



BAIL SLIP

The Petitioner/Accused viz., Sakthivel, Male Aged 37 years, S/o.Siddha Nadar was directed to be released on bail as per order of this Court dated 18.05.2017 in CrI.MP.No.6565 & 6566 of 2017 in CrI.R.C.No.685 of 2017 on the file of this Court.

THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 20.06.2022]

[Pronounced on : 24.06.2022]

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.R.C.No.685 of 2017

Sakthivel

...Petitioner

vs.

State, rep. by The Inspector of Police

Mettur Police Station, Salem District,
(Ref.Crime No.163 of 2010)

...Respondent

Prayer: Criminal Revision petition filed under Sections 394 r/w 401 of Cr.P.C, to call for the records and set aside the Judgement passed in C.A.No.112 of 2016 dated 18.04.2017, on the file of the II Additional District and Sessions Judge, Salem and Judgement in C.C.No. 208 of 2010 dated 17.10.2016 on the file of Judicial Magistrate - I, Mettur.

For Petitioner : Mr.V.Vijayakumar

For Respondent : Mr.S.Sugendran,
Additional Public Prosecutor,

ORDER

This Revision petition has been filed to call for the records and set aside the Judgement made in CrI.A.No.112 of 2016 dated 18.04.2017, passed by the learned II Additional District and Sessions Judge, Salem and confirming the Judgement made in C.C.No. 208 of 2010 dated 17.10.2016 passed by the learned Judicial Magistrate -I, Mettur.



2.The petitioner/accused was convicted for the offence under Section 279 IPC, and sentenced to pay a fine of Rs.500/- and in default to suffer one month Simple Imprisonment, for the offence under Section 337 (4 Counts) IPC sentenced to pay a fine of Rs.500/- for each count and in default to suffer one month Simple Imprisonment and for Section 304-A IPC and sentenced to undergo two years Simple Imprisonment and to pay a fine of Rs.5000/-, and in default to suffer three months Simple Imprisonment, by the Judgement dated 17.10.2016 passed in C.C.No.208 of 2010. Against the Judgement of the trial Court, the petitioner filed an appeal in C.A.No.112 of 2016 before the II Additional District and Sessions Judge by the Judgement dated 18.04.2017 dismissed the Appeal and confirmed the trial Court's Judgement and conviction.

3.The Prosecution in order to establish its case examined P.W.1 to P.W.16 and marked Ex.P.1 to Ex.P.11. The petitioner examined D.W.1 and D.W.2 of his side.

4.The brief facts of the case is that on 30.04.2010 at about 5.30 p.m in Mettur to Bavani Main Road, Kaveri Cross Muniyappan Kovil Street, the petitioner drove the passenger bus of Venkateswara Transport bearing Reg.No.TN-52-5577 in a rash and negligent manner and collided against the stationary lorry bearing Reg.No.TN-23-T-977 from behind, due to which a passenger of the bus, a boy aged twelve one Krishnan, died on the spot and five other passengers namely, Venkatachalam, Azhagesan, Vadivel, Mani and Arukani sustained simple injuries.

5.The defacto complainant is the father of the deceased Krishnan who lodged a complaint and a case in Crime No.163 of 2010 for the offence under Sections 279, 337 and 304 - A IPC came to be registered. On conclusion of investigation, the final report was filed. The Prosecution examined P.W.1 to P.W.16 and marked Ex.P1 to Ex.P11. The petitioner examined D.W.1 and D.W.2 on his side. P.W.1 is the father of the deceased Krishnan. In his complaint, he has stated that on 30.04.2010 at about 5.30 p.m., he along with his wife viz., Selvarani (PW10), his daughter, his son, his sister and his brother-in-law and his wife Kavitha and their two daughters all travelled in the bus after visiting Temple at Madheswaran hills, the bus in which they travelled crossed river cauvery, collided against the stationary lorry from behind and caused the accident, due to which, he lost his son and many passengers in the bus sustained injuries. The complaint was marked as Ex.P.1. PW2, PW3, PW4 and PW6 were the passengers in the bus who had sustained injuries. PW5 and PW7 are the



