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Crl.RC.No.851 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2024

PRONOUNCED ON : 10.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

Crl.RC.No.851 of 2021

Boopathi

Petitioner

Vs

The State represented by the Inspector of Police
Mohanur Police Station, Namakkal

Respondent

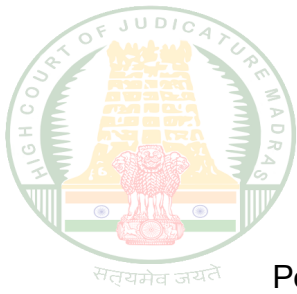
Prayer:- This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 21.10.2021 made in CA.No.48 of 2021, by the Sessions Judge, Special Court for Trial of Cases under the SC/ST (POA) Act at Namakkal, confirming the judgement of conviction and sentence, dated 24.02.2021, made in CC.No.116 of 2017 by the Judicial Magistrate II, Namakkal.

For Petitioner : Mr.M.Mohamed Riyaz

For Respondent : Mr.A.Gopinath, GA(Crl.Side)

ORDER

1. This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 21.10.2021 made in CA.No.48 of 2021, by the Sessions Judge, Special Court for Trial of Cases under the SC/ST (POA) Act at Namakkal, confirming the judgement of conviction and sentence, dated 24.02.2021, made in CC.No.116 of 2017 by the Judicial Magistrate II, Namakkal, thereby convicting and sentencing the Revision

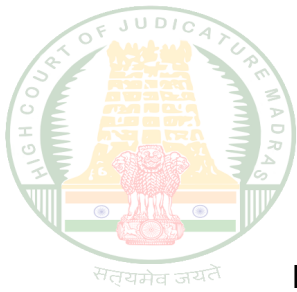


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Petitioner/Accused, Boopathi, for the offences under Section 279 of IPC to pay a fine of Rs.1,000/-, in default to undergo 3 months Simple Imprisonment and under Section 338 of IPC to pay a fine of Rs.1,000/-, in default to undergo 3 months Simple Imprisonment and under Section 304A of IPC to undergo six months Simple Imprisonment.

2. The case of the Prosecution, arisen on the basis of the complaint, Ex.P3, First Information Report, given by the defacto complainant, PW.1, Jagadeeswaran, registered in Crime No.376 of 2016 at the Mohanur Police Station for the offences under Sections 279, 338 and 304A of IPC, is as follows:-

- (a) When on 30.10.2016 at about 2.15 p.m., the father of the defacto complainant, Kuppusamy, was riding his two wheeler, bearing Reg.No.TN 48 the 9193, on the left side of the road towards North direction, in Mohanur to Karur Road, along with his wife, Chellammal, PW.3, as a pillion rider, at Vangal Bridge, a Car, bearing Reg.No.TN 88 A 7243, coming in the opposite direction and driven by the Revision Petitioner/ accused, Boopathi, in a rash and negligent manner, hit against the said two wheeler and caused the accident. In the above said accident, both the rider and the pillion rider of the said two wheeler sustained grievous injuries and the rider, Kuppusamy died on the way to Hospital. Hence, for such acts, the Respondent Police, after conducting investigation, had filed a charge sheet against the Revision Petitioner/ accused for the offences under Sections 279, 338 and 304A of IPC



before the Judicial Magistrate II, Namakkal.

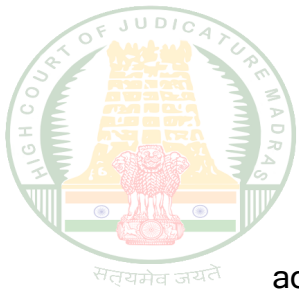
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3. The case was taken on file in CC.No.116 of 2017 by the Judicial Magistrate II, Namakkal. After receipt of summons from the Trial Court, when the accused appeared in person before the Trial Court, copies of the documents were served on them under Section 207 of Cr.PC. After giving sufficient time to the accused and after hearing the accused and considering the documents, necessary charges were framed for the offences under Sections 279, 338 and 304A of IPC. Since the accused had denied the charges and pleaded not guilty of the aforeaid charges and claimed to be tried, in order to bring home the charges against the accused, the Prosecution examined the following 11 witnesses, as PW.1 to PW.8 and marked 9 documents as Ex.P1 to Ex.P9.

1. PW.1 = Jagadeeswaran
2. PW.2 = Praveen, relative of PW.1, (eye witness)
3. PW.3 = Chellammal, wife of the deceased (eye witness)
4. PW.4 = Radhika (hearsay witness)
5. PW.5 = Gopalakrishnan (mahazar witness)
6. PW.6 = Nithyanandam (mahazar (witness)
7. PW.7 = Vijayan, Sub Inspector of Police
8. PW.8 = Elango, Investigating Officer

1. Ex.P1 = Complaint given by PW.1
2. Ex.P2 = Observation mahazar
3. Ex.P3 = First Information Report
4. Ex.P4 = Rough Sketch
5. Ex.P5 = Inquest Report
6. Ex.P6 = Post-mortem certificate
7. Ex.P7 = MVI Report of Two Wheeler
8. Ex.P8 = MVI Report of the Car
9. Ex.P9 = Wound Certificate of Chellammal

