

BAIL SLIP

The Petitioner herein P.Bakkiaraj, s/o.Sri Palani accused has been released on bail as per order of this court made in M.P.No.1 of 2009 in Crl.R.C.No.272 of 2009 dated 20.3.2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 272 of 2009

P.Bakkiaraj

... Petitioner

Versus

State represented by
The Inspector of Police
Edapadi Police Station
Sankari.

... Respondent

Criminal Revision Case filed under Section 397 read with 401 of the Criminal Procedure Code, against the Judgment dated 27.01.2009 passed in Crl.A. No. 116 of 2008 on the file of the I Additional Sessions Judge, Salem, confirming the order dated 26.06.2008 passed in C.C. No. 6 of 2005 on the file of the learned Judicial Magistrate No.II, Sankari.

For Petitioner : Mr. B.R.Shankarlingam

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

ORDER

On the basis of the complaint given by the defacto complainant a case in Crime No. 400 of 2004 was registered against the accused for the offences punishable under Sections 279 and 304 (A) of IPC. Ultimately, after trial, the Trial Court convicted the accused for the offences punishable under Sections 279 and 304(A) IPC and sentenced him to undergo rigorous imprisonment for three months and to pay a fine of Rs.750/-, in default to undergo simple imprisonment for one month for the offence under Section 279 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for six months for the offence under Section 304(A) IPC. Aggrieved by the same, the

accused has filed CrI.A. No. 116 of 2008 before the learned I Additional Sessions Judge, Salem, and the same was dismissed, thereby, confirming the judgment of conviction and sentence imposed by the Trial Court. Aggrieved by the judgment passed by the Appellate Court, the petitioner has filed the present Criminal Revision Case.

2. The case of the prosecution is that on 18.09.2004 at about 10.00 a.m., on the Omalur-Sankari Main Road near Morambukadu, Konganapuram, within the jurisdiction of Edappadi Police Station Limits, while the deceased Gopal was riding his Bullet Motor Cycle bearing Regn.No.TN-27-H-2266 proceeding towards Konganapuram on the Eastern side of the road, a lorry bearing Regn.No. TN-27-T-5898 which was driven by the accused from Konganapuram-Omalur came in a rash and negligent manner suddenly came on the Eastern side and hit against the motor cycle, due to which, the deceased Gopal sustained grievous fracture injuries on his right knee and also sustained fatal injuries all over the body, as a result of which, he died on the spot and therefore, the accused committed offences under Sections 279 and 304 (A) IPC and hence, the respondent laid charge sheet against the accused before the learned Judicial Magistrate No.2, Sankari. On overall consideration of the evidence, the Trial Court has come to the conclusion that the charges against the accused were proved and convicted and sentenced to accused to undergo the imprisonment as aforesaid.

3. Mr.B.R.Shankarlingam, learned counsel appearing for the petitioner/ accused pointed out certain vital discrepancies in the evidence, especially, in the Observation Mahazar, which has been marked as Ex.P.2, the prosecution claims that the vehicle was driven in the wrong side of the road, whereas, the Mahazar witnesses, who have been examined as P.Ws. 6 to 9 have given contradictory statement, viz., one of them has stated that it was signed at the Police Station, others have stated that it was signed at the hospital and none of them have stated that it was signed at the spot of occurrence, coupled with the fact, P.W.1, who is the defacto complainant, a close relative of deceased would categorically admit in the cross-examination that the vehicle was driven in the left side of the road i.e., in the proper direction. The learned counsel for the petitioner pointing out to the discrepancies in the prosecution case, by way of abundant caution, submitted that he is not arguing on merits but confining his argument only on the question of sentence imposed on the petitioner by the Courts below. He would further plead that the petitioner had already undergone imprisonment for a period of 29 days and this is his first offence, he is a young man aged 28 years, he is the sole breadwinner of the family, apart from that, he has to take care of his aged parents and two children. He would further add that the petitioner/accused is willing to compensate the family of deceased as per the direction of this Court and hence, prayed for showing leniency in reduction of sentence.

4. Mr.T.Arul, learned Government Advocate appearing for the respondent would contend that the eye witnesses were examined as P.Ws. 1 to 5 and they have spoken to about the accident. He would further add that small discrepancies in the evidence of the prosecution witnesses cannot be a reason to discard their testimony. He would further point out that at the time of the death of deceased his age is only 55 years.

5. Heard both sides and I have perused the materials on record. By consent, the main Criminal Revision Case itself is taken up for final disposal.

6. No doubt, as rightly pointed out by the learned counsel for the petitioner/accused, there are lot of discrepancies in the evidence of P.Ws. 1 and 5, who are the eye witnesses to the occurrence, and also the evidence of P.Ws. 6 and 9, who are the mahazar witnesses, who attested Ex.P.2, who have given total contradictory statements and therefore, according to the revision petitioner/accused, the driving of the vehicle in the opposite direction has not been proved beyond reasonable doubt. Now, the petitioner/accused confined his argument only on the question of sentence imposed on the petitioner by the Courts below. Taking into consideration the submission of the learned counsel for the petitioner that the petitioner is a young man aged 28 years; he has a long way to go; he has take care of his aged parents and two children, apart from the fact that the petitioner had already undergone sentence for a period of nearly 29 days so far and he is a first time offender, besides the fact that the petitioner/accused is willing to compensate the family of deceased, I am of the view that some leniency can be shown to the petitioner in reducing the sentence. Accordingly, while confirming the conviction imposed by the Appellate Court, the sentence alone is reduced to the period already undergone by the petitioner/accused and the petitioner/accused is directed to deposit a sum of Rs.30,000/- (Rupees Thirty Thousand only) as compensation to the credit of C.C.No. 6 of 2005 on the file of the Judicial Magistrate No.II, Sankari, within a period of four weeks, failing which, the judgment passed by the Appellate Court shall stand revived. On such deposit being made, the compensation amount shall be paid to the family of deceased on filing proper application and also on ascertaining their identity.

7. With the above modification in sentence, the Criminal Revision Case is partly allowed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The I Additional Sessions Judge,
Salem.
2. The Judicial Magistrate No.II,
Sankari.
3. The Inspector of Police,
Edapadi Police Station,
Salem.
4. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.B.R.Shankaralingam, Advocate SR 29318

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