

Bail Slip

The Petitioner/Accused namely C.Thirumalaisamy, S/o. Chennimalai Gounder, aged about 47 years, was directed to be released on bail as per the order of this court dated 15.12.2009 in M.P.No. 1 of 2009 in Crl.R.C.No. 1212 of 2009 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No. 1212 of 2009

C. Thirumalaisamy

...Petitioner/Accused

Versus

State by Inspector of Police
Modakurichi Police Station
Erode

...Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure against the Order dated 07.08.2009 passed in Criminal Appeal No. 285 of 2008 on the file of Principal Sessions Judge, Erode Division at Erode confirming the conviction and sentence passed by the Judicial Magistrate No.III, Erode in C.C. No. 382 of 2005 dated 15.10.2008.

For Petitioner : Mr. A.K. Kumarasamy

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

ORDER

The petitioner is the sole accused in C.C. No. 382 of 2005 on the file of the learned Judicial Magistrate No.III, Erode. The petitioner stood charged for the offences punishable under Sections 279, 338 and 304 (A) of IPC. After trial, the trial Court convicted the petitioner for the offence under Section 338 of IPC and sentenced him to undergo rigorous imprisonment for two months with fine of Rs.500/-, in default, to undergo simple imprisonment

for a period of one month. The petitioner was also convicted for the offence under Section 304 A of IPC and sentenced to undergo six months rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month. The trial Court did not impose any separate sentence for the offence under Section 279 of IPC. However, the sentences imposed for the offences under Sections 338 and 304-A of IPC were ordered to run concurrently. Such conviction and sentence imposed on the petitioner was confirmed by the Appellate Court in Criminal Appeal No. 285 of 2008 preferred by the petitioner. Aggrieved by the conviction and sentence awarded by the Courts below, the present Criminal Revision Case is filed.

2. The case of the prosecution is that PW2 and 3 are husband and wife. The deceased Easwaran was the son of PWs 2 and 3. On 01.03.2005 PW1 Prabhu was riding Pillion in the motor vehicle bearing Registration No. TN 22 U 9265 which was driven by the deceased Easwaran. PW2 was riding another vehicle in which PW4 Suresh was riding pillion. The vehicle driven by the deceased was proceeding in front of the vehicle driven by PW2. When the vehicles were nearing Transport Nagar in Erode to Karur Main Road, the accused drove the vehicle - Eicher Van bearing Registration No. TN 33 AV 9929 in a rash and negligent manner and dashed against the vehicle driven by the deceased Easwaran. In the impact, the deceased was thrown out of the vehicle and sustained multiple injuries. Apart from the deceased, PW1 also sustained grievous injuries. Immediately, the deceased was rushed to Lotus Hospital, Erode from where he was discharged and admitted to Government Hospital, Erode. In spite of treatment extended, the deceased died due to the injuries sustained in the motor accident. On the basis of intimation given by the Doctors in the hospital, a case in Crime No. 55 of 2005 came to be registered against the petitioner for the offences under Section 279, 338 and 304-A of IPC.

3. The learned counsel for the petitioner did not argue the case on merits, but confined his argument only with reference to reduction of sentence imposed on the petitioner. The learned counsel for the petitioner only would contend that the petitioner is driver by profession and he is the sole bread winner in his family. The counsel for the petitioner further submits that the petitioner repents for his misdeeds and therefore he prayed for showing some leniency in the matter of reduction of sentence imposed on him.

4. On the contrary, the learned Government Advocate (CrI.side) would submit that there is no dispute that due to the rash and negligent driving of the petitioner, the deceased, who was pursuing his Diploma in Textile Management at that time, died on

the same date of accident. Further, the trial court imposed a very meager punishment and it was also affirmed by the Appellate Court. Therefore, the learned Government Advocate prayed for dismissal of this Criminal Revision Case.

5. I heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondent. Admittedly, in the accident that took place on 01.03.2005, the son of PWs 2 and 3 died. Both the courts below have given a concurrent finding that the accident is attributable solely due to the negligent driving of the petitioner. The trial Court convicted the petitioner for the offences under Section 338 of IPC and sentenced him to undergo rigorous imprisonment for two months with fine and for the offence under Section 304 A of IPC, the petitioner was sentenced to undergo six months rigorous imprisonment with fine. The trial Court did not impose any separate sentence for the offence under Section 279 of IPC.