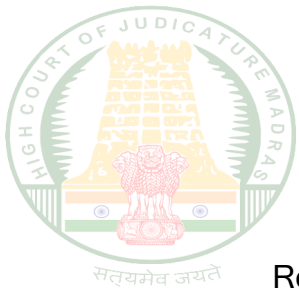
4. On completion of the evidence on the side of the Prosecution, when the



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accused was questioned under Section 313 of Cr.PC, as to the incriminating circumstances found in the evidence of prosecution witnesses against him, the accused had come with the version of total denial and stated that he had been falsely implicated in this case. On the side the accused, one Subramani was examined as DW.1 and no document was marked.

5. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the Revision Petitioner guilty and awarded punishments, as referred to above, by the impugned judgement of conviction and sentence. On the appeal, the lower appellate court had, by its impugned judgement of conviction and sentence, confirmed the judgement of conviction and sentence of the Trial Court. Aggrieved over the same, this Criminal Revision Case has been filed by the Revision Petitioner/ accused.
6. This Court heard Mr.M.Mohamed Riyaz, the learned counsel for the Revision Petitioner/accused and Mr.A.Gopinath, the learned Government Advocate (Criminal Side) for the Respondent. Translated copies of the judgements and the other connected documents were supplied by learned counsel for the parties in the Court for consideration.
7. The learned counsel for the Revision Petitioner/accused has submitted that the trial courts have not appreciated the evidence in a proper and perspective manner and that though there is no valid, reliable and cogent evidence, both oral and documentary evidence, to base conviction on the

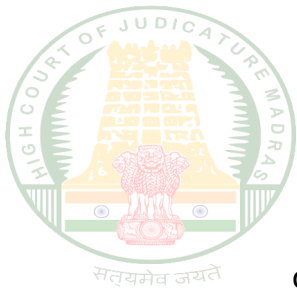


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Revision Petitioner/accused for the offences under Sections 279, 338 and 304A of IPC, the trial courts erred in convicting the Revision Petitioner only based on the evidence of the interested witnesses.

8. The learned counsel for the Revision Petitioner/accused has further submitted that the impugned judgements of conviction and sentence of the trial courts are not sustainable on the following grounds:-

- a) Though the date of occurrence is 30.10.2016 at 2.15 p.m., Ex.P3 First Information Report was registered on 31.10.2016 at 7.00 a.m. The First Information Report was sent to the Court after a delay of two days, which has not been properly and satisfactorily explained by the Prosecution. Since, PW.7, Sub Inspector of Police has stated that he received a written complaint from PW.1, but, PW.1 has stated that he instructed the Police about the accident and he wrote the complaint, the registration of the First Information Report itself becomes highly doubtful and there were every possibilities to falsly implicate the Revision Petitioner for some other reasons.
- b) There is no independent eye witness to the occurrence. The alleged, eye witnesses, namely, PW.1 to PW.3 who are relatives, namely, wife and sons, are interested witnesses. As per the evidence of, PW.7, Sub Inspector of Police, PW.2 could not have witnessed the occurrence. PW.3, has also deposed that she did not see the driver of the car, which caused the accident. Since the evidence of PW.1 to PW.3 are contradictory in nature, they cannot be treated as eye witnesses to the



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occurrence.

c) There is also another contradiction in the evidence of PW.1 and PW.2.

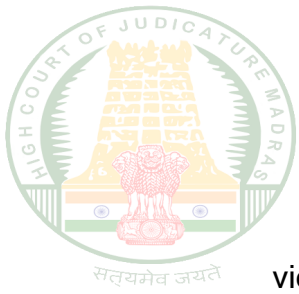
PW.1 has not stated in the complaint that he was riding the vehicle along with his cousin brother PW.2, as a pillion rider. But, PW.1, in his oral evidence has stated that PW.2, who was claimed to be an eye witness to the occurrence, was a pillion rider.

d) The essential requirements of rash and negligent driving on the part of the Revision Petitioner/accused have not been proved, by valid evidence. None of the witnesses deposed about the rash and negligent driving of the Revision Petitioner.

e) Though PW.3 had stated in her evidence that she did not saw the driver of the vehicle, which caused the accident, the Trial Court gave a wrong finding that PW.3 has identified the accused at the time of the accident. Thus, there is no proper appreciation of evidence on the part of the trial courts.

f) Non examination of the Motor Vehicle Inspector to prove the damage and cause of damage for the two wheeler and the Medical Officers, who treated the injured and conducted post-mortem, would be fatal to the case of the Prosecution.

