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Crl.RC.No.207 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.207 of 2018

Antony

... Petitioner

Versus

The Inspector of Police,
Sankari Police Station,
Sankari Taluk

... Respondent

PRAYER:

Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to set aside the order of conviction passed by the learned III Additional Sessions Judge, Salem in Crl.A.No.64 of 2017 dated 04.01.2018 by confirming the order passed by the learned Judicial Magistrate-I, Sankari in CC.No.151 of 2010 dated 23.05.2017 convicting the petitioner for the offences under Sections 279 and 304(A) of IPC imposing a fine of Rs.500/- for the offence under Section 279 of IPC and in



Crl.RC.No.207 of 2018

default to undergo simple imprisonment for one week and for the offence under Section 304(A) of IPC, six months simple imprisonment along with a fine of Rs.500/-, in default to undergo a simple imprisonment for one month by allowing the present criminal revision petition.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER

This criminal revision is filed as against the judgment passed in Crl.A.No.64 of 2017 dated 04.01.2018 on the file of the III Additional Sessions Court, Salem thereby confirmed the judgment passed in CC.No.151 of 2010 dated 23.05.2017 on the file of the learned Judicial Magistrate-I, Sankari, thereby convicted the petitioner for the offence punishable under Sections 279 and 304(A) of IPC.

2. The case of the prosecution is that on 05.04.2010 at about 08.20 a.m., when the deceased was driving his two wheeler TVS bearing registration No.TN 28 V 4058 from Sankari to Salem road on his left hand



Crl.RC.No.207 of 2018

side, the accused drove Antony Vivekananda college bus bearing registration No. TN 30 Y 6096 in a rash and negligent manner from Konganapuram to Sankari and while entering into Sankari to Salem main road, without noticing the two wheeler, dashed against the two wheeler and caused accident, due to which the deceased sustained grievous injuries and died. On receipt of the complaint, the respondent registered FIR in crime No.208 of 2010 for the offence punishable under Section 279, 304(A) of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial court in CC.No.151 of 2010 for the offence punishable under Sections 279, 304(A) of IPC.

3. On the side of the prosecution, they had examined PW1 to PW13 and marked Ex.P1 to Ex.P11. On the side of the petitioner, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial court found him guilty for the offence punishable under Sections 279 and 304(A) of IPC and he was sentenced to pay fine of Rs.500/-, in default to undergo one week simple imprisonment for the offence under Section 279 of IPC and he was sentenced to undergo



Crl.RC.No.207 of 2018

six months simple imprisonment and fine of Rs.500/-, in default to undergo one month simple imprisonment for the offence under Section 304(A) of IPC. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the order passed by the trial court. Aggrieved by the same, the present criminal revision has been filed.

4. The learned counsel for the petitioner would submit that PW1 to PW4 are relatives and they are hear say witnesses. They had not seen the occurrence. The only eye witness was examined as PW5. Both the courts below relied upon the deposition of PW5 and convicted the petitioner. PW5 deposed that the deceased drove his two wheeler from Salem to Sankari, whereas rough sketch and the statement recorded under Section 161 of Cr.P.C. revealed that the deceased was driving his two wheeler from Sankari to Salem. Further, while he was standing near Raju Medical Shop, the accident had occurred and he had not seen the accident. The said Raju Medicals did not find place in the rough sketch. He categorically admitted that only after hearing the noise of accident, he came to the place of the accident. Therefore, he could not be the eye-witness. The entire conviction



Crl.RC.No.207 of 2018

cannot be sustained since the conviction was imposed only on the basis of evidence of PW5.

4.1 He further submitted that there was no evidence to show that the petitioner drove his vehicle in a rash and negligent manner. Though PW4 stated that the petitioner drove his vehicle in a high speed manner, it cannot be presumed that the accident occurred only due to rash and negligent driving of the petitioner. The speed driving cannot be presumed as rash and negligent driving. PW5 was also residing 80 meters from the place of the accident. Therefore, he could not have seen the occurrence. Except PW5, no other independent witness was examined by the prosecution. In support of his contention, he relied upon the judgment in the case of *State of Karnataka Vs. Satish* reported in (1998) 8 SCC 493, in which the Hon'ble Supreme Court of India held that high speed driving does not bespeak of either 'negligence' or 'rashness' by itself. 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



Crl.RC.No.207 of 2018

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 record, no presumption of 'rashness' or 'negligence' could be drawn by invoking the maxim '*res ipsa loquitur*'. It is also followed by this Court in the case of ***M.Subramani Vs. State rep. by Inspector of Police*** reported in ***(2017) 1 LW (Cri) 160***, in which this Court held that *there is no indication from him that the accused had driven the bus at which speed and whether it was in a rash and negligent manner. The eyewitness did not depose that the bus driver had driven in a rash and negligent manner* and therefore, this Court set aside the conviction.

