

The Petitioner/Accused namely R.Baskar, S/o.Radhakrishnan was directed to be released on bail order of this Court dated 07/05/2010 in Mp.1/2010 in CrI.Rc.498/2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.R.C.No.498 of 2010

R.Baskar
S/o.Radhakrishnan ... Petitioner

vs.

State represented by
Inspector of Police,
Traffic and Investigation Wing,
G.N.T.Road,
Chennai - 600 010.
Crime No.366 of 2006 ... Respondent

Criminal Revision filed under section 397 and 401 Cr.P.C. against the judgment of learned Additional District Judge, Fast Track Court IV, Ponneri, passed in C.A.No.61 of 2009 on 28.04.2010 modifying the judgment of learned Judicial Magistrate II, Ponneri, passed in C.C.No.189 of 2007 on 11.09.2009.

For Petitioner : Mr.P.K.Ilavarasan

For Respondent : Mr.C.Iyyapparaj,
Government Advocate [CrI.side]

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O R D E R

This revision arises against the judgment of learned Additional District Judge, Fast Track Court IV, Ponneri, passed in C.A.No.61 of 2009 on 28.04.2010 modifying the judgment of learned Judicial Magistrate II, Ponneri, passed in C.C.No.189 of 2007 on 11.09.2009.

2. The prosecution case is that on 18.12.2006 at about 08.00 p.m., while the deceased and his friend were riding motor cycles, a container lorry bearing registration No.TN-04-M-9563, driven in a rash and negligent manner, hit the deceased's motor cycle owing to which the deceased fell down, suffered grave injuries and died. A case was registered in Crime No.366 of 2006 on the file of respondent and upon completion of investigation and filing of charge sheet informing commission of offences u/s.279 and 304-A IPC, the case was tried in C.C.No.189 of 2007 on the file of learned Judicial Magistrate II, Ponneri.

3. To prove its case, the prosecution examined seven witnesses and marked ten exhibits. None were examined on behalf of the defence nor were any exhibits marked. The trial Court, under judgment dated 11.09.2009, convicted the petitioner for offences u/s.279 and 304-A IPC and sentenced to 6 months S.I. and fine of Rs.1,000/- i/d 1 month S.I. for offence u/s.279 IPC and 1 year S.I. and fine of Rs.5,000/- i/d 3 months S.I. for offence u/s.304-A IPC. There against, the petitioner preferred an appeal in C.A.No.61 of 2009 on the file of learned Additional District and Sessions Judge cum Fast Track Judge IV, Ponneri. Appellate Court, under judgment dated 28.04.2010, while confirming the finding of conviction, modified the sentence to one of 1 month S.I. for offence u/s.279 IPC and 3 months S.I. for offence u/s.304-A IPC. Fine imposed by the trial Court was confirmed. Appellate Court directed that the sentences run concurrently. Against such finding, the present revision has been filed.

4. Learned counsel for petitioner submits that the prosecution case is that the accident occurred at 08.00 p.m. on 18.12.2006. The First Information Report, Ex.P7, allegedly was recorded at 01.30 a.m. on 19.12.2006 and the same has reached the Magistrate only on 3.30 p.m. on such date. Petitioner was not named in the the First Information Report and the prosecution witnesses have not identified him as the driver of the container lorry and hence, there was no proof of his having been at the wheel of such lorry. It is the prosecution case that the deceased and PW-1, his friend, were riding motor cycles and PW-1 witnessed the accident. It is the evidence of PW-1 that the deceased suffered a head injury. PW-5, Doctor, who conducted postmortem, deposed to the deceased not having suffered any head injury. While PW-1 had spoken to initially taking the deceased to a hospital by name 'Anand Hospital' by an auto rickshaw and thereafter, to the Government Stanley Hospital, no proof there regards had been produced. No auto driver had been examined. Learned counsel, therefore, contends that there was no material to enter upon a conviction against the petitioner and the Courts below wrongfully have so done.

5. Heard learned Government Advocate [Crl.side] on the above submissions and perused the records.

6. This Court finds merit in the submissions of learned counsel for petitioner. The evidence of PW-1 is that the deceased suffered a head injury whereas that of PW-5, Doctor, is that the deceased has not suffered any head injury. There is no explanation for the inordinate delay in the First Information Report reaching the Magistrate. No records from Anand Hospital have been produced nor has any driver of auto been examined towards supporting the version of PW-1. A reading of Ex.P6, Accident Register, relating to the hospital records puts paid to the prosecution case inasmuch as it reveals that the deceased was brought to the hospital by a named auto driver. Even such person has not been examined. In the circumstances, the benefit of doubt would flow to the petitioner/accused.

This Criminal Revision is allowed. The judgment of learned Additional District Judge, Fast Track Court IV, Ponneri, passed in C.A.No.61 of 2009 on 28.04.2010 modifying the judgment of learned Judicial Magistrate II, Ponneri, passed in C.C.No.189 of 2007 on 11.09.2009, is set aside. Petitioner is acquitted of all charges. Fine amount, if any, paid by petitioner shall be refunded to him.

Sd/
ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

gm

To

1. The Additional District Judge,
Fast Track Court IV,
Ponneri.
2. do thro The Principal Sessions Judge,
Tiruvallur.
3. The Judicial Magistrate II,
Ponneri.
4. do thro The Chief Judicial Magistrate,
Tiruvallur.

5. The Superintendent
Central Prison I, Puzhal, Chennai

6. The Inspector of Police,
Traffic and Investigation Wing,
G.N.T.Road,
Chennai - 600 010.

7.The Public Prosecutor,
High Court, Madras.

+1 CC to MR.P.K.Ilavarasan Advocate. SR.NO. 65605

Crl.R.C.No.498 of 2010

CO-KJI
JD 29/12/2015



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