9. The learned counsel for the Revision Petitioner has ultimately submitted that in view of the above said grounds, the case of the Prosecution appears to be wholly unreliable and that the Prosecution has miserably failed to prove its case beyond the realm of reasonable doubts and that in



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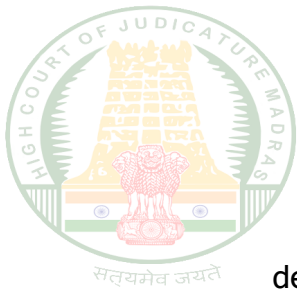
view of the above said grounds and in the absence of valid, convincing and cogent evidence against the Revision Petitioner/accused to base conviction for the offences under Sections 279, 338 and 304A of IPC, the impugned judgements of conviction and sentence are not sustainable.

10. In support of his contentions, the learned counsel for the Revision Petitioner has relied on the following decisions:-

- a) 2021 CDJ MHC 6783 (Subburam Vs. Inspector of Police)
- b) 2016 SCC Online Mad 30704 (Renugopal Vs. State)
- c) CDJ 2019 MHC 5962 (Sankarapandiyan Vs State)
- d) Order dated, 23.12.2020 in Crl.RC.No.1090 of 2020 of the Madras High Court
- e) Order dated, 16.12.2020, in Crl.RC.No.1118 of 2020 of the Madras High Court

11. Per contra, the learned Government Advocate (Criminal Side) for the Respondent has, while supporting the impugned judgements of conviction and sentence of the trial courts, submitted that the Prosecution has proved its case beyond all reasonable doubts, by letting in valid and cogent evidence and that though the Prosecution witnesses are interested witnesses, their evidence is sufficient to base conviction on the Revision Petitioner/accused for the offences under Sections 279, 338 and 304A of IPC and that therefore, the impugned judgements of conviction and sentence do not warrant any interference by this Court.

12. I have given my careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgements of conviction and sentence, including the various



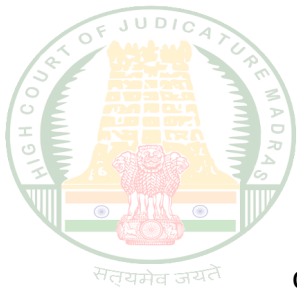
decisions referred to by the learned counsel for the parties.

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13. Now, in the present case, the question is whether the impugned judgements of conviction and sentence of the trial courts, convicting and sentencing the Revision Petitioner/accused for the offences under Sections 279, 338 and 304A of IPC are justifiable or not?
14. In order to attract the provisions of 279, 338 and 304A of IPC, the Prosecution has to prove the essential ingredient of rash and negligent manner on the part of the Revision Petitioner/accused, by letting in valid and cogent evidence. In the present case, in order to come to a conclusion as to whether the Prosecution has proved its case against the Revision Petitioner under the provisions of Sections 279, 338 and 304A of IPC, by valid and cogent evidence and whether the trial courts are right in coming to the conclusion that the Revision Petitioner is guilty of the offences under Sections 279, 338 and 304A of IPC, it has become necessary for this Court to analyse the entire evidence, both oral and documentary evidence, in a proper and perspective manner.
15. At the outset, it is relevant to quote the provisions of Sections 279, 338 and 304A of IPC as under:-

“279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

338. Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by

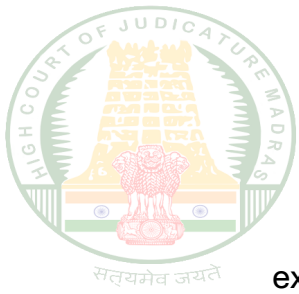


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doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

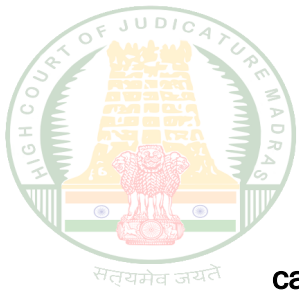
16. With regard to the grounds, relating to delay in registering the First Information Report and sending the same to the Court concerned and also the question as to who wrote the complaint, raised by the learned counsel for the Revision Petitioner, on a perusal of the entire records, it is seen that the date of the accident is 30.10.2016 at 2.15 p.m. and Ex.P3 First Information Report was registered on the next day on 31.10.2016 at 7.00 a.m. and the same was sent to the concerned Court after a delay of two days. These facts are evident from the oral evidence of PW.7, Sub Inspector of Police, who registered the First Information Report, inasmuch as PW.7, has deposed to the effect that if it is stated that he had sent the First Information Report involving a delay of 2 days, the same is correct and that if it is stated that the signature of the complaint was not obtained in column 14 of the First Information Report, the same is correct.
17. Regarding the issue as to who wrote the complaint, it is appropriate to refer to the evidence of PW.1, defacto complainant, PW.7, Sub Inspector of Police and PW.8, Investigating Officer. PW.7 has stated that he received a written complaint from PW.1, but, PW.1, in his cross



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examination, has deposed that since he was not capable of writing in Tamil, the complaint was written by the Police. Contrarily, PW.8 deposed that PW.1 knew Tamil.