5. Per contra, the learned Government Advocate (Crl.side) would submit that though PW5 wrongly stated about the direction on which the deceased drove his two wheeler, the rough sketch is very clear that the two wheeler was driving from Sankari to Salem road and while the petitioner drove his vehicle in a negligent manner while entering into the Salem to Sankari road, without noticing the deceased driving his two wheeler and



Crl.RC.No.207 of 2018

dashed against him. Therefore, he sustained grievous injuries and died. In support of the rough sketch, the motor vehicle inspector's report and his deposition are very clear. Therefore both the courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

6. Heard, Mr.C.K.M.Appaji, the learned counsel for the petitioner and Mr.A.Gopinath, learned Government Advocate(crl.side) appearing for the respondent / police.

7. Admittedly, the petitioner was driving a college bus bearing registration No.TN 30 Y 6096 from Konganapuram. While he was entering into Salem to Sankari main road, without noticing the two wheeler which was driven by the deceased from Sankari to Salem on the left hand side, the petitioner dashed against him and due to which he sustained grievous injuries and died. PW1 to PW4 are relatives of the deceased and all are hear say witnesses. They proved that the deceased died due to injuries sustained while the accident happened on 05.04.2010. On perusal of evidence of PW5 revealed that when the deceased was driving his two wheeler from Salem to



Crl.RC.No.207 of 2018

Sankari, the petitioner drove his vehicle in a rash and negligent manner and hit the two wheeler, due to which he sustained injuries and died. While cross examination, he clarified that when the deceased was driving his two wheeler from Sankari to Salem, the petitioner drove his vehicle from Konganapuram to reach Sankari and entered into the Salem to Sankari main road. While entering into the main road, he did not notice the two wheeler and dashed against him. Further, he has seen the accident and immediately rushed to the accident place and identified the petitioner who drove the offending vehicle. Therefore, this Court believed the evidence of PW5.

8. It is also corroborated the rough sketch which was marked as Ex.P6. It is very clear that the accident happened when just entering into Salem to Sankari main road. The motor vehicle inspection report was also marked as Ex.P7 and Ex.P8. Ex.P7 belong to the offending vehicle and Ex.P8 belong to the vehicle which was driven by the deceased. The offending vehicle got damaged on its left hand side. The vehicle which was driven by the deceased got damaged on its entire portion of left hand side. It shows that the offending vehicle came from Konganapuram and entered into



Crl.RC.No.207 of 2018

Salem to Sankari main road and he dashed against the deceased vehicle.

Thus, it is clear that the accident occurred only because of the rash and negligent driving of the petitioner herein. Further, Salem to Sankari is a main road. Whenever turning the main road from cross roads, we have to verify both sides and cross the road in a slow speed. Whereas the petitioner drove his vehicle rash and negligently without noticing the deceased vehicle and entered the Salem to Sankari road in a high speed manner. Therefore, the judgments cited by the learned counsel for the petitioner are not helpful to the case on hand since there is material evidence on record to show that the petitioner drove his vehicle in a rash and negligent manner. Therefore, this Court has no hesitation to invoke the maxim '*res ipsa loquitur*' to convict the petitioner for the offence punishable under Section 304(A) of IPC.

9. That apart, rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be



Crl.RC.No.207 of 2018

always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to 'rash and negligent driving' within the meaning of the language of [Section 279](#) IPC. That is why the legislature in its wisdom has used the words 'manner so rash or negligent as to endanger human life'. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under [Section 279](#) IPC is attracted.

10. Further, 'negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured



Crl.RC.No.207 of 2018

in a given case. Whether there exists negligence *per se* or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

11. Therefore, the courts below rightly convicted the petitioner for the offence punishable under Sections 279 and 304(A) IPC and this Court finds no infirmity or illegality in the orders passed by the courts below. However, the learned counsel for the petitioner would submit that the sentence may be reduced considering the age of the petitioner.

12. Considering the above submission, this Court is inclined to reduce the sentence of imprisonment from six months to three months. Accordingly, the judgment passed by the learned III Additional Sessions Judge, Salem in Crl.A.No.64 of 2017 dated 04.01.2018 confirming the judgment passed by the learned Judicial Magistrate-I, Sankari in CC.No.151 of 2010 dated 23.05.2017 is modified as follows:



WEB COPY



Crl.RC.No.207 of 2018

- (i) The conviction imposed against the petitioner for the offences under Sections 279 and 304(A) of IPC is hereby confirmed.
- (ii) (a) The fine imposed against the petitioner for the offences under Section 279 of IPC is hereby confirmed.
(b) The sentence imposed against the petitioner for the offence under Section 304(A) of IPC is reduced to three months simple imprisonment.
- (iii) The fine imposed by the courts below for the offence under Section 304(A) of IPC is hereby confirmed.
- (iv) The trial court is directed to take steps to secure the petitioner for serving his remaining period of sentence.

13. In the result, the criminal revision stands partly allowed.

08.11.2022

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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WEB COPY



Crl.RC.No.207 of 2018



WEB COPY



Crl.RC.No.207 of 2018

G.K.ILANTHIRAIYAN. J,

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To

- 1.The learned III Additional Sessions Judge,
Salem
- 2.The learned Judicial Magistrate-I,
Sankari
- 3.The Inspector of Police,
Sankari Police Station,
Sankari Taluk
- 4.The Public Prosecutor,
High Court of Madras

Crl.RC.No.207 of 2018

08.11.2022