



Bail Slip

The Petitioners/Accused/Viz., Arulanandham, Male age 32 Years S/o.Palanisamy, was/were released on bail as per the order of this Court dated 05.05.2017 in CrI.M.P.No.6424 of 2017 in CrI.RC.No.671 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2022

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.RC.No.671 of 2017

Arulanandham

... Petitioner

vs.

State rep. By
Inspector of Police,
Kodumudi Police Station,
Erode District,
Crime No: 117/2014

... Respondent

Prayer: This Criminal Revision Case has been filed, under Sections 397 r/w 401 of Cr.P.C, to set aside the order made in C.A.No.203 of 2016 dated 11.01.2017 on the file of the Principal Sessions Judge, Erode confirming the judgment made in C.C.No.56/2014 dated 11.11.2016 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For petitioner : Mr.S.N.Arunkumar
for Mr.C.Ramkumar

For Respondent : Mr.S.Sugendran
Addl.Public Prosecutor

ORDER

The Petitioner/accused has preferred the above revision, challenging the Judgment passed in C.A.No.203 of 2016 on the file of the Principal Sessions Judge, Erode, confirming the Judgment passed in C.C.No.56/2014 dated 11.11.2016 on the file of the District Munsif Cum Judicial Magistrate, Kodumudi convicting the petitioner for the offences under Sections 279



and 304-A of IPC. The Trial Court imposed a sentence of one year simple imprisonment and a fine of Rs.5000/- in default, to undergo sentence of one month of Simple Imprisonment on the petitioner. The Trial Court did not impose any separate sentence for the offence under Section 279 IPC.

2. The case of the prosecution is that the deceased Kandaswamy was travelling from east to west on Muthur to Kodumudi road in a two wheeler TN 42 V 7431 on 03.06.2014 at about 9:00 PM. When the deceased was nearing Ramya Mahal on the said road, a heavy vehicle lorry bearing registration No. TN 04 AL 3762 came in the opposite direction; that the appellant had overtaken the said lorry in his Bajaj Pulsar vehicle bearing registration No. TN 33 AX 0211 and collided with the vehicle of the deceased who came on the correct side of the road; that due to the collision, the victim fell from his vehicle and to his right side, and the back wheel of the lorry ran over the victim and he died on the spot.

3. The prosecution had examined 10 witnesses on their side. Out of which P.W.1 and P.W.2 are said to be eye witnesses to the occurrence. P.W.1 was the employer of the deceased who was riding another two wheeler following the vehicle of the deceased. P.W.2 was accompanying P.W.1 in the said two wheeler. P.W.3 and P.W.4 are the father and mother of the deceased. P.W.5 is the witness to the Observation Mahazer. P.W.6 was the driver of the lorry. P.W.7 is the Motor Vehicle Inspector. P.W.8 is a Doctor who conducted the autopsy on the deceased, P.W.9 and P.W.10 are the Investigating Officers. Based on the evidence, the trial Court concluded that the petitioner had caused the death of the deceased by riding the vehicle in rash and negligent manner. The Appellate Court also confirmed the findings of the trial Court.

4. Heard Mr.S.N.Arunkumar, the learned counsel for the petitioner/accused and Mr.S.Sugendran, learned Additional Public Prosecutor and perused the materials available on record.

5. This Court, from the evidence let in by the prosecution, finds that the manner in which the occurrence has taken place has not been conclusively established by the prosecution. P.W.1, who was the employer of the deceased, is said to have followed the vehicle of the deceased at the time of occurrence. P.W.2 was riding pillion in the vehicle of P.W.1. Both the witnesses admit in their cross-examination that they heard a sound and thereafter saw the deceased lying on the road. It is therefore



highly unsafe to rely upon their evidence. P.W.6, the lorry driver, who was originally shown as accused, in his cross-examination would say that they were two persons in the two wheeler that the deceased came in. This is totally contrary to the prosecution case. It is therefore unsafe to believe his version also. The prosecution has neither established rashness nor negligence on the part of the accused. Both the Courts below have convicted the accused on the strength of the deposition of the above witnesses. No other independent witnesses were examined. Both the Courts below have proceeded on the basis that the accused did not have valid license for riding two-wheeler. However, that is not the case of the prosecution. None of the witnesses including the Investigating Officer have spoken about the said fact. The Courts below have relied upon the report of Motor Vehicles Inspector. P.W.7 marked as Ex.P.5 to come to the said conclusion. The report in my view does not conclusively establish that the accused did not have a valid driving license. The report only says that the documents relating to the vehicle were not produced at the time of inspection. In any event, there is no evidence let in by the prosecution to establish that the accused did not have a valid driving license. This Court is of the view that the Courts below have not appreciated the facts and the evidence on record in the proper perspective.

