



Crl.R.C(MD)No.263 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.263 of 2018

Kannan

... Revision Petitioner/
Appellant/Accused

Vs.

The Inspector of Police,
Panagudi Police Station,
Tirunelveli District.
(Crime No.268 of 2001).

... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the Judgment passed in C.A.No.118 of 2015 on the file of the learned III Additional Sessions Judge, Tirunelveli, dated 02.02.2018, confirming the order passed in C.C.No.13 of 2004 on the file of the learned Judicial Magistrate, Valliyoor, dated 05.11.2015.

For Petitioner : Mr.G.Anto Prince

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl. Side)



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ORDER

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This Revision has been filed to set aside the Judgment passed in C.A.No.118 of 2015 on the file of the learned III Additional Sessions Judge, Tirunelveli, dated 02.02.2018, confirming the order passed in C.C.No.13 of 2004 on the file of the learned Judicial Magistrate, Valliyoor, dated 05.11.2015.

2.The case of the prosecution is that on 11.11.2001 at about 11.30 am., on Nagercoil-Tirunelveli National Highways road near Kavalkinaru Vilakku S.A.Raja Dental Hospital, the petitioner drove his Tempo bearing Registration No.TN-74-C-1132 after boarding 46 passengers in the goods carriage vehicle and turned upside down, due to rash and negligent driving. Therefore, four persons died, 5 persons sustained grievous injuries and 19 persons sustained simple injuries. On the complaint, the respondent registered the F.I.R in Crime No.268 of 2001 for the offences under Sections 279, 337 (19 counts), 338 (5 counts) and 304(A)(4 counts) against the petitioner herein. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.13 of 2004 on the file of the learned Judicial Magistrate, Valliyoor.



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3.On the side of the prosecution, they had examined P.W.1 to P.W.34 and marked Exs.P.1 to P.57 and on the side of the accused, no one was examined and no exhibits were marked.

4.On perusal of oral and documentary evidence, the trial Court found the accused guilty for the offences under Sections 279, 337 (19 counts), 338 (5 counts) and 304(A) (4 counts) of I.P.C and he was sentenced to pay a fine of Rs.500/-, in default to undergo one week Simple Imprisonment for the offence under Section 279 of I.P.C; he was sentenced to pay a fine of Rs.200/- each (Rs.200 X 19 = Rs.3,800/-), in default to undergo one week Simple Imprisonment for the offence under Section 337 of I.P.C (19 counts), he was sentenced to pay a fine of Rs.400/- each (Rs.400 X 5 = Rs.2,000/-, in default to undergo one week Simple Imprisonment for the offence under Section 338 of I.P.C (5 counts) and he was sentenced to undergo one year Simple Imprisonment each, in default to pay a fine of Rs.1,000/- each (Rs.1,000 X 4 = Rs.4,000/-) for the offence under Section 304(A)(4) of I.P.C (4 counts). The sentences shall go concurrently. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.118 of 2015 on the file of the learned III Additional



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Sessions Judge, Tirunelveli and the Appellate Court also confirmed the conviction and sentence imposed by the trial Court and dismissed the appeal. Hence, the present revision.

5.The learned counsel appearing for the petitioner would submit that no witness had spoken that the petitioner drove the Tempo in a rash and negligent manner. Though some of the witnesses had deposed that the petitioner drove the tempo in a speedy manner, it would not amount to rash and negligence. Some of the witnesses also deposed that only in order to avoid head-on collision with the opposite lorry, the petitioner turned the Tempo on his left-hand side and as such, he got upside down. Therefore, there is no fault on the petitioner to cause the accident and as such, he is liable to be acquitted. The accident had occurred due to unacceptable, the lorry came from the opposite side and the same was also categorically admitted by P.W.5. In support of his contention, he relied upon the following Judgments:-

"(i) Nanjundappa and another Vs. The State of Karnataka reported in 2022 SC 489.

(ii) Nachimuthu Vs. The Inspector of Police reported in 2011 SCC Mad 4.



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(iii) Sentu Rudra Paul Vs. The State of Tripura reported in Manu/TR/0378/2020.

(iv) Abdul Subhan Vs. State (NCT of Delhi) reported in 2006 SCC Online DEL 1132.