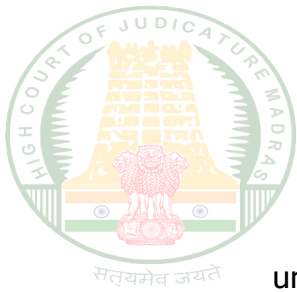
18. Thus, it is established that the complaint was written by the Police after due deliberation and consultation and not by PW.1, complainant. Further, this Court finds no satisfactory explanation from the Prosecution, by way of valid evidence whatsoever for the delay both in registering the First Information Report and also sending the same to the Court. Hence, the registration of the First Information Report itself becomes highly doubtful and there were every possibilities to falsely implicate the Revision Petitioner for some other reasons and also to manipulate, by suitably drafting the complaint according to their wish. Hence, this Court is of the view that the registration of the First Information Report was with due deliberation and consultation from the Prosecution and not by PW.1.
19. As the case of the Prosecution mainly rests on the evidence of PW.1 to PW.3, who are stated to be the eye witnesses to the occurrence, now coming to the question as to whether the evidence of the Prosecution witnesses, PW.1 to PW.3, can be relied upon, admittedly, PW.1 is the defacto complainant and son of the deceased, PW.2 is the relative of PW.1 and PW.3 is the wife of the deceased and it can be stated that they are interested witnesses.
20. On a perusal of the oral evidence of PW.1, it is seen that PW.1 in his chief examination, has deposed that **“the registration number of the car, which**



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caused the accident, was not in his memory and that in the cross examination, PW.1 has deposed that if it is stated that only on hearing the terrific sound, he had seen, the same is correct.” In view of such evidence of PW.1, PW.1 cannot be said to be a direct eye witness to the occurrence.

21. Admittedly, PW.1 in the First Information Report did not state that PW.2 accompanied him as a pillion rider. But, PW.1, in his chief examination, has deposed that in the two wheeler, he and PW.2 as a pillion rider were going behind the deceased. PW.2 also in his chief examination, has deposed that in that two wheeler, he and PW.1 going behind the deceased. Further, PW.7 in the cross examination has deposed that “if it is stated that the complainant said in his complaint that he was going behind the deceased person and no one came along with them, the same is correct.” Thus, here also, it cannot be said that PW.2 had witnessed the occurrence.
22. In this regard, it is also seen that PW.3, during the Chief-Examination, has deposed that “since the said Car came very speedily, she did not see the driver and that since she is not educated, she did not know the registration number of the Car”.
23. In view of the above said evidence of PW.7, Sub Inspector of Police and PW.1 to PW.3, who are relatives and interested witnesses and though they are stated to be the eye witnesses to the occurrence, they cannot be treated as eye witnesses to the occurrence and hence, their evidence is



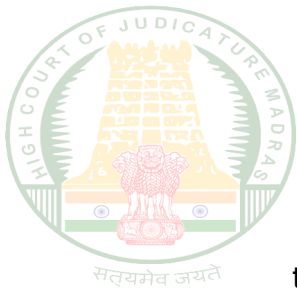
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unbelievable and cannot be taken into consideration. There is no proper corroboration of evidence, which is not at all taken into consideration by the trial courts.

24. Though PW.3 had stated in her evidence that she did not saw the driver of the vehicle, which caused the accident, the Trial Court gave a wrong finding that PW.3 has identified the accused at the time of the accident. However, the trial courts erred in relying on the evidence of PW.1 to PW.3 to base conviction on the Revision Petitioner/ accused. Thus, this Court is of the view that there is no proper appreciation of evidence on the part of the trial courts, while passing the impugned judgements of conviction and sentence.

25. Witnesses may be categorized into three distinct categories. They may be wholly reliable. Similarly there may be witnesses, who can be considered wholly unreliable. There is no difficulty in placing reliance or disbelieving his evidence when an evidence is wholly reliable or wholly un-reliable, but difficulty arises in case of third category i.e. where witness is neither wholly reliable nor wholly unreliable. Hostile witness ordinarily falls in category of those witnesses who are neither wholly reliable nor wholly un-reliable. The Honourable Supreme Court, in **Khujji @ Surendra Tiwari Vs. State of M.P;** AIR 1991 SC page 1853, was pleased to observe as under :-

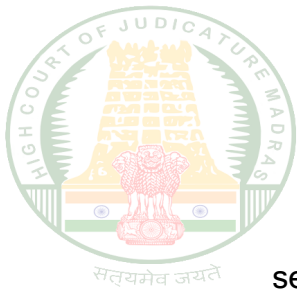
"The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be



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treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

26. The term "**hostile witness**" does not find a place in the Evidence Act 1872 (herein after referred to as the Act of 1872 for brevity). It is a term borrowed from the English Law. Though in the English Law to allow a party to contradict its own witness was not acceptable a view, the theory of contradicting its own witness was resisted on the ground that a party should be permitted to discard or contradict his own witness, which turns unfavorable to the party calling him, however, this rigidity of rule was sought to be relaxed by evolving a term "**hostile**" or "**unfavourable witness**" in common law.
27. It is relevant to quote Section 154 (1) of the Act of 1872, as under:-
- "the Court may, in its discretion, permit the person, who calls a witness to put any question to him, which might be put in cross examination by the adverse party".
28. Sub-Section (2) of Section 154 of Act of 1872, further provides as under:-
- "Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of evidence of such witness".
29. Thus, discretion is vested in Court to permit a person to put such question, which may be put by an adverse party, if Court deems it appropriate. Thus, the term "hostile witness" has been borrowed from the English Law and developed in through case Laws.
30. The principle of "**falsus in uno falsus in omnibus**" (false in one thing, false in everything) has no application in India. It is the duty of the Court to

