



Crl.R.C.No.438 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM

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

Crl.R.C.No.438 of 2018

and Crl.M.P.Nos.5316 and 5317 of 2018

Sakthivel Kumar

... Petitioner

Vs.

The State Represented by
Inspector of Police,
Veppur Police Station,
Virudhachalam.

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the order dated 02.06.2017 passed in C.A.No.90 of 2016 on the file of Learned III Additional District and Sessions Judge Cuddalore, Virudhachalam confirming the order dated 06.10.2016 passed in C.C.No.101 of 2008 by Learned Judicial Magistrate No.I, Virudhachalam.

For Petitioner : Mr.R.Murali

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)

ORDER



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This Criminal Revision case has been filed to set aside the order dated 02.06.2017 passed in C.A.No.90 of 2016 on the file of Learned III Additional District and Sessions Judge Cuddalore, Virudhachalam confirming the order dated 06.10.2016 passed in C.C.No.101 of 2008 by Learned Judicial Magistrate No.I, Virudhachalam, thereby convicted the petitioner for the offences punishable under Sections 279, 337 (5 counts), 338 (3 counts) and 304(A) (6 counts) of IPC.

2. The case of the prosecution is that on 09.10.2007, around 1.00 a.m., the accused had driven the bus bearing Registration No.TN 01 N 6512 belonging to Tamil Nadu State Transport Corporation bound to Chennai from Madurai and proceeding towards north from south in the National Highways in a rash and negligent manner nearing the border of Cheppakkam Village. While being so, opposite to the land of Kolanji Udayar, it dashed behind the lorry bearing Registration No.TN 45 AC 7611 which was parked on the left hand side of the road, due to which, the entire left hand side of the bus got damaged and as a consequence the passengers in the bus, 6 persons died, 3 persons suffered grievous injuries



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and 5 persons suffered simple injuries. On the complaint, the respondent registered an FIR for the offences punishable under Sections 279, 337 (5 counts), 338 (3 counts) and 304(A) (6 counts) of IPC. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.101 of 2008 on the file of the Trial Court.

3. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.22 and marked Exs.P1 to P26. On the side of the petitioner, no one was examined and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found the petitioner guilty and convicted him for the offences punishable under Sections 279, 337 (5 counts), 338 (3 counts) and 304(A) (6 counts) of IPC and sentenced him to undergo simple imprisonment for a period of one year for each count under Section 304(A) of IPC (6 counts) and sentenced him to pay a fine of Rs.100/- for the offence punishable under Section 337 IPC (5 counts) for each count, in default, to undergo simple imprisonment for a period of two weeks for each count and also sentenced to pay a sum of Rs.200/- for the offence punishable under



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Section 338 IPC (3 counts) for each count, in default, undergo simple imprisonment for a period of one month for each count. It was ordered that the sentences imposed for each count shall run concurrently. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed by the Appellate Court, confirming the order passed by the Trial Court. Hence, this revision.

4. The learned counsel for the petitioner submitted that no witness had deposed that the petitioner drove the bus in a rash and negligent manner to attract the provision under Section 304(A) of IPC. Even according to the case of the prosecution, the lorry was parked in the National Highways instead of adjacent mud road, without necessary precautions. Therefore, the accident occurred only on the negligent act of the lorry driver and as such the petitioner ought not to have been charged for the offence punishable under Section 304(A) of IPC. P.W.9 turned hostile and he was unaware of the contents of the Observation Mahazar and directed to sign in the Observation Mahazar by the respondent. Therefore, the Observation Mahazar and rough sketch which helped the



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Trial Court to conclude that the lorry was partly stationed in the mud road was not proved by the prosecution. P.W.1 deposed that he woke up after hearing the sound of the accident and his signature was also obtained by the respondent in the written complaint. Therefore, no witness had spoken about the rash and negligent driving of the bus by the petitioner. The petitioner had driven the vehicle in a low speed and with all cautions. However, the lorry was parked on the road without any indications that the vehicle was parked on the road. During the early hours, when the petitioner drove the vehicle in a careful manner, unfortunately it dashed the lorry, in which, 6 persons died and others suffered injuries. He further submitted that the Maxim res ipsa loquitor does not come into play in the case on hand, since no witness had spoken about the rash and negligent driving of the petitioner.

5. In support of his contentions, he relied upon the Judgment of this Court and also the Hon'ble Supreme Court of India reported in **2020 SCC Online Mad 14564** in the case of **Batcha Vs. State represented by The Inspector of Police, Mettupalayam Police Station**, in **1998 8 SCC**



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493 in the case of *State of Karnataka Vs. Satish*, in 2021-1-L.W.(Crl) 472 in the case of *E.Jayakumar Vs. State represented by Sub-Inspector of Police, Aravakurichi Police Station, Karur District (Crime No.291 of 2005)*, in 2021-1-L.W.(Crl).413 in the case of *Rajendran Vs. The State represented by the Inspector of Police, Transport and Investigation Wing, Salem City (Crime No.84 of 2012)* and in 1980 1 SCC 30 in the case of *Syad Akbar Vs. State of Karnataka*.