(v) State of Karnataka Vs. Sathish reported in (1998) 8 SCC 493.

(vi) Mahadeo Hari Lokre Vs. State of Maharashtra reported in (1972) 4 SCC 758 and

(vii) Saravanan Vs. State reported in Manu/TN/1988/2015.”

6.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that the prosecution witnesses categorically deposed that the petitioner only drove the Tempo. It is a goods carriage vehicle. Even then, without following the law and the road safety rules, the petitioner boarded 46 persons in the goods carriage vehicle and had driven the Tempo in a rash and negligent manner and caused the accident. He had driven the vehicle in a speedy manner and he had lost his control and he has turned the vehicle upside down and four persons died and so many persons sustained injuries. The motor vehicle



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Inspector also deposed that the accident was not occurred due to a mechanical fault. Therefore, the prosecution categorically proved its case and both the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.Admittedly, the petitioner had driven the Tempo bearing Registration No.TN-74-C-1132 on 11.11.2001 at about 11.30 a.m from Nagercoil-Tirunelveli National Highways road near Kavalkinaru Vilakku S.A.Raja Dental Hospital, in a rash and negligent manner and turned upside down. It is a goods carriage vehicle and without following the road safety rules and Motor Vehicles Act, the petitioner boarded 46 persons in the goods carriage vehicle. It is against the law and the petitioner was not supposed to carry the passengers in a goods carriage vehicle. P.W.1 to P.W.4 categorically deposed that the petitioner had only driven the Tempo in a speedy manner and he lost his control in the turning of the National Highways Road. Therefore, he turned the vehicle upside down and due to which four persons died and 42 persons



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sustained injuries. The motor vehicle Inspector was examined as P.W.32. He deposed that the vehicle was intact and the accident was not occurred due to any mechanical fault. Therefore, the accident occurred only due to the rash and negligent driving of the petitioner.

9.The learned counsel appearing for the petitioner relied upon the Judgment in Nanjundappa and another Vs. The State of Karnataka reported in 2022 Live Law (SC) 489, wherein the Honourable Supreme Court held as follows:-

"9. Here it would be useful to advert to the dictum in the case of Syad Akbar Vs. State of Karnataka¹ in 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 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 accused can be convicted on the basis of circumstantial evidence alone. These are: Firstly, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly,



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those circumstances 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."

10.It is true that in the case of circumstantial evidence, there is a risk of jumping to conclusions in haste. While evaluating such evidence the jury should bear in mind that inference of guilt should be the only reasonable inference from the facts. Whereas, in the case on hand, there were eyewitnesses, who travelled in the same Tempo and were deposed categorically that only because of the rash and negligent driving of the petitioner, the accident had occurred. Therefore, the prosecution had proved the negligence and established direct nexus between the negligence of the petitioner and the death of the victims. Therefore, the above Judgment is not helpful to the case on hand.



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11.Further, this Court respectively agreed with the dictum laid down by the Honourable Supreme Court of India that in the absence of any evidence to prove rash and negligent, merely driving the vehicle at high speed would not be sufficient to bring the offence under Section 304 of I.P.C. Whereas in the case on hand, there were witnesses and they categorically deposed that only because of rash and negligent driving of the petitioner, the accident had occurred. That apart, there was no collusion by other vehicle. The petitioner himself had driven the Tempo in a speedy manner and lost his control in the turning of the National Highways. Therefore, he turned the Tempo upside down and caused the accident due to which four persons died and 42 persons sustained injuries. The petitioner had driven the vehicle in a rash and negligent manner so as to endanger human life. Therefore, both the Courts below rightly convicted the petitioner for the offence under Sections 279, 337 (19 counts), 338 (5 counts) and 304(A) (4 counts) of I.P.C. This Court finds no infirmity or illegality in the order of conviction and sentence imposed by the Courts below and the Civil Revision Case is liable to be dismissed.



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12. Accordingly, this Criminal Revision Case is dismissed.

The trial Court is directed to take appropriate steps to secure the petitioner in order to serve the remaining period of sentence.

17.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1. The III Additional Sessions Court,
Tirunelveli.
2. The Judicial Magistrate,
Valliyoor.
3. The Inspector of Police,
Panagudi Police Station,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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