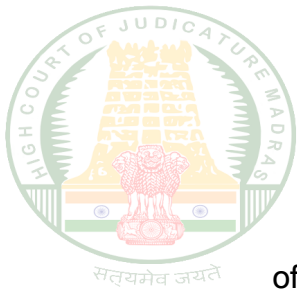


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separate grain from chaff. Keeping in view the above principles, the Honourable Supreme Court, in the case of **Sucha Singh v. State of Punjab**; AIR 2003 SC 3617, was pleased to observe as under :-

"even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus (false in one thing, false in everything) has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, truth is the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well."

31. Now, coming to question as to whether the Revision Petitioner is guilty of rash and negligent driving or not, it is settled proposition of law that there can be no general presumption that a person should have driven a vehicle in a rash and negligent manner. The Prosecution has to prove the factum of rash and negligent manner, by convincing and concrete evidence. When there is no evidence to show the rash and negligent driving by an accused, the accused person is entitled for acquittal.
32. In the present case, it is seen from the entire evidence of the Prosecution witnesses, particularly that of PW.1 to PW.3, who are interested witnesses that there is no indication that the Revision Petitioner drove the vehicle in a rash and negligent manner nor they have stated so in their statements. There is no other independent eye witness to the occurrence. Since none



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of the Prosecution witnesses deposed about the rash and negligent of the Revision Petitioner. In other words, there is no evidence at all in this regard. Thus, it is established that the essential requirement of rash and negligent driving on the part of the Revision Petitioner/ accused has not been proved by the Prosecution. On a perusal of the entire evidence, it is also highly improbable to say that the Revision Petitioner/ accused drove the vehicle in a rash and negligent manner.

33. This Court, in the case of **Subburam v. Inspector of Police; 2021 CDJ MHC 6783** in Crl.RC(MD)No.89 of 2018 (Order dated 02.09.2021), was pleased to observe as under:-

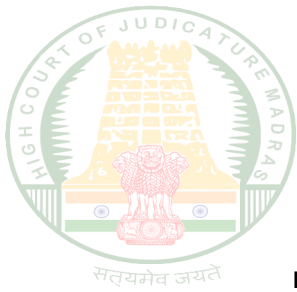
"13. It is mainly argued on the side of the petitioner/accused that the oral evidence of the prosecution witnesses was not proved the rash and negligent driving of the accused and there are contradictions between the oral evidence of the prosecution witnesses and there can be no general presumption that a person should have driven a vehicle in a rash and negligent manner, merely because there was an accident.

14. At this juncture, it is relevant to refer the decision of this Court reported in 2017-1-LW.(Crl.) 160 (M.Subramani Vs. State rep. By Inspector of Police, Edapadi Police Station, Salem District), wherein this court has held as follows:-

"19.In State of Karnataka vs. Sathish (1998)8 SCC 493), in a road accident where the accused was prosecuted under Section 304-A IPC, one of the witness had stated that the bus drive came driven the bus at a high speed. The Hon'ble Apex Court held that it would not satisfy the requirement of the driver driving the vehicle in a rash and negligent manner as required under Section 304-A IPC and acquitted the accused."

20. In this respect, the following observations made by the Hon'ble Supreme Court in SATISH (supra) are relevant here to note:-

"3. Both the Trial Court and the Appellate Court held the



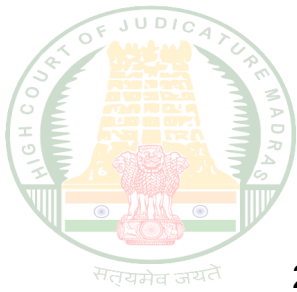
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respondent guilty for offences under Sections 337, 338 and 304-A IPC after recording a finding that the respondent was driving the truck at a "high speed". No specific finding has been recorded either by the Trial Court or by the First Appellate Court to the effect that the respondent was driving the truck either negligently or rashly. After holding that the respondent was driving the truck at a "high speed", both the Courts pressed into aid the doctrine of *res ipsa loquitur* to hold the respondent guilty.

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 facts 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 of innocence in favour of the accused until the contrary is proved. Criminality is not to 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*". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case."

21. Subsequently, in *Abdul Subhan vs. State* (NCT of Delhi) (2007 Cri.L.J. 1089), in a road accident case for an offence under Section 304-A IPC, the only available evidence of an Head Constable is that the bus driver had driven the bus fastly. The Delhi High Court relying on the Hon'ble Apex Court decision in *SATISH* (supra) held that the bus driver cannot be held to have drove the bus in a rash and negligent manner.

