

BAIL SLIP

Kandasamy, Appellant herein(Accused in C.C.No.139/06 on the file of the J.M.No.II, Sankari) was directed to be released on bail by the order of this Court dated 29.10.2009 and made in M.P.No.3/09 pending in Crl.R.C.No.1040/09 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.9.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN
CRL. RC. No. 1040 of 2009

Kandasamy ... Petitioner

Versus

The State rep. by the
Inspector of Police
Magudanchavadi Police Station
Salem Diastrect ... Respondent

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to call for the records and suspend the sentence imposed on the petitioner in C.A.No.57 of 2009 on the file of Additional District Judge, Salem (Fast Track Court No.1, Salem) by judgment dated 15.9.2009, confirming the conviction and sentence passed by the Judicial Magistrate No.II, Sankari in C.C.No.139 of 2006 by judgment dated 29.6.2009.

For Petitioner : Mr. B.Vasudevan

For Respondent : Mr. V.Arul
Government Advocate (Crl.side)

ORDER

On the basis of the complaint given by the defacto complainant, namely, Pazhanichamy, a case in Crime No. 387 of 2006 was filed against the accused, the petitioner herein for the offences punishable under Sections 279 and 304 (A) of IPC. After investigation, final report has been filed and the same was taken cognizance in C.C.No.139 of 2006 the file of the Judicial Magistrate No.II, Sankari. After trial, the trial court convicted the accused for the offence punishable under Sections 304 (A) I.P.C and sentenced him to undergo Rigorous Imprisonment for one year. Against which, the accused has filed Crl.A. No. 57 of 2009 before the learned Additional District Judge, Salem and the same was dismissed. Aggrieved over the order passed by the first appellate Court, the petitioner/accused has filed

the present Criminal Revision Case.

2. The case of the prosecution is that on 13.7.2006 at about 16.15 hours, when the deceased Kumar was riding his TVS Champ along with P.W.1 at Konganapuram to Omalur Main Road, near Koraikuttapatti Kattuvalavu Nalla Munappan Kadaliakadu, the Mini door Auto bearing Registration No.TN 30 V 4179, which was driven in a rash and negligent manner, came in the opposite direction and hit the TVS Champ, which was driven by the deceased Kumar. In the said accident, driver of the TVS champ died on the spot. In this context, the defacto complainant had given a complaint based on which the accused was proceeded with for the offences as mentioned above.

3. The learned counsel appearing for the petitioner did not argue on merits but confined his argument only on the question of sentence imposed on the petitioner by the Courts below. The learned counsel for the petitioner submits that the accident had occurred only due to the negligent act of the deceased, who driven the vehicle in a rash manner. The learned counsel also submits that there is some discrepancy in the evidence. However, the learned counsel submits that he is not pressing the case on merits and he is only questioning the sentence imposed on the petitioner.

4. It is the submission of the learned counsel for the petitioner that the petitioner was aged about 52 years and he is the sole bread winner of the family. It is also the submission of the learned counsel for the petitioner that the accident had occurred not only on the fault of the petitioner. It is submitted that the petitioner is repenting his misdeed and, therefore, the learned counsel for the petitioner prayed for showing leniency in reduction of sentence.

5. Learned Government Advocate submitted that due to rash and negligent driving of the auto by the accused, the accident had occurred. The learned Government Advocate further submitted that nowadays, death are increasing due to these type of accident and, therefore, the Courts below have rightly convicted the petitioner. Therefore, the learned Government Advocate prays for dismissal of the revision.

6. I have heard the submission made by the learned counsel for the petitioner, learned Government Advocate appearing for the respondent State and perused the materials on record.

7. The trial court convicted the petitioner/accused for the offence punishable under Section 304 (A) and sentenced to undergo Rigorous imprisonment for one year. On a perusal of the entire evidence and the judgment of the Courts below, it is clear that the accident had occurred due to the rash and negligent driving of the auto by the accused. Therefore, the conviction imposed by the Courts below is correct and this Court is not inclined to interfere with the conviction imposed on the petitioner/accused.

8. However, taking into consideration the submission of the counsel for the petitioner, the fact that the petitioner is the sole bread winner of the family and that he is now aged 52 years, I am of

the view that some leniency can be shown to the petitioner in reducing the sentence.

9. Accordingly, while confirming the conviction imposed by the Courts below, the sentence alone is reduced to the period of three months. The petitioner shall undergo Rigorous Imprisonment for a period of three months.

10. In the result, the Criminal Revision Case is partly allowed by modifying only the period of sentence from one year to three months. In view of the same, the trial court is directed to take necessary steps as are necessary to secure the presence of the petitioner/accused to undergo the above period of sentence. It is needless to point out that the period of sentence already undergone by the petitioner/accused shall be given set off as contemplated under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

ga

To

1. The Additional District Judge, (Fast Track Court No.1) Salem
2. The Judicial Magistrate No.II, Sankari.
- 3.-do- Thro the CJM, Salem.
- 4.The Inspector of Police,
Magudanchavadi Police Station
Salem District
- 5.The Public Prosecutor, High Court, Madras.

1 cc to Mr. B.Vasudevan, Advocate Sr.No.47349

ksj (co)
pmk.1.10.2015

CRL.RC.No. 1040 of 2009

WEB COPY