6. Be that as it may, it is the case of the prosecution that the cause of the death of the deceased was due to his fall pursuant to the collision and thereafter being runover by the lorry. Even if the prosecution case is accepted to be true, it has to be seen whether the act of the accused would constitute the offence under Section 304-A IPC. In order to appreciate the same, it has to be seen whether the accused had the requisite mens rea and whether his acts were the 'causa causans' for the death of the deceased.

7. The words to denote mens rea in the offence of Section 304-A IPC are "rash" or "negligent". The mental states necessary to convict a person under Section 304-A IPC are lesser in degree as compared to "intention" and "knowledge" which are the culpable mental states required for other offences against body. Just as there is a gradation in the maximum sentence prescribed under the Penal Code proportionate to the act committed by the accused, there is gradation according to the mens rea even though the resultant act is the same. For instance, though in murder, culpable homicide and in the offence under Section 304-A IPC the resultant act is death, the punishments are different because there is a difference in the degree of culpable mental state required for each of these offences. Interestingly, in the punishment provided for culpable



homicide not amounting to murder one would find that where the offence is committed with intention, the maximum sentence is imprisonment for life and when it is committed only with knowledge but without any intention the maximum punishment is ten years, though in many other offence no such distinction is made in the punishment prescribed.

8. Therefore, the nature and degree of culpable mental states has to be understood clearly while interpreting the provisions of Penal Code. The framers of the Penal Code did not intend to punish all wrongful or immoral acts as could be seen from their note annexed along with the original draft of the Penal Code prepared in 1837. In note (H) which is a note on the chapter of offences relating to marriage, the framers stated thus:

"...We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in passion, or breaks a window in a frolic; yet we have punishment for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness "

The Hon'ble Supreme Court in two of their Judgments has extracted the above portion in R.Sai Bharathi Vs, J, Jayalalitha and others reported in (2004) 2 SCC 9 at Para No.56 and in Subramanian Swamy Vs. Union of India reported in (2016)7 SCC 221 (para 90).

9. The mental states that are necessary as stated earlier for an offence under Section 304-A IPC are either "rash" or "negligent". Both these words have not been defined in the Penal Code. Negligence is both a tort and a crime. Hence, it is necessary to make a distinction between negligence as a tort and a culpable negligence. The Hon'ble Supreme Court in Sushil Ansal v. State, reported in (2014) 6 SCC 173 while examining Section 304-A IPC was pleased to observe as follows in Paragraphs 57



and 58:

WEB COPY

"57. The terms "rash" or "negligent" appearing in Section 304-A extracted above have not been defined in the Code. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. One of the earliest of these pronouncements was in *Empress of India v. Idu Beg* [*Empress of India v. Idu Beg*, ILR (1881) 3 All 776] , where Straight, J. explained that in the case of a rash act, the criminality lies in running the risk of doing an act with recklessness or indifference as to consequences. A similar meaning was given to the term "rash" by the High Court of Madras in *Nidamarti Nagabhushanam, In re* [*Nidamarti Nagabhushanam, In re*, (1871-74) 7 Mad HCR 119], where the Court held that culpable rashness meant acting with the consciousness that a mischievous and illegal consequence may follow, but hoping that it will not. (Emphasis Supplied) Culpability in the case of rashness arises out of the person concerned acting despite the consciousness. These meanings given to the expression "rash", have broadly met the approval of this Court also as is evident from a conspectus of decisions delivered from time to time, to which we shall presently advert. But before we do so, we may refer to the following passage from *A Textbook of Jurisprudence* by George Whitecross Paton reliance whereupon was placed by Mr Jethmalani in support of his submission. Rashness according to Paton means:

"where the actor foresees possible consequences, but foolishly thinks they will not occur as a result of his act".

58. In the case of "negligence" the courts have favoured a meaning which implies a gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual which having regard to all the circumstances out of which the charge arises, it may be the imperative duty of the accused to have adopted. Negligence has been understood to be an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do. (Emphasis supplied) Unlike rashness, where the imputability arises from acting



WEB COPY

despite the consciousness, negligence implies acting without such consciousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him. The imputability in the case of negligence arises from the neglect of the civil duty of circumspection."

10. From the above observations, it is clear that the meaning of the words rashness and negligence have evolved through Judicial pronouncements for a long time and has been approved by the Hon'ble Supreme Court in the above Judgment. The Hon'ble Supreme Court also made it clear that rashness and negligence are two different mental states. Therefore, it is proper that while framing Charge under Section 304-A of IPC, the trial Court must specifically state as to which of the mental states, the accused is charged with. Both the mental states would not go together.