22. In *State vs. Avadh Kishore* (Cri.L.P. No.213 of 2007 dated 30.1.2009 (Delhi High Court)), the Delhi High Court reiterated its earlier view in *ABDUL SUBHAN* (supra).



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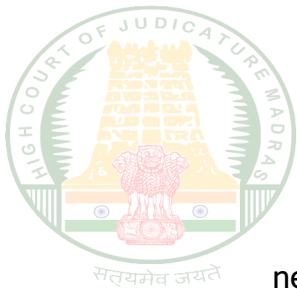
23. Recently in Puttaiah @ Mahesh vs. State by Rural Police (Crl. Review Petition No. 1317 of 2010 dated 4.3.2016 (Karnataka High Court)), the Karnataka High Court held as under:-

"In this view of the matter, both the Trial Court as well as the First Appellate Court have not assessed the oral and documentary evidence in right perspective. Both the Courts should have navigated through the evidence of material witnesses cautiously. Glaring inconsistencies have been brushed aside as minor variations. They have adopted wrong approach to the real state of affairs and have not properly scanned the evidence. Both the Courts have forgotten that the initial burden was on the prosecution to establish the charge of rashness or negligence beyond reasonable doubt. Thus, the judgments of both the Courts suffer from perversity and illegality. Hence, this Court is of the opinion that the revision petition is to be allowed."

15. On coming to the instant case on hand, the prosecution witnesses have not stated that the accident occurred due to the rash and negligent driving of the accused. For all the reasons stated above, this court is of the considered view that the prosecution has not proved the case beyond reasonable doubt.

16. In the result, this Criminal Revision is allowed. The impugned judgment of conviction and sentence are set aside. The revision petitioner/accused is acquitted of the charges levelled against him. The bail bond if any executed by him shall stand cancelled and the fine amount if any paid by him shall be refunded to him."

34. In the present case, from the evidence of PW1 to PW3, it is highly improbable to say that the Revision Petitioner/A1, the driver of the vehicle had driven in a rash and negligent manner. The rash and negligent driving of the vehicle is the essential component in order to attract section 304 (A) of IPC and the prosecution has not established the case before the trial courts that the Revision Petitioner/A1 had driven the vehicle in rash and negligent manner. There is no indication from the prosecution evidence that the Revision Petitioner/A1 had driven the vehicle in a rash and



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negligent manner. And no evidence was let in by the prosecution as to the speed in which vehicle was driven by the Revision Petitioner/accused.

35. This Court, in the case of **Renugopal vs State; 2016 SCC Online Mad 30704**, relying upon the dictum of Honourable Supreme Court, has held in para No. 24 that ipse dixit of the eye witnesses that the accused came driven the vehicle fast was not enough to convict the accused person. The relevant paragraph is extracted hereunder.

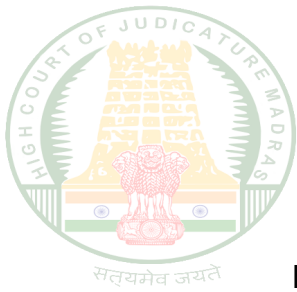
"24. In the decided cases when the witnesses stated that the driver had driven the vehicle at high speed, the Courts held that that will not be a rash and negligent act. Further the ipse dixit of the eye-witnesses in this case is that the accused came driven the van fast. There is no material as to what was the speed, what was the details of the speed there is no material to decide whether the accused has driven the van in a rash and negligent manner."

It is also relevant to extract the para No. 18, 19 of the said judgment wherein this Court has extracted the dictum of the Hon'ble Apex Court as under:-

"18. In State of Karnataka v. Satish ((1998) B SCC 493), in a road accident, the accused was prosecuted under Section 304-A IPC. One of the witnesses had stated that the bus driver came driven the bus at a high speed. The Hon'ble Apex Court held that it would not satisfy the requirement of the diver having driven the vehicle in a rash and negligent manner as required under Section 304-A IPC. and acquitted the accused.

19. In this respect, the following observations of the Hon'ble Supreme Court made in Satish (supra) are relevant here to note:

"3. Both the Trial Court and the Appellate Court held the respondent guilty for offences under Sections 337, 338 and 304-A IPC after recording a finding that the respondent was driving the truck at a "high speed". No specific finding has been recorded either by the Trial Court or by the First Appellate Court to the effect that the respondent was driving the truck either negligently or rashly. After



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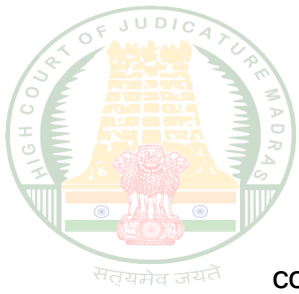
holding that the respondent was driving the truck at a "high speed", both the Courts pressed into aid the doctrine of res ipsa loquitur to hold the respondent guilty.

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 facts 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 of innocence in favour of the accused until the contrary is proved. Criminality is not to 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' There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case".