6. Having regard to the above facts and the submission of the counsel for the petitioner seeking for reduction of sentence, this Court is of the view the petitioner can be shown some leniency in the matter of imposition of sentence. Accordingly, while upholding the conviction imposed on the petitioner by the courts below for the offence under Sections 338 and 304-A of IPC, the sentence imposed for the offence under Section 304-A of IPC alone is modified to the extent that the petitioner shall undergo rigorous imprisonment for a period of three months as against the sentence of six months imposed on him by the courts below. The fine amount imposed by the Courts below is confirmed. The petitioner shall undergo the modified sentence imposed by this Court concurrently along with the sentence imposed for the offence under Section 338 of IPC. It is made clear that the imprisonment already undergone by the petitioner shall be given set off. The trial court shall take steps as are necessary to secure the presence of the petitioner to undergo the period of sentence as mentioned above.

7. In the result, the Criminal Revision Case is partly allowed to the extent indicated above.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

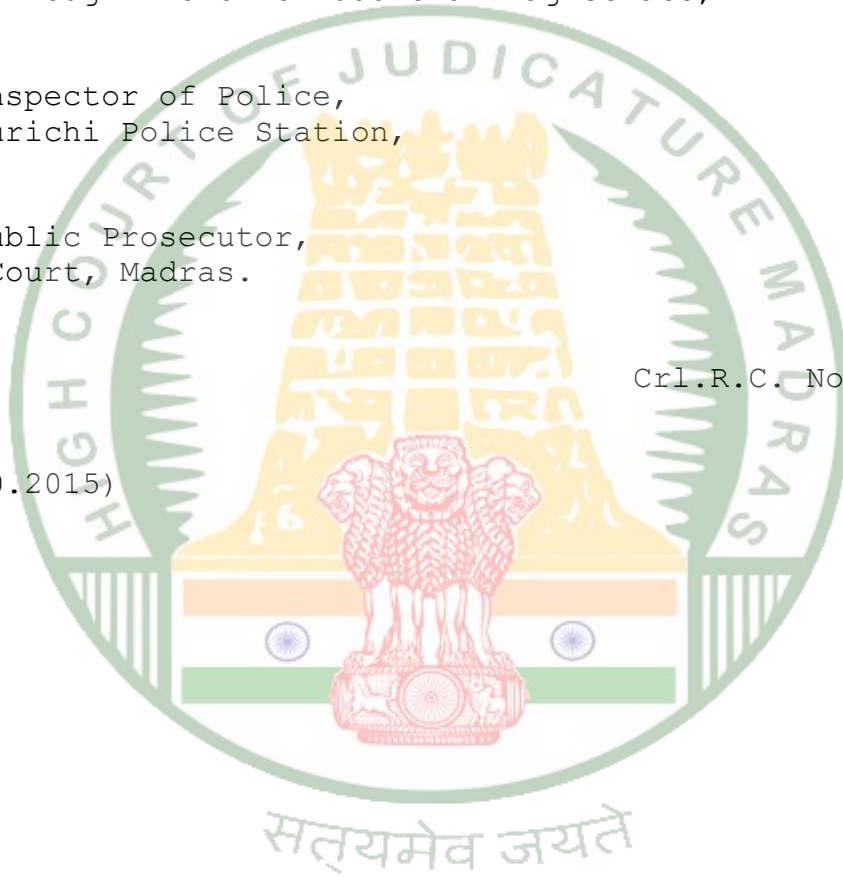
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To

1. The Principal Sessions Judge,
Erode.
2. The Judicial Magistrate No.III,
Erode.
3. -Do- Through The Chief Judicial Magistrate,
Erode.
4. The Inspector of Police,
Modakurichi Police Station,
Erode.
5. The Public Prosecutor,
High Court, Madras.

Crl.R.C. No. 1212 of 2009

SAI (CO)
PSI (14.10.2015)



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