



Crl.R.C.No.1450 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

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

Crl.R.C.No.1450 of 2018

Muthukumar

... Petitioner

Vs.

The State
represented by The Inspector of Police,
Traffic Investigation Wing,
Anuparpalayam Police Station,
Thiruppur.
(Crime No.110 of 2016)

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records of the learned IInd Additional District and Sessions Judge, Thiruppur in Crl.A.No.33 of 2018 by its Judgment dated 14.08.2018 by which confirming the conviction and sentence imposed by the learned Judicial Magistrate No.III, Thiruppur, C.C.No.92 of 2017 by the Judgment dated 14.03.2018 and set aside the Judgments of the Courts below and acquit the petitioner.

For Petitioner : Mr.M.Guruprasad
for Mr.D.Ramesh Kumar

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

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This Criminal Revision case has been filed as against the Judgment passed in Crl.A.No.33 of 2018 dated 14.08.2018 by the learned IInd Additional District and Sessions Judge, Thiruppur, thereby confirming the Judgment passed in C.C.No.92 of 2017, dated 14.03.2018 on the file of learned Judicial Magistrate No.III, Tiruppur, thereby convicted the petitioner for the offence punishable under Sections 279 and 304A of IPC.

2. The case of the prosecution is that on 02.02.2016, at about 09.10 a.m, opposite to Saran Hospital in Tiruppur to Perumanallur Road, Poyampalayam, the accused drove his lorry bearing Registration No. TN 33 AU 7490 from south to north in a rash and negligent manner while overtaking the two wheeler which was driven by the deceased bearing Registration No.TN 30 BQ 4419 Bajaj Pulsar, hit the two wheeler by bumper of the lorry and the deceased fell down and sustained grievous injuries and thereafter he died. Hence, the complaint.



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3. On receipt of the complaint, the respondent registered FIR in Crime No.110 of 2016 for the offences punishable under Sections 279 and 304A of IPC. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.92 of 2017 on the file of the learned Judicial Magistrate No.III, Tiruppur.

4. In order to bring home the charges, the prosecution had examined P.W.1 to P.W.12 and marked Exs.P1 to P8. On the side of the petitioner, no one was examined and no document was marked. On a perusal of oral and documentary evidences, the Trial Court found the accused guilty for the offence punishable under Sections 279 and 304A of IPC and sentenced him to undergo six months rigorous imprisonment for the offence under Section 279 of IPC. He was also sentenced to undergo one year rigorous imprisonment for the offence under Section 304A of IPC. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed confirming the Judgment passed by the Trial Court. Hence, this revision.



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5. The learned counsel for the revision petitioner would submit that in order to bring home the charges, the prosecution had examined P.W.1 to P.W.12 in which, P.W.2 and P.W.9 were eye witnesses to the occurrence. The other witnesses are only hear say witnesses. They did not see the occurrence. Even P.W.2 is none other than the own cousin brother of the petitioner, who happens to be the eye witness to the occurrence. Therefore, he is the interested witness and his deposition cannot be taken into account for conviction. Even assuming that the evidence of P.W.2 can be considered, he did not whisper about whether the petitioner drove his lorry in a speedy manner and only because of his rash and negligent driving the accident had occurred, due to which the victim died. Likewise, another eye witness P.W.9 did not even whisper about the rashness or negligent driving of the petitioner. Therefore, even according to the case of the prosecution, the petitioner never drove the lorry in a speedy manner and as such only because of the rash and negligent driving of the two wheeler by the victim, the accident had occurred and he died. Moreover, immediately, after the alleged occurrence, it was in evidence that the victim was taken to Saran



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Hospital. However, no Accident Register was marked and the Doctor who is alleged to have given first aid to the victim was also not examined by the prosecution. According to the learned counsel for the petitioner, these hallows are fatal to the case of the prosecution. Thus, the entire conviction is based on the evidence of P.W.2 to P.W.9, which cannot be sustained as against the petitioner. When the prosecution failed to prove that the petitioner drove the lorry in a rash and negligent manner, the Doctrine of res ipsa loquitur cannot be applicable. It is also not the case of the prosecution that the petitioner drove his lorry in a speedy manner. Even assuming that the prosecution had proved that the petitioner drove his lorry in a speedy manner, the place of accident is a market place and the petitioner could not have driven the lorry in a speedy manner.

6. In support of his contention, he relied upon the Judgment of this Court reported in **2017 2 MWN (Crl) 475** in the case of ***Senthilkumar Vs The Station House Officer, Valavanur Police Station, Villupuram District (Cr.No.321 of 2009)***, in which this Court held that the witnesses failed to speak about the rash or negligent act on the part of



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the accused, the rash and negligent act on the accused cannot be defined merely because the deceased met with an unfortunate accident.

7. He also 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***, in which the Hon'ble Supreme Court of India held that the merely because the truck was being driven at a “high speed” does not be 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 material on the record, no presumption of “rashness” or “negligence” could be drawn by invoking the maxim “res ipsa loquitur”.