36. Similarly, this Court in **Sankarapandiyan Vs. State; CDJ 2019 MHC 5962 in para 13**, was pleased to observe as under:-

"13. In the case on hand, as stated above, none of the Witnesses have spoken about the Bus having been driven in a rash and negligent manner. Further, no evidence has been let in by the prosecution to decide, as to what was the speed in which the bus was driven."

37. Another infirmity in the case of the Prosecution, as pointed out by the learned counsel for the Revision Petitioner is the non examination of the Motor Vehicle Inspector to prove the damage and cause of damage for the two wheeler and the Medical Officers, who treated the injured and



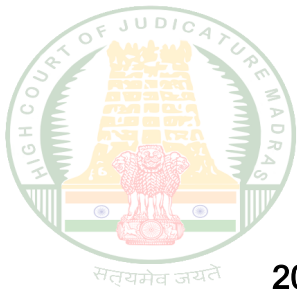
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conducted post-mortem, as witnesses. In this regard, in the present case, though two MVI Reports, a post-mortem certificate and a wound certificate of Chellammal, have been marked as Ex.P7, Ex.P8, Ex.P6 and Ex.P9 respectively, but to corroborate the said documents, admittedly, the Prosecution has not examined the Motor Vehicle Inspector concerned and the concerned Doctors. Hence, in view of non-examination of Doctors and Motor Vehicles Inspector and failure in marking the documents through the appropriate witnesses, it cannot be stated that the said documents are proved and the Revision Petitioner is guilty of rash and negligent driving. As such, non-examination of the concerned Motor Vehicles Inspector and Doctors as witnesses is fatal to the case of the Prosecution and it cannot said that the Revision Petitioner/accused is guilt of rash and negligent driving.

38. This Court, in the case of **Srinivasan Vs. State**, in Crl.R.C. 1090 of 2020, by the order, dated 23.12.2020, while acquitting, was pleased to observe as under:-

"10. The direction and position of the bus shown in rough sketch is contrary to the oral evidence, and the doctors who treated the injured and conducted post-mortem, were not examined as witnesses in this case. Likewise, the Motor Vehicles Inspector was not examined as witnesses. Exs.P7 to P14 are marked through Investigating Officer. In view of non-examination of Doctors and Motor Vehicles Inspector and failure in marking the documents through the appropriate witnesses, it cannot be conclusively held that the documents are proved and further nothing to show that the petitioner driven the vehicle in a rash and negligent manner and he is the cause for the accident".

39. This Court, in the case of **N.Kinnaskandan Vs. State**, in Crl.R.C. 1118 of

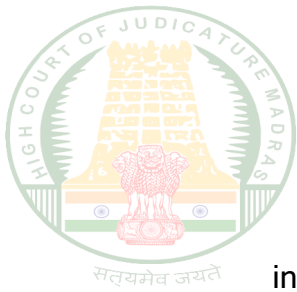


2020, by the order, dated 16.12.2020, was pleased to observe as under:-

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“12. Admittedly, the Motor Vehicle Inspector were not examined to prove the damages caused and cause for damage of the motor bikes. Further, the Doctors, who treated the injured were not examined in this case as witnesses, even the Postmortem Doctor was not examined, which is fatal, cut the root of the prosecution case.”

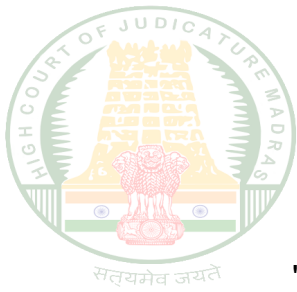
40. At this juncture, this Court is of the view that through out the web of the Criminal Jurisprudence, one golden thread is always seen that it is the duty of the Prosecution to prove the guilt of the accused beyond all reasonable doubts, by letting in valid, convincing and cogent evidence. This burden of proof on the Prosecution to prove guilt is also known as presumption of innocence. The presumption of innocence, some times refer to by the latin expression *“ei incumbit probatio qui dicit, non qui negat”* (the burden of proof is on one who declares, not to one who denies) is the principle that one is considered innocence unless proven guilt. In criminal jurisprudence, every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. The Prosecution may obtain a criminal conviction only when the evidence proves the guilt of accused beyond reasonable doubt.
41. In sum and substance, in the present case, this Court is of the view that the delay in registering of the First Information Report and sending the same to the concerned Court creates a doubt and suspicion over the case of the Prosecution in implicating the Revision Petitioner/accused for the offences under Sections 279, 338 and 304A of IPC. PW.1 to PW.3 are



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interested witnesses and as per their evidence, they cannot be treated to be the eye witnesses to the occurrence and hence, their evidence cannot be relied upon. There is no other independent eye witness to the occurrence. None of the Prosecution witnesses has spoken about the factum of rash and negligent driving on the part of the Revision Petitioner/accused. There is no evidence to prove the allegation of rash and negligence against the Revision Petitioner/accused, even though PW.3, who is the wife of the deceased accompanying him, did not recognise the Revision Petitioner nor said that he was driving the vehicle rashly and with negligence. Further, non-examination of the Motor Vehicles Inspector and the Doctor concerned to corroborate the documents filed by them, is fatal to the case of the Prosecution. The Prosecution has failed to discharge the initial burden of establishing the ingredients in respect of rash and negligent aspect required for all the offences under Sections 279, 338 and 304A of IPC. Both the trial courts have not assessed the oral and documentary evidence in right perspective. The learned Government Advocate for the Respondent has not been able to point out any evidence on record to prove the charges under Sections 279, 338 and 304A of IPC against the Revision Petitioner/accused.