WEB C

brothers-in-law of PW1. PW5 was informed about the accident by PW7. PW8 and PW9 are the witnesses to the inquest. PW10 is the wife of PW1 and mother of deceased who also travelled in the bus. PW11 is the tailor who is said to have witnessed the accident and is a witness for the observation mahazar Ex.P2. PW12 is the Casualty Doctor attached to the Government Hospital who treated PW2 Venkatachalam and issued Ex.P3 wound certificate, treated PW6 issued Ex.P4 wound certificate, treated PW5 issued Ex.P6 wound certificate, treated PW4 issued Ex.P7 wound certificate. PW13 is the Doctor who conducted the Post-mortem and issued a post-mortem certificate as Ex.P.8. PW14 is the Grade I Motor Vehicle Inspector who inspected the vehicles and confirmed the accident, between the bus bearing Reg.No.TN-52-Y-5577 and lorry bearing Reg.No.TN-23-T-9777, issued a motor vehicle report. PW15 Sub Inspector of Police, visited the accident spot, registered the First Information Report. PW16 is the Investigating officer who conducted further investigation, visited the scene of occurrence, prepared the observation mahazar and rough sketch, recorded the statement of witnesses present in the scene of occurrence and also the injured witnesses, and thereafter, filed the final report. The petitioner examined one Perumal as D.W.1 to establish the fact that the accident did not take place due to the negligence of the petitioner and that it was raining at the time of occurrence and it was only a case of an accident. The petitioner examined D.W.2 viz.,Sunder rajan who travelled in the bus, who has deposed to the effect that the petitioner tried to apply brakes and because of the slippery road, the vehicle skidded and accidentally collided with the stationary lorry.

6.Both the Courts below on appreciation of the evidence of the eyewitnesses who were seated inside the bus and on application of the principle of "res ipsa loquitur" came to the conclusion that the petitioner was guilty of the offence under Section 304-A and the other offences that he was charged with.

7. The learned counsel for the petitioner submitted that the prosecution had not established either rashness or negligence on the part of the petitioner. The witnesses who are said to have witnessed the occurrence were all passengers travelling in the bus driven by the petitioner except for P.W.11. They are P.W.1, P.W.2 to P.W.4, P.W.6 and P.W.10. P.W.2 to P.W.4 and P.W.6 sustained injuries in the accident. He would submit that there is no evidence to show as to where these witnesses were seated except for PW6 who says that he was seated in the third row and hence it has not been established by the prosecution that they were in a position to



witness the occurrence. Hence, according to him their version cannot be believed. In any event, he would submit that none of them including P.W.11 have spoken about rashness or negligence and they only stated that the bus was speeding. The learned counsel for the petitioner would submit that the road on which the accident took place was a State Highway and speeding by itself cannot be the basis to infer either rashness or negligence. That apart he would submit that the lorry was not parked in any designated parking lot. He would also submit that the investigation was not conducted in a proper and impartial manner. The rough sketch which the Investigating Officer is said to have prepared was suppressed by the prosecution. The Motor vehicle Inspector had not visited the place of accident and not recorded the tyre marks. According to him, neither the trial Court nor the appellate Court appreciated the evidence in the proper perspective and convicted based on surmises and conjectures only because a person died and there were five injured witnesses due to the accident.

8. In support of his contention, the learned counsel for the petitioner relied upon the following Judgements in 1) "State of Karnataka Vs. Sathish reported in 1998 (8) SCC 493, 2) Mohammed Aynuddin @ Miyam Vs. State of Andhra Pradesh reported in 2000 (7) SCC 72, 3) M. Subramani Vs. State rep. by IoP Edappadi PS reported in 2017 (1) LW (Cr1) 160 and 4) Alagumani Vs. State rep. by Iop Kallal PS order in Cr1.R.C. (MD) No.780 of 2016 dated 11.08.2021".

9. The learned Public Prosecutor submitted that the occurrence took place because of the negligent act of the petitioner which is amply proved by the evidence of the eye witnesses who travelled in the bus, five of whom were injured and that of P.W.11. According to him, their evidence, coupled with application of the principle of "Res ipsa loquitur" establishes the negligence on the part of the petitioner. He would also submit that the accident did not take place due to any mechanical failure as deposed by P.W.14 viz. the Motor Vehicle Inspector and that it was due to the fault of the petitioner.

