem.

(iv) P.W.9-Ganesan, the then Special Sub-Inspector of Police, speaks about the receipt of information from the hospital in respect to the accident, recording of statement from P.W.1 and other things.

(v) P.W.10-Dr.Ashmi attached with Government Hospital, Tirunelveli, speaks about the treatment given to P.W.1 to P.W.6. According to her, P.W.4 sustained grievous injuries and others i.e., P.W.1 to P.W.3, P.W.5 and P.W.6 sustained simple injuries. The copy of the Accident Register issued by the doctor (P.W.10) in respect to P.Ws.1 to 6 are marked as Ex.P5 to Ex.P11.

(vi) P.W.11-Sasi, the Motor Vehicle Inspector, speaks about the details in respect to the inspection made on the offending vehicle.

(vii) P.W.12-Kaveri Mahalakshmi, attached with the Government Hospital, Tirunelveli, speaks about the details in respect to the postmortem conducted over the dead body of the deceased Packiyam.

(viii) P.W.13-Gurunathan, the then Inspector of Police, speaks about the details of investigation and about filing of the final report.

7. 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 chose to examine any witness nor mark any document on his side.

8. Having considered all the above materials placed before him and after considering the arguments advanced by the learned counsels appearing on either side, the learned Judicial Magistrate No.3, Tirunelveli convicted and sentenced the revision petitioner as stated above. Further, in the appeal preferred by the accused in C.A.No.24 of 2017, the learned IV-Additional District Court,



Tirunelveli affirmed the findings arrived at by the trial Court and dismissed the appeal.

9. I have heard Mr.C.Jeganathan, learned counsel appearing for the revision petitioner and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Crl.side) appearing for the respondent. I have also perused the records carefully.

10. The first and foremost contention raised by the learned counsel appearing for the revision petitioner is that the witnesses examined on the side of the prosecution as occurrence witnesses did not say about the rash and negligent act of accused and therefore, the same would be sufficient to hold that the prosecution has not proved their case beyond reasonable doubt and therefore, the judgment rendered by the Courts below is liable to be set aside.

11. He would further contend that during the relevant point of time after seeing the lorry, which is came from opposite direction in a negligent manner, with a view to avoid the collusion between the said lorry and the auto, the driver of the auto, who is the accused herein, diverted the auto in a mud portion and thereafter, unfortunately, the auto got upset. In the said circumstances, it cannot be said the revision petitioner negligently drove the vehicle and committed an offence.

12. On the other hand, the learned Government Advocate (Crl.side) appearing for the respondent would contend that the evidence given by the injured witnesses is sufficient to hold that during the time of occurrence the revision petitioner drove his vehicle in a rash and negligent manner and caused the accident. According to him, interference of this Court in the findings arrived at by the trial Court does not require.

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

14. Initially, on going through the evidence given by P.Ws.1 to 3, it seems that all of them are categorically stated that during the relevant point of time, the revision petitioner drove the auto in a high speed and as a result of which, the auto got up-set. At this juncture, it would relevant to see the judgment of our Hon'ble Apex Court in **State of Karnataka vs. Satish** reported in **1998 (8) SCC 493**, wherein, our Hon'ble Apex Court has held as follows:-

" 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



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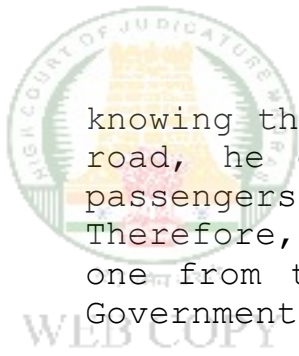
examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal 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*"....."

15. Accordingly, in view of the said principles laid down by our Hon'ble Apex Court, herein also we cannot hold driving the vehicle in a high speed alone is sufficient to convict the accused under Section 304(A) of IPC.

16. In this occasion, the stand taken by the defence is that during the time when the auto proceeded in a single road, a sand lorry came in opposite direction and after seeing the said lorry to avoid the collision between the lorry and the auto, the accused herein turned his auto to the mud portion and only because of the said reason, the auto got up-set and the accident had happened.

17. Now, on considering the said submission in the light of the relevant records, it is seen that the injured witnesses, who have travelled in the auto, did not give evidence to the effect that at the time of occurrence, a lorry was coming from opposite direction and in turn, in order to avoid collision, the present accused turned his auto in a mud portion. In this regard, at the time of questioning under Section 313 Cr.P.C., the accused has not stated anything about the situation, during which, only by compulsion, he turned the vehicle to the mud road. Therefore, in the absence of any materials in support of his claim, arguing as above, cannot be accepted.

18. In otherwise, all the injured while at the time of giving evidence as P.Ws.1 to 6 gave a similar evidence that there was sand on the both side of the road and on the other hand, at the time of accident, the accused herein, drove the auto in a rash manner and as a result of which, the level has stumbled and collapsed. Here it is a case, during the time of occurrence, the accused not only drove the vehicle in a high speed, indeed, after



knowing the fact that there was sand found on the both side of the road, he drove the vehicle in a high speed after picking up 7 passengers in a single road and committed this offence. Therefore, the said act committed by the accused is a different one from the **Satish** case as rightly pointed out by the learned Government Advocate (Crl.side) appearing for the respondent.

19. Accordingly, in the light of the above discussions, I am of the considered opinion that at the time of occurrence, the appellant herein drove the auto in a negligent manner and turned to the mud portion and therefore, the auto got up-set and therefore, the said act is termed as negligent act. Therefore, this Court is of the opinion that the findings arrived at by the Courts below is with full of reasons and found correct.

20. In this occasion, the learned counsel appearing for the revision petitioner would contend that in respect to the alleged accident, the revision petitioner herein is facing the trial for the past 7 years from the year 2014 and therefore, it should be necessary to show some leniency in awarding punishment.

21. Now, on considering said submission made by the revision petitioner, it is true that the alleged accident had happened on 01.06.2014 and thereafter, till now, the revision petitioner is before the Judicial forum and facing this case. Hence, considering the said situation, it would be appropriate to modify the sentence already awarded to the revision petitioner under Section 304(A) of IPC. Accordingly, the sentence awarded under Section 304(A) of IPC is reduced to three months and the revision petitioner is convicted and sentenced to undergo Simple Imprisonment for three months for the offence under Section 304(A) of IPC. It is also directed that the period of sentence already undergone by the revision petitioner shall be given set off, as required under Section 428 Cr.P.C. In otherwise, the fine amounts imposed under Sections 337 (5) counts, 338 I.P.C and 304(A) of IPC are all confirmed. The trial Court is directed to take steps to secure the custody of the accused and make him to undergo the remaning period of the sentence.

22. Accordingly, in view of the above modification, the Criminal Revision Case is disposed of.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar (CS)



To

1.The IV-Additional District and Sessions Judge,
Tirunelveli.

2.The Judicial Magistrate No.3,
Tirunelveli.

3.Do - Through The Chief Judicial Magistrate,
Tirunelveli.

4.The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District.

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

+1 CC to M/s.C.JEGANATHAN, Advocate (SR-28232[F] dated 06/09/2021)

CrI.R.C. (MD)No.872 of 2017
03.09.2021

SJ(CO)
SB(30.09.2021) 8P 7C