

Bail Slip

That the Appellant/Accused namely Mathialagan was directed to be released on bail as per order of the court dated 29.06.2010 and made in Crl.M.P.No.1/2010 in Crl.RC.No.434/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL.RC. No.434 of 2010

Mathialagan .. Petitioner/Appellant

Versus

1. The Inspector of Police
J-2 Traffic Investigation
Adyar, Chennai - 20 .. Respondent/Complainant

Revision filed under Sections 397 read with 401 of the Criminal Procedure Code against the conviction and sentence imposed in C.A.No.153 of 2008 on the file of the learned V Additional Sessions Judge, Chennai by its judgment dated 18.11.2009, against order dated 21.4.2008 in C.C.No.1344 of 2006 on the file of IV Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr. Santhosh Kumar

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

ORDER

On the basis of the complaint given by the defacto complainant/P.W.1, namely, Srivatsan, a case in Crime No. 99/A.M.3/2006 was filed against the accused/ the petitioner herein for the offences punishable under Section 304 (A) of IPC. After investigation, final report has been filed and the same was taken cognizance in C.C.No.1344 of 2006 on the file of the IV Judicial Magistrate, Saidapet. After trial, the trial court convicted the accused for the offences punishable under Section 304 (A) IPC and sentenced him to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo two weeks Simple Imprisonment. Against which, the accused has filed Crl.A.No. 153 of 2008 before the learned V Additional Sessions Judge, Chennai and the same was also dismissed. Aggrieved by 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 22.2.2006, at about 3.00 hours, when the petitioner accused driving the van bearing Registration No.TN.No.49-B-1004 at Chennai Adyar, Padmanaba Nagar 5h Street, 7th cutting Salai junction, towards north to south in a rash and negligent manner and the 8 years old child by name Jayashree got down from the van and while she was attempting to cross the road east to west, without noticing her, the petitioner suddenly drove the vehicle in a rash and negligent manner and thereby dashed against the victim and the van was run over her body. As a result of which, the said Jayashree sustained severe head injury and died. In this context, the defacto complainant/P.W.1 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 petitioner is a driver and if sentence of imprisonment is imposed on him, it will affect his entire family. The learned counsel further submits that the petitioner is not having any previous case and that now he is aged about 51 years and that he is the sole bread winner of the family and that he has to take care of his children. It is submitted that the petitioner is repenting his misdeeds. Therefore, the learned counsel for the petitioner prayed for showing leniency in reduction of sentence.

4. Learned Government Advocate submitted that due to rash and negligent driving of the van by the accused/petitioner, the accident had occurred. However, the learned Government Advocate admits that the petitioner is not having any previous case. It is submitted by the learned Government Advocate that nowadays, death are increasing due to these type of accident and, therefore, the Courts below have rightly convicted the petitioner. It is also submitted by the learned Government Advocate that leniency has already been shown by the appellate Court by imposing minimum punishment. Therefore, the learned Government Advocate prayed for dismissal of the revision.

5. 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.

6. The trial court convicted the petitioner/accused for the offences punishable under Section 304 (A) I.P.C and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo two weeks Simple Imprisonment. On appeal, the appellate Court also confirmed the conviction and sentence.

7. On a careful perusal of the entire evidence, it is clear that the petitioner has committed the offence under Section 304 (A) IPC and the same has been established by the prosecution beyond reasonable doubt. But now the petitioner contends that he is the sole bread winner of the family and if

sentence of imprisonment is imposed on him, it will affect his entire family. Now, the petitioner is also repenting his misdeeds. But, at the same time, the petitioner has caused irreparable loss to the family of the deceased.

8. However, taking into consideration the submission of the learned counsel for the petitioner that the petitioner is 51 years old and that he is the sole bread winner of the family and that he is not having any previous case, I am inclined to reduce the sentence into one year Rigorous imprisonment.

9. Accordingly, while confirming the conviction imposed by the Courts below, the sentence is reduced into one year Rigorous Imprisonment instead of two years Rigorous Imprisonment as imposed by the Courts below. The fine amount of Rs.1,000/- imposed by the Courts below is confirmed. If the petitioner fails to pay the fine amount, he shall undergo simple imprisonment for two weeks as ordered by the Courts below. The trial court is directed to take necessary steps as are necessary to secure the presence of the petitioner for undergoing the period of one year Rigorous Imprisonment. It is needless to say that the sentence, if any, already undergone by the petitioner can be given set off as contemplated under Section 428 of Cr.P.C.

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

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. IV Metropolitan Magistrate, Saidapet, Chennai
 2. Do-Thro-The Chief Metropolitan Magistrate, Egmore, Chennai 8.
 3. V Additional Sessions Judge, Saidapet, Chennai.
 4. The Superintendent, Central Prison, Puzhal, Chennai.
 5. The Inspector of Police, J2, Traffic Investigation Adyar, Chennai 20.
 6. The Public Prosecutor, High court, Madras.
- +1 cc to Mr.Santhoshkumar, Advocate, sr.58500

CRL.RC.No.434 of 2010