10. This Court on perusal of the records and on hearing the submissions of the learned counsel on either side finds that all the witnesses except P.W.11 examined by the prosecution to prove the occurrence were passengers who travelled in the bus driven by the petitioner. As rightly



WEB COPY

contended by the learned counsel for the petitioner there is no evidence to show as to where these witnesses were seated and whether they were in a position to witness the accident except for P.W.6 who would say that he was sitting on the left hand side of the bus in the third row. That apart none of the witnesses has spoken about either rashness or negligence on the side of the petitioner. We find that though the P.Ws 2 to 4 and 6 were injured in the absence of any evidence to show as to where they were seated it is highly unsafe to rely upon the version and especially when their versions are parrot like repetitions. P.W.1 also does not say where he was seated. In any event all of them only say that the bus was speeding and collided with the stationary lorry from behind, and there is nothing to suggest from their evidence that the petitioner drove the vehicle in either rash or negligent manner.

11.The learned counsel for the petitioner relied upon the Judgement of the Hon'ble Apex Court reported in 1998 (8) SCC 493, in support of his submission that high speeding alone cannot be proof of either rashness or negligence. The relevant observations of the Hon'ble Supreme Court is 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 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 fact 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 and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not 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"

The other Judgements relied on by the petitioner reiterate the above principle of law.

12.The above Judgement of the Hon'ble Supreme Court,



WEB C

squarely applies to the facts of the instant case. The prosecution had not established what the witnesses meant by speeding. As observed by the Hon'ble Supreme Court it is a relative term. The prosecution also failed to examine any independent witnesses other than P.W.11 who had witnessed the occurrence from outside. Admittedly, it was a crowded place where there was a tea shop and several lorries were parked.

13. The Courts below applied the principle of *res ipsa loquitur* to come to the conclusion that since there was substantial damage to the bus, one can infer that it had happened only due to the negligence on the part of the petitioner. The lower Appellate Court besides applying the principle of *res ipsa loquitur* also held that the petitioner was driving the bus regularly in the road where the occurrence took place and it has to be presumed that he had knowledge of lorries being parked at that particular place. The trial Court went to an extent of holding that the appellant was a driver of private bus company and it is a matter of common knowledge that the drivers of private bus companies always drive in a rash manner to complete the trips in quick time and make more money. The conclusions based on these types of surmises and conjectures in our view is unknown to criminal law.

14. The next question is to what extent the principle of *res ipsa loquitur* can be applied to establish culpable negligence or culpable rashness under Section 304-A of IPC. The Courts below had applied this principle on the basis that substantial damage was caused to the bus driven by the petitioner and also since one person died and five persons were injured. This Court is of the view that mere damage, substantial or otherwise, cannot be the sole basis to infer culpable rashness or negligence, by applying the principle of '*res ipsa loquitur*'. When two heavy vehicles are involved in an accident, the damage would obviously be huge and that cannot conclusively establish culpable rashness or negligence.

15. The law relating to application of the principle *res ipsa loquitur* in criminal cases is no longer *res integra*. The Hon'ble Supreme Court in *Syad Akbar Vs. State of Karnataka* reported in 1980 1 SCC 30 in para 28 to 30 has elaborately dealt on this aspect which is extracted below:

28. In our opinion, for reasons that follow, the first line of approach which tends to give the maxim a larger effect than that of a merely permissive inference, by laying down that the application of the maxim shifts or casts, even in the first instance, the burden on the defendant who in order to exculpate



WEB COPY

himself must rebut the presumption of negligence against him, cannot, as such, be invoked in the trial of criminal cases where the accused stands charged for causing injury or death by negligent or rash act. The primary reasons for non-application of this abstract doctrine of *res ipsa loquitur* to criminal trials are: Firstly, in a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution, as every man is presumed to be innocent until the contrary is proved, and criminality is never to be presumed subject to statutory exception. No such statutory exception has been made by requiring the drawing of a mandatory presumption of negligence against the accused where the accident "tells its own story" of negligence of somebody. Secondly, there is a marked difference as to the effect of evidence viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of Judgement. As pointed out by Lord Atkin in *Andrews v. Director of Public Prosecutions* simple lack of care such as will constitute civil liability, is not enough"; for liability under the criminal law "a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied 'reckless' most nearly covers the case".

30. Such simplified and pragmatic application of the notion of *res ipsa loquitur*, as a part of the general mode of inferring a fact in issue from another circumstantial fact is subject to all the principles, the satisfaction of which is essential before an



WEB COPY

accused can be convinced on the basis of circumstantial evidence alone. These are Firstly all the circumstances, including the objective circumstance constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing unerringly towards the guilt of the accused. Thirdly, the circumstance shown make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with is innocence, and inferentially exclude all reasonable doubt about his guilt.

