

BAIL SLIP

Petitioner/(Accused) was directed to be released on bail as per order of this Court dated 06.02.2009 in M.P.No.1 of 2009 in Crl.R.C.No.131 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.131 of 2009

Saravanan

.... Petitioner/Accused

Versus

State, rep .by Inspector of Police,
Kodalampatty Police Station,
Salem District

.... Respondent/Complainant

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C., to call for the records, allow this revision by setting aside the conviction and sentence passed in C.C.No.5 of 2007 on the file of the Judicial Magistrate No.5, Salem, by judgment dated 01.02.2008 confirmed by the appeal in C.A.No.28 of 2008 on the file of the first Additional Sessions Judge, Salem, by judgment dated 17.09.2008.

For Petitioner : Mr.B.Vasudevan

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

ORDER

The revision petitioner herein, who is the accused in C.C.No.5 of 2007 on the file of Judicial Magistrate No.5, Salem was convicted for the offence under Sections 279 and 304(A) of I.P.C. and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment of one month under Section 304(A) IPC. The order of conviction against the revision petitioner was confirmed by the learned I Additional

Sessions Judge, Salem in C.A.No.28 of 2008. Aggrieved by the said conviction, the petitioner/accused has preferred this criminal revision.

2. The case of the prosecution in brief is that on 19.03.2006 at about 20.30 hrs on Salem-Sankagiri Main Road, Kondalampatti, while the deceased Subramani was standing, the petitioner/accused who drove the Hero Honda bearing Registration No.TN 27 D 3114 came in a high speed and dashed against the said Subramani and caused grievous injuries over his head. He was admitted in the Government Mohan Kumaramangalam Medical College Hospital at Salem immediately for treatment and the said Subramani died in the hospital and therefore, the petitioner/accused committed offence punishable under Sections 279 and 304(A) IPC.

3. On the side of the prosecution, eight witnesses were examined apart from marking Exs.P1 to P7. On the side of the defence, no witness was examined and no exhibit was marked. On considering the oral and documentary evidence, the Trial Court, found the accused guilty of the offences as aforesaid and punished him accordingly. The Appellate Court confirmed the conviction and sentence imposed by the Trial Court, against which the petitioner is before this Court.

4. The learned counsel appearing for the revision petitioner submitted that though P.W.1 and P.W.2., alleged to be the eye witness to the occurrence, P.W.1 says that while the deceased was standing on the side of the mud road, the accident took place whereas P.W.2 says that while the deceased was crossing the road, the accident took place. So according to the learned counsel, P.W.1 and P.W.2 are not eye witnesses. Further, Ex.P6 Rough Sketch reveals that accident took place 6 feet in the thar road and not in the mud road, so charge u/s. 279 and 304 (A) IPC is not proved. The learned counsel for the petitioner further submitted that though the main ingredient for offence u/s.279 and 304(A) IPC is rash and negligent driving, P.W.2 did not say about the negligence of the accused. Similarly, Pws.1 and 2, who were projected as eye witnesses, have not specifically stated that it is the petitioner who had driven the vehicle. The learned counsel for the revision petitioner also submitted that there is an in ordinate delay in preferring the complaint. Under those circumstances, in the absence of any material evidence to show that it is the petitioner who had driven the offending vehicle at the time of accident, the orders of the Courts below cannot be legally sustained and he prayed for allowing this Criminal Revision Case.

5. On the other hand, the learned Government Advocate would contend that Pws 1 to 3 have given cogent and natural evidence in support of the case of the prosecution. Further, as per the Motor Vehicles Inspector's Report, the accident had happened not due to any mechanical defect. Therefore, the Courts below have rightly convicted the accused and no interference is warranted.

6. I heard the counsel for both sides and perused the materials placed on record.

7. It is the contention of the counsel for the petitioner that the petitioner was not identified by the prosecution witnesses at all and he was not the person who had driven the vehicle at the time of the accident. It is also the contention of the counsel for the petitioner that there is a total contradiction in the evidence with regard to the place of the occurrence. It is also submitted that there is an inordinate delay in preferring FIR.

8. In this connection, the evidence of the prosecution witnesses has to be looked into. P.W.1 and P.W.2 are close relatives and they are the grand son and grand daughter of the deceased. As far as the place of occurrence, is concerned, there is a total contradiction in the evidence as three different places have been stated by P.W.1 to P.W.3. P.W.1 in his evidence has stated that while the deceased was standing on the side of the mud road, the accident took place whereas P.W.2 has stated that while the deceased was crossing the main road, the accident took place. P.W.3, in Ex.P.2, has stated that the accident had occurred in the main road. Therefore, it is very clear that the evidence of P.W.1 and P.W.2 are contradictory.

9. Even though P.W.1 and P.W.2 are stated to be the eye witness and close relatives of the deceased, none of them identified the driver of the vehicle. In the cross examination, a specific question was put to P.W.2 with regard to the driver of the vehicle and he has stated that he has not seen the driver of the vehicle. The non identification of the driver of the vehicle itself is fatal to this case. Thus, both Pws 1 and 3, who were projected as an eye witnesses on behalf of the prosecution, have not deposed about the identity of the deceased. There is also no evidence available to show as to how the petitioner was identified by the prosecution witnesses and, therefore, the evidence of Pws 1 to 3 cannot be relied on to base an order of conviction against the petitioner.

10. Insofar as the delay in preferring FIR is concerned, admittedly, the occurrence took place on 19.5.2006 at about 8.30 p.m. Thereafter, the deceased was taken to the Government hospital immediately. However, FIR has been registered only on 20.5.2015 at about 2.00 p.m, which is fatal to the case. As per the evidence of P.W.2, the deceased met the accident opposite to his shop and he took him immediately to the Government hospital. Normally, in the Government hospital, intimation will be sent to the police to register FIR. But in this case, FIR has been registered only at 2.00 p.m on 20.5.2010. Therefore, there is a delay in FIR and the same was not explained by the prosecution, which is fatal to the case of the prosecution and, therefore, on the said sole ground, the Courts below ought to have given the benefit of doubt to the petitioner.

11. In view of the above, it has to be concluded that the prosecution has not proved the guilt against the revision

petitioner/accused beyond reasonable doubt and, therefore the revision petitioner/accused is entitled to benefit of doubt.

12. Accordingly, the conviction and sentence imposed on the petitioner by the courts below are set aside. The Criminal Revision Case is allowed. The surety bond, if any, executed by the petitioner/accused shall stand cancelled. Fine amount, if any, paid by the petitioner/accused is ordered to be refunded.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.5,
Salem.
- 2.-do- Through The Chief Judicial Magistrate,
Salem.
- 3.I Additional Sessions Judge,
Salem
- 4.-do- Principal Sessions Judge,
Salem
- 5.The Inspector of Police,
Kondalampatti Police Station,
Salem District.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.28628

Cr1 RC No. 131 of 2009

TEJ(CO)
CA(07/07/2015)