6. Per contra, the learned Government Advocate (Crl.Side) submitted that admittedly, the petitioner drove the bus bearing Registration No.TN 01 N 6512 belonging to the Tamil Nadu State Transport Corporation. On 09.10.2007, at around 01.00 a.m., though, the petitioner drove the vehicle not in a rash manner, he negligently drove the vehicle and dashed against the lorry which was parked in the left hand side of the road bearing Registration No.TN 45 AC 7611, due to which, the entire left hand side of the bus got damaged and as a consequence, passengers who were travelled in the bus, 6 persons died, 3 persons suffered grievous injuries and 5 persons suffered simple injuries. In order



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to prove the charge, the prosecution had examined P.W.1 to P.W.22 and marked Exs.P1 to P26. P.W.1, P.W.2, P.W.3, P.W.5 and P.W.6 are injured witnesses. Though, P.W.6 turned hostile, in order to prove the case, P.W.1, P.W.2, P.W.3 and P.W.5 categorically deposed that only due to rash and negligent driving of the petitioner, the accident had occurred, due to which, 6 persons died. The Motor Vehicle Inspector was examined as P.W.4. He deposed that the accident did not occur due to any mechanical defects. Therefore, it shows that the accident had occurred only due to the negligent act of the petitioner. Therefore, the Maxim res ipsa loquitur comes into play to presume that only an act of negligence the accident had occurred. Therefore, the burden shifts on the petitioner, who was in control of the bus, to establish that the accident did not happen on account of any negligence on his part. The petitioner failed to prove that the accident did not happen due to any cause other than negligence on his part.

7. In support of his contentions, he relied upon the order of this Court in ***Crl.R.C.No.222 of 2017, dated 22.12.2021*** in the case of ***Viml***



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Kannan Vs. State by Inspector of Police, Koradacherry Police Station, Tiruvarur District (Crime No.146 of 2007). He also relied upon the Judgment of the Hon'ble Supreme Court of India, reported in ***2012 9 SCC 284*** in the case of ***Ravi Kapur Vs. State of Rajasthan.***

8. Heard Mr.R.Murali, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent.

9. On 09.10.2007, when the petitioner was driving the bus bearing Registration No.TN 01 N 6512, belong to the Tamil Nadu State Transport Corporation bound to Chennai from Madurai and proceeding towards north from south in the National Highways, he dashed the bus behind the lorry bearing Registration No.TN 45 AC 7611, which was parked with load on the left hand side of the road, due to which, the left hand side of the bus was completely damaged and 6 passengers, who were inside the bus, suffered from fatal injuries and died. That apart, 3 passengers suffered grievous injuries and 5 passengers suffered simple injuries. One



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of the passengers lodged complaint, who was examined as P.W.1. He deposed that he was travelling in the bus and while the bus was proceeding from south to north on the Trichy to Chennai Main Road at around 01.00 a.m., when the bus was crossing Cheppakkam Village limit near Veppur main road, it dashed against the lorry which was parked on the left hand side of the road. As a consequence, the complete left hand side of the bus got damaged and 6 persons died and others suffered injuries. The said complaint was marked as Ex.P1. P.W.2, who was also one of the passengers, deposed that the petitioner had driven the vehicle in a rash and negligent manner and dashed against the lorry which was parked with load of iron rod on the left hand side of the road, due to which, 6 persons died and others suffered injuries. The other witnesses P.W.3 and P.W.5 also deposed in the same manner. However, they did not say that the petitioner drove the vehicle in a rash and negligent manner. Whereas, they deposed that due to his driving, the accident occurred. That apart, the accident did not occur due to any mechanical defects of the bus. The Motor Vehicle Inspector, inspected the vehicle and certified that the bus which was driven by the petitioner was not affected with any



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mechanical defect, which was marked as Ex.P2. Thus, it is clear that the accident did not occur due to any mechanical defect and it occurred only due to the negligent driving of the bus.

10. It is seen from the records that the lorry bearing Registration No. TN 45 AC 7611 was parked with the load of iron rods. Before the said accident, already one lorry which was loaded with iron rods fell down on the place of the accident. Only to unload the iron from the said lorry and to load in the lorry bearing Registration No. TN 45 AC 7611, the said lorry was parked on the left hand side of the road. After completion of reload of the iron rods, when it was about to move, unfortunately, the petitioner without noticing the said lorry which was parked on the left hand side of the road, dashed against the said lorry. Therefore, both the Courts below found the petitioner guilty for the offences punishable under Sections 279, 337 (5 counts), 338 (3 counts) and 304(A) (6 counts) of IPC.

11. The only ground raised by the learned counsel for the



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petitioner is that no one had spoken about the rash and negligent driving of the petitioner for committing the accident. All the witnesses had deposed that the petitioner drove the vehicle in a high speed manner and dashed against the lorry. Further it was contended that the lorry which was parked on the main road was without any caution, such as parking lamp or indicator. Therefore, the Maxim res ipsa loquitor does not come into play to presume that the accident had occurred only due to rash and negligent driving of the petitioner.