16. The Hon'ble Supreme Court in Jacob Mathew vs. State of Punjab reported in 2005 6 SCC 1 in para 27 was pleased to observe as follows:

In criminal proceedings, the burden of proving negligence as an essential ingredient of the offence lies on the prosecution. Such ingredient cannot be said to have been proved or made out by resorting to the said rule (see Syad Kabir vs. State of Karnataka (1980) 1 SCC 30). Incidentally, it may be noted that in Krishnan and Anr. v. State of Kerala (1996) 10 SCC 508, the Court has observed that there may be a case where the proved facts would themselves speak of sharing of common intention and while making such observation one of the learned judges constituting the Bench has in his concurring opinion merely stated '*res ipsa loquitur*'. Nowhere it has been stated that the rule has applicability in a criminal case and an inference as to an essential ingredient of an offence can be found proved by resorting to the said rule. In our opinion, a case under Section 304A Ipc cannot be decided solely by applying the rule of *res ipsa loquitur*.

17. In a recent judgement the Hon'ble Supreme Court reported in Nanjundappa and Another vs. State of Karnataka [2022 SCC Online Sc 628] was pleased to follow the dictum of the Hon'ble Supreme Court in Syad Kabir v. State of Karnataka



WEB COPY

(1980) 1 SCC 30). The relevant observations are extracted hereunder:

9. Here it would be useful to advert to the dictum in the case of Syad Akbar Vs. State of Karnataka 1 and 1 MANU/SC/0275/1979; 1979CriLJ 1374 which this Court proceeded on the basis that doctrine of "res ipsa loquitur" stricto sensu would not apply to a criminal case as its applicability in an action for injury by negligence is well known. In Syad Akbar (supra), this Court opined:

29. Such simplified and pragmatic application of the notion of res ipsa loquitur as part of the general mode of inferring a fact in issue from another circumstantial fact is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are:

Firstly, all the circumstance, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established.

Secondly, those circumstance must be of a determinative tendency pointing unerringly towards the guilt of the accused. Thirdly, the circumstances should make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt.

18. Thus, from the above Judgements of the Hon'ble Apex Court the following principles emerge:

(a) The Doctrine of "Res ipsa loquitur" cannot be applied in Criminal cases in the same manner as it is applied in torts.

(b) In the tort of negligence inference may be drawn from proved circumstances by applying the rule if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant.

(c) Such an inference cannot be made in Criminal cases firstly because there is a presumption of innocence and the burden of proving the charge rests on the prosecution. Secondly, the nature of proof required in criminal case is 'proof beyond reasonable doubt' unlike in civil proceedings where a fact can be established by preponderance of probability.

(d) However, in a case involving culpable negligence or rashness while assessing the evidence on record the rule of "Res ipsa loquitur" can only be used for the limited purpose



of making a permissive inference under Section 114 of the Indian Evidence Act. This inference has to be considered along with the other circumstances/evidence on record and cannot be the sole basis for coming to any conclusion. This inference along with other firmly established circumstances must form a complete chain pointing to the guilt of the accused ruling out any other hypothesis.

19. Applying the above principle to facts on hand we find that the prosecution has not proved the circumstances suggesting the guilt of the accused. The evidence of the eye witnesses do not inspire confidence as discussed earlier. It is seen that there is nothing to suggest from their evidence that the petitioner had driven the bus in a rash or negligent manner. The rough sketch said to have been prepared by the Investigating Officer has not been marked for the reasons best known to the prosecution. In the absence of other firmly established circumstances, the accused cannot be convicted only on the permissive inference under Section 114 of Indian Evidence Act using the principle of "Res ipsa loquitur". The defence of the accused that the accident took place in a State highway on a rainy day and the lorry was parked in an unauthorised place and hence even assuming that there was negligence on his part it cannot be termed as gross negligence punishable under Section 304-A IPC has to be accepted.

20. For the foregoing reasons, this Court is of the view that the Judgement of the Appellate Court confirming the Judgement of the trial Court is set aside and the accused is hereby acquitted from all the charges levelled against him. The bail bond if any executed by the petitioner/accused shall be cancelled.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

dk

To



1.The II Additional District & Sessions Judge,
Salem.

2.The Judicial Magistrate - I,
Mettur.

3.The Inspector of Police,
Mettur Police Station.

4.The Public Prosecutor
High Court of Madras, Chennai - 600 104.

Crl.R.C.No.685 of 2017

SKM (CO)
PR (08/07/2022)