8. Per contra, the learned Government Advocate (Crl.Side) would submit that P.W.2 and P.W.9 were eye witnesses to the occurrence. They



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categorycally depoced that the petitioner drove his lorry in a rash and negligent manner and hit the two wheeler while overtaking the two wheeler. Therefore, the victim/deceased fell down and sustained injuries and due to the injuries, he died. Therefore, only because of the rash and negligent driving of the petitioner, the accident had occurred and due to which the deceased died. It is not the case of the prosecution that the petitioner drove his lorry in a speedy manner. Therefore, the Judgments cited by the learned counsel for the petitioner are not helpful to the case on hand. He further submitted that the Motor Vehicle Inspector of was examined as P.W.11 and he categorycally depoced that he found a mark on the rear side bumper of the lorry, which hit the two wheeler and caused accident. He further depoced that the accident had not happened due to any mechanical defects. Therefore, both the Courts below rightly convicted the petitioner for the offences punishable under Sections 279 and 304A of IPC.

9. Heard, Mr.M.Guruprasad, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side)



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appearing for the respondent.

10. The petitioner was charged for the offences under Sections 279 and 304A of IPC. Admittedly, on 02.02.2016, at about 09.10 a.m, when the petitioner drove his lorry bearing Registration No.TN 33 A 7490 from south to north, opposite to Saran Hospital in Tiruppur to Perumanallur road, Poyampalayam, while overtaking the two wheeler which was driven by the deceased bearing Registration No. TN 30 BQ 4419 Bajaj Pulsar, the petitioner's lorry rear bumper had hit the two wheeler, due to which the deceased fell down and sustained grievous injuries. Thereafter, he was taken to Saran Hospital, Tiruppur, since he sustained grievous injuries and he was referred to KMCH, Coimbatore. Unfortunately, while he was being taken to the hospital, he died. Therefore, the Saran Hospital authorities did not record any Accident Register and without giving any first aid they straight away referred the case to the KMCH, Coimbatore, where the victim was declared dead and postmortem was conducted.



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11. The only point for consideration is that whether the prosecution proved that the petitioner drove his lorry in a rash and negligent manner. P.W.2 who is one of the eye witnesses to occurrence, who deposed that the petitioner drove the lorry bearing Registration No. TN 33 AU 7490 in a rash and negligent manner while overtaking the two wheeler which was driven by the victim, the rear bumper of the lorry had hit the two wheeler. Due to which, the deceased fell down and sustained grievous injuries. It was also corroborated by the evidence of P.W.9, who is another eye witness to the occurrence. P.W.9 deposed that without any horn, the petitioner had driven the lorry in a rash and negligent manner and hit the two wheeler, while overtaking the two wheeler. Therefore, the victim fell down and sustained grievous injuries. He further deposed that immediately, the victim was moved to Saran Hospital, which was opposite to the place of occurrence and he was referred to KMCH, Coimbatore. Unfortunately, while he was on the way to the hospital, he died due to the grievous injuries sustained by him.



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12. Thus, it is clear that the lorry which was driven by the petitioner had hit the two wheeler, due to which the victim fell down and sustained grievous injuries. P.W.2 and P.W.9 categorically deposed that only because of the rash and negligent driving of the petitioner, the accident had occurred, due to which, the victim died.

13. In this regard, it is relevant to rely upon of the Judgment of Hon'ble Supreme Court of India in **2012 9 SCC 284** in the case of **Ravi Kapur Vs. State of Rajasthan**, in which it was held as follows,

“(A) Rash and negligent driving

12. 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 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.

13. ‘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



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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

14. The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others".

14. Thus, it is clear that there are two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime.

15. Therefore, the Judgments cited by the learned counsel for the petitioner are not applicable to the case on hand. Hence, this Court has no hesitation to apply the Doctrine of res ipsa loquitor, since admittedly



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the petitioner was driving his lorry at the relevant point of time and while he was overtaking the two wheeler, he had hit the two wheeler, due to which, the victim fell down and sustained injuries.

16. Therefore, both the Courts below rightly convicted the petitioner for the offences punishable under Sections 279 and 304A of IPC and this Court finds no infirmity or illegality in the orders passed by the Courts below.

17. However, the learned counsel for the petitioner would submit that considering the age of the petitioner the sentence imposed on the petitioner may be reduced.

18. In view of the above submission, the conviction and sentence imposed on the petitioner for the offence punishable under Section 279 of IPC is hereby confirmed. Insofar as the offence punishable under Section 304A of IPC is concerned, while confirming the conviction, the sentence imposed on the petitioner alone is reduced from one year to six



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months. The respondent is directed to secure the petitioner to serve the remaining period of sentence. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C.

19. Accordingly, this Criminal Revision case is partly allowed.

21.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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G.K.ILANTHIRAIYAN, J

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To

1. The IInd Additional District and Sessions Judge, Thiruppur.
2. The Judicial Magistrate No.III, Thiruppur.
- 3.The Inspector of Police,
Traffic Investigation Wing,
Anuparpalayam Police Station,
Thiruppur.
4. The Public Prosecutor,
High Court, Madras.

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