11. While discussing about the difference between negligence in civil actions and in criminal cases, the Hon'ble Supreme Court was pleased to observe as follows in Paragraph 73:

"73. Conceptually the basis for negligence in civil law is different from that in criminal law, only in the degree of negligence required to be proved in a criminal action than what is required to be proved by the plaintiff in a civil action for recovery of damages. For an act of negligence to be culpable in criminal law, the degree of such negligence must be higher than what is sufficient to prove a case of negligence in a civil action. Judicial pronouncements have repeatedly declared that in order to constitute an offence, negligence must be gross in nature. That proposition was argued by Mr Ram Jethmalani at great length relying upon the English decisions apart from those from this Court and the High Courts in the country. In fairness to Mr Salve, counsel appearing for CBI and Mr Tulsi appearing for the Association of Victims, we must mention that the legal proposition propounded by Mr Jethmalani was not disputed and in our opinion rightly so. That negligence can constitute an offence punishable under Section 304-A IPC only if the same is proved to be gross, no matter the word "gross" has not been used by Parliament in that provision is the settled legal position. It is, therefore, unnecessary for us to trace the development of law on the subject, except making a brief reference to a few notable decisions which



were referred to at the Bar."

12. The Hon'ble Supreme Court in Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 was pleased to hold that the word "gross" has to be read into the provisions of 304-A. The relevant portions of the judgment of the Hon'ble Supreme Court are found in Paragraph 48.6 which is extracted below:

"(6) The word "gross" has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly"."

13. The Hon'ble Supreme Court in Sushil Ansal case stated supra clarified that it is impossible to define exactly as what would be "gross" "Rashness" or "negligence" and that it would depend on facts and circumstances of each case. The relevant portion in Paragraph 78 of the said judgment is as follows:

"78. There is no gain saying that negligence in order to provide a cause of action to the affected party to sue for damages is different from negligence which the prosecution would be required to prove in order to establish a charge of "involuntary manslaughter" in England, analogous to what is punishable under Section 304-A IPC in India. In the latter case it is imperative for the prosecution to establish that the negligence with which the accused is charged is "gross" in nature no matter that Section 304-A IPC does not use that expression. What is "gross" would depend upon the fact situation in each case and cannot, therefore, be defined with certitude. Decided cases alone can illustrate what has been considered to be gross negligence in a given situation."

14. Thus, from the above discussion, it would be clear that "negligence" or "rashness" per se are not culpable unless it is grave or gross in nature. That apart, the facts of the instant case would show that the act of the accused was not the "causa causans" for the death of the deceased. Even according to the prosecution, the deceased fell off the bike and thereafter runover by the lorry. The act of the accused, therefore, was not the immediate cause for the death of the deceased. The Hon'ble Supreme Court in Sushil Ansal stated supra was pleased to observe as follows:



WEB COPY

"82. To sum up : for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim.

83. As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (5th Edn.) which defines that expression as under:

"Causa causans.—The immediate cause; the last link in the chain of causation."

The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines causa causans as follows:

"Causa causans.—The immediate cause as opposed to a remote cause; the 'last link in the chain of causation'; the real effective cause of damage."

84. The expression "proximate cause" is defined in the 5th Edn. of Black's Law Dictionary as under:

"Proximate cause.—That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. *Wisniewski v. Great Atlantic & Pacific Tea Co.* [226 Pa Super 574 : 323 A2d 744 (1974)] , A2d at p. 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or



WEB COPY

omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission."

15. From the available evidence on record and the case of the prosecution, it could be seen that the prosecution has neither established culpable "rashness" or "negligence" nor established that the act of the accused was the "causa causans" for the death of the deceased.

16. For the foregoing reasons, the judgment of the Learned Principal Sessions Judge passed in C.A. No. 671 of 2017 confirming the judgment of the Trial Court is set aside and the accused is set at liberty.

17. Accordingly, the Criminal Revision is allowed. The bail bond if any executed by the petitioner/accused shall stand cancelled.

Sd/-
Assistant Registrar (CS-VI)

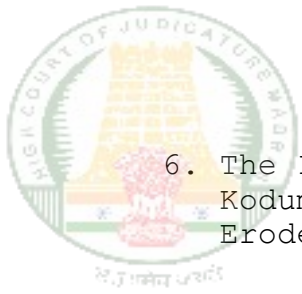
//True copy//

Sub Assistant Registrar

vsn

To

1. The Principal Sessions Judge,
Erode.
2. The District Munsiff Cum Judicial Magistrate,
Kodumudi
3. The Chief Judicial Magistrate,
Erode (Information)
4. The Superintendent,
Central Prison, Coimbatore.
5. The Public Prosecutor,
High Court, Madras.



6. The Inspector of Police,
Kodumudi Police Station,
Erode District.

WEB COPY

+1cc to Mr.C.Ramkumar, Advocate SR.No.35081

Cr1.RC.No.671 of 2017

GSM(CO)

GMV(30/06/2022)