42. The Honourable Supreme Court, in the case of **Vadivelu Thevar v. State of Madras; 1957 SCR 981: AIR 1957 SC 614**, was pleased to observe at para 11 & 12 as under:-



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"11.....it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable,
- (2) Wholly unreliable
- (3) Neither wholly reliable nor wholly unreliable.

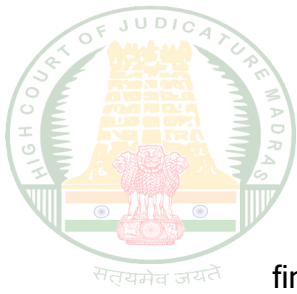
12. In the first category of proof the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness if it is found to be above reproach or suspicion of interestedness, incompetence, or subornation. In the second category the court equally has no difficulty to its conclusion. It is in the third category of cases that the court has to be circumspect and has to look for corroboration in the material particulars by reliable testimony direct or circumstantial....."

43. In the present case, after a careful perusal of all the testimonies of the Prosecution witnesses as well as the defence witnesses, this Court finds that the trial courts had failed to circumspect the material on record carefully.

44. Further, a Division Bench of the Allahabad High Court, in the case of **Suresh Narain Tripathi and others Vs. State of UP and Others; 2005 Cril LJ 2479**, granted acquittal for the offence under Section 436 of IPC, where the star witnesses were unreliable and was pleased to observe at para 13 as under:-

"13. Certainly, it is the primary principle that the accused must be and not merely may be guilty before a court can convict and a mental distinction between 'may be' and 'must be' is long and divided vague conjectures from sure conclusions."

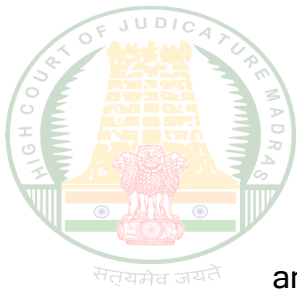
45. It feels pain to observe that in our present system of trial despite having sufficient power to the Judge to ask questions to the witnesses in order to



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find out truth, most of them do not ask questions to the witnesses to shift the grain from the chaff. Practice of leaving witnesses to the Advocates, when a witness becomes hostile, is not un-common in the trial courts. Time and again the Honourable Supreme Court has reminded that a Judge does not preside over a criminal trial merely to see that no innocent man is punished, but a Judge also presides to see that a guilty man does not escape. Both are public duties, which the Judge has to perform. Therefore, the trial Court must shed their inertia and must intervene in all those cases where intervention is necessary for the ends of justice.

46. In the present case, in the absence of any concrete and convincing evidence to show that by the statement of the witnesses, offences under Sections 279, 338 and 304A of IPC have not been proved against the Revision Petitioner/Accused. Therefore, it is difficult to sustain the impugned conviction and sentence imposed on the Revision Petitioner/Accused under Sections 279, 338 and 304A of IPC merely on the unreliable testimony of the Prosecution witnesses, whose evidence is not worthy of credence, as they are not acceptable in the eye of law. Hence, the impugned judgements of conviction and sentence recorded by the trial courts under Sections 279, 338 and 304A of IPC against the Revision Petitioner/Accused cannot be sustained and accordingly, are liable to be set aside.
47. In the result, in view of the above said discussions and reasons, this Criminal Revision Case is **allowed**. The impugned judgement of conviction



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and sentence, dated 21.10.2021 made in CA.No.48 of 2021, by the Sessions Judge, Special Court for Trial of Cases under the SC/ST (POA) Act at Namakkal and the impugned judgement of conviction and sentence, dated 24.02.2021, made in CC.No.116 of 2017 under Sections 279, 338 and 304A of IPC, by the Judicial Magistrate II, Namakkal, **are set aside and reversed**. The Revision Petitioner, Boopathi, is **acquitted** of all the charges levelled against him. The personal bonds and surety bonds, if any executed by the Revision Petitioner, shall stand **cancelled** and **the sureties are discharged**. No order as to costs.

48. Let record of the Trial Court be sent back to the Court concerned along with copy of judgement and order for information.

10.01.2025

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
Srcm

To

1. The Sessions Judge, Special Court for Trial of Cases registered under SC/ST (POA) Act at Namakkal
2. The Judicial Magistrate II, Namakkal
3. The Public Prosecutor, Madras High Court



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Crl.RC.No.851 of 2021

SHAMIM AHMED, J.

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Pre-Delivery Order in
Crl.RC.No.851 of 2021

10.01.2025