12. He relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1998 8 SCC 493** in the case of ***State of Karnataka Vs. Satish***, wherein it was held that merely because the truck was being driven at a “high speed” does not speak 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 the absence of any



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material on the record, no presumption of “rashness” or “negligence” could be drawn by invoking the maxim “res ipsa loquitur”.

13. Following the said ratio, this Court also held in **2021-1-L.W.(Crl) 472** in the case of ***E.Jayakumar Vs. State represented by Sub-Inspector of Police, Aravakurichi Police Station, Karur District (Crime No.291 of 2005)***, wherein it was held that the driver of paper loaded lorry deposed that the egg loaded lorry overtook his vehicle collide with the Eicher lorry. Due to friction, both the vehicle got fire and also paper loaded lorry. He is the eye witness, but never deposed about the rash and negligent manner of the petitioner. Therefore, no specific finding has been rendered by the Courts below to the effect that the driver was driving the truck either negligently or rashly. Therefore, the prosecution failed to prove the case beyond any reasonable doubt.

14. He also relied upon the Judgment of this Court reported in **2021-1-L.W.(Crl).413** in the case of ***Rajendran Vs. The State***



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represented by the Inspector of Police, Transport and Investigation

Wing, Salem City (Crime No.84 of 2012), in which this Court held that the provisions under Section 279, 337, 338 of IPC, the essential elements and basic requirements which is needed to be proved is the rashness and the negligent act of the offender and thereby all the three offences fall within the category of cognate offences. The cognate offences defines that a lesser offence that is related to the greater offence because it shares several of the elements of the greater offence and is of the same class or category for example, shop lifting is a cognate offence of larceny because both crimes require the element of taking property with the intent to deprive the rightful owner of that property. Therefore, to prove these offences, the basic and essential elements are commonly required.

15. It is seen from the evidence of P.W.2 that he categorically deposed that the petitioner drove the vehicle in a rash and negligent manner and dashed against the lorry which was parked in the left hand side of the road. Though, other witnesses failed to depose that the petitioner had driven the vehicle in a rash and negligent manner, it is seen



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from the manner in which the accident had occurred that the petitioner drove the vehicle in a negligent manner i.e., without noticing the lorry which was parked on the left hand side of the road. Therefore, the Maxim doctrine of “res ipsa loquitur” comes into play and as such the burden shifts on the petitioner, who was in control of the bus, to establish that the accident did not happen on account of any negligence on his part.

16. In this regard, the learned Government Advocate (Crl.Side) relied upon the Judgment of this Court in ***Crl.R.C.No.222 of 2017, dated 22.12.2021*** in the case of ***Viml Kannan Vs. State by Inspector of Police, Koradacherry Police Station, Tiruvarur District (Crime No.146 of 2007)***, in which this Court cited the Judgment of the Hon'ble Supreme Court of India reported in ***(2003) 9 SCC 208*** in the case of ***Thakur Singh Vs. State of Punjab***, in which the Hon'ble Supreme Court of India held that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into a canal. In such a situation the doctrine of res ipsa loquitur comes into play and the burden shifts on the man who was in control of the automobile to



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establish that the accident did not happen on account of any negligence on his part.

17. In the case on hand, as stated supra, the petitioner drove the vehicle in a negligent manner i.e., without noticing the lorry which was parked on the left hand side of the road and dashed against the said lorry and committed an accident. Therefore, the Judgments cited by the learned counsel for the petitioner are not helpful to the case on hand, since there is a specific evidence to substantiate the charges against the petitioner.

18. That apart, it is relevant to extract the portion of the Judgment reported in **2012 9 SCC 284** in the case of **Ravi Kapur Vs. State of Rajasthan**.

“(A) Rash and negligent driving

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 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



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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.

‘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 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”.

19. In the light of the above, it has to be verified that if negligence in the case of an accident can be gathered from the attendant circumstances, 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. Either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the Court, with the aid of proper evidence, may take assistance of the attendant circumstances and apply the doctrine of res



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ipsa loquitur. Admittedly, the petitioner had driven the bus and dashed against the lorry which was parked on the left hand side of the road, due to which, the entire left hand side of the bus got damaged and 6 passengers who travelled in the bus died. That apart, 3 passengers suffered grievous injuries and 5 passengers suffered simple injuries. In such a situation, the doctrine of res ipsa loquitur comes into play and the burden shifts on the petitioner, who was in control of the bus, to establish that the accident did not happen on account of any negligence on his part. Admittedly, the petitioner failed to prove that the accident had occurred due to any cause other than negligence on his part.

20. Hence, the Courts below rightly convicted the petitioner for the offences punishable under Sections 279, 337 (5 counts), 338 (3 counts) and 304(A) (6 counts) of IPC and this Court finds no infirmity or illegality in the orders passed by the Courts below and this revision is liable to be dismissed.

21. Accordingly, this Criminal Revision case stands dismissed.



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Consequently, connected Miscellaneous petition are closed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order
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To

1. The III Additional District and Sessions Judge Cuddalore,
Virudhachalam.

2. The Judicial Magistrate No.I, Virudhachalam.

3. The Inspector of Police,
Veppur Police Station,
Virudhachalam.

4. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J



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