

Bail Slip

The Petitioner/Accused was directed to released on bail and by the order of this court dated 20.05.2009 and made in MP.NO.1 of 2009 in Crl.R.C.No.489 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 489 of 2009

Soundararajan

.. Petitioner/Accused

Versus

The Inspector of Police
Tiruppur North Police Station,
Tiruppur.

.. Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. against the Judgment dated 23.01.2008 made in Crl.Appeal No. 62 of 2008 on the file of the learned Additional District Sessions Judge, (Fast Track Court No.IV), Coimbatore at Tiruppur confirming the judgment dated 06.05.2009 passed in C.C. No.1061 of 2003 on the file the learned Judicial Magistrate No.1, Tiruppur.

For Petitioner : Mr. P.Jagadeesan

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

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ORDER

The petitioner stood charged for the offences punishable under Sections 279, 337 and 304 (A) of IPC and after trial, he was convicted for the offence under Section 279 of PIC to pay a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment and under Section 337 to pay a fine of Rs.1,000/- in default to undergo one month imprisonment and under Section 304-A of IPC and sentenced to undergo rigorous imprisonment for a period of 12 months. The appeal filed by the petitioner questioning his conviction and sentence passed by the trial court was dismissed by the learned District Sessions Judge, (Fast Track Court No.IV), Coimbatore at Tiruppur on 06.05.2009 against which the present Criminal Revision Case is filed.

2. The case of the prosecution is that on 02.06.2003 at about 6.00 pm, the petitioner was driving the lorry in Tiruppur-Mangalam Road. At that time, the petitioner, due to his rash and negligent driving of the lorry, hit a motor cyclist from behind, who was driving the motor cycle bearing Registration No.TN 38-F-4018 and caused the death of the rider and injury on the pillion rider.

3. The learned counsel for the petitioner would mainly contend that the courts below failed to see that the appellant was not identified by any of the prosecution witnesses as driver of the vehicle and in the absence of the same, the conviction and sentence imposed by the courts below are vitiated. Learned counsel also contended that the evidence of P.W.1, who was sitting at the back side of the motor cycle has categorically stated that he turned back and found that the lorry was driven in rash and negligent manner which cannot be accepted. It is also contended that the eye witnesses projected by the prosecution are closely associated with the victim and his father. Hence, the court below failed to establish that they were the interested witnesses and their evidence cannot be relied on for any purpose. 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 sustainable and he prayed for allowing this Criminal Revision Case.

4. On the other hand, the learned Government Advocate would contend that Pws.1 to 9 have given cogent and natural evidence in support of the case of the prosecution. The prosecution witnesses have also identified the deceased and therefore, it cannot be said that the deceased was not identified and that he was identified for the first time in the Court. Merely because the trip sheet was not produced or the employees of the lorry company have not been examined, it will not vitiate the case of the prosecution in any manner.

5. I heard the counsel for both sides and perused the materials placed on record. The main contention of the counsel for the petitioner is that as per the case of the prosecution, if the lorry hits the motor cycle from behind, it will be pillion rider who would sustained injury at first. In this case, the categorical statement of P.W.1 that he turned back and saw the lorry was driven in a rash and negligent manner, is an erroneous one. Hence, the contention put forth by the prosecution, is not in accordance with law. However, learned counsel also contend that the petitioner is the sole bread winner of the family and at the time of accident, he was aged only 28 years and hence, some leniency of this Court to be shown on the accused.

6. It is the case of the prosecution as well as the statement of P.W.1/pillion rider that the vehicle said to have been driven by the petitioner had hit the two wheeler from behind in a rash and negligent manner with high speed. In this context, it is to be mentioned that if the P.W.1 is the pillion rider definitely he is the person who would have sustained grievous injury and done to death if the lorry has hit the motor cycle from behind. Whereas, in this case it was the rider of the motor cycle who was done to death. From the perusal of the judgment of the appellate court, it is seen that the accident occurred due to the sudden stoppage of the lorry which was going in front of the motor cycle and that the lorry which came from behind had hit the motor

cycle. So the possibility of the motor cycle getting dashed against the lorry which was going in front of it, cannot be ruled out. Therefore, it cannot be said that it is due to rash and negligent driving of the driver of the lorry alone, the accident occurred and there was also no evidence available to prove the rash and negligent driving of the lorry. Further, when the eye witnesses were termed to be interested witnesses, the court below ought to have seen the evidences clearly. The courts below have only taken into consideration that if the lorry was driven at a normal speed, the motor cyclist could have only sustained minor injuries and the fact that he died on the spot would indicate the rash and negligent driving of the driver of the lorry. Such a conclusion arrived at by the courts below is without any legal evidence and only based on surmises.

7. Hence, in the present case, the prosecution has failed to prove the case beyond reasonable doubt and hence, modifying the sentence to one of payment of compensation alone would meet the ends of justice.

8. In the result, the Criminal Revision is partly allowed, confirming the conviction imposed on the petitioner by the trial court and modifying the sentence to one of deposit of compensation of Rs.1,00,000/- to the credit of C.C.No.1061 of 2003, on the file of the learned Judicial Magistrate No.1, Tiruppur, within a period of eight weeks from the date of receipt of copy of this order. On such deposit, learned Judicial Magistrate No.1, Tiruppur is directed to disburse the amount of compensation so deposited by the petitioner to the family of the deceased on filing appropriate petition. If the petitioner fails to deposit the aforesaid compensation amount, within the time stipulated, he has to undergo the remaining period of sentenced as ordered by the trial court and confirmed by the appellate court. In such event, the trial Court shall take appropriate steps as are necessary to secure the presence of the petitioner herein.

smi

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Additional District Sessions Judge,
(Fast Track Court No.IV),
Coimbatore at Tiruppur

2. The Judicial Magistrate No.1,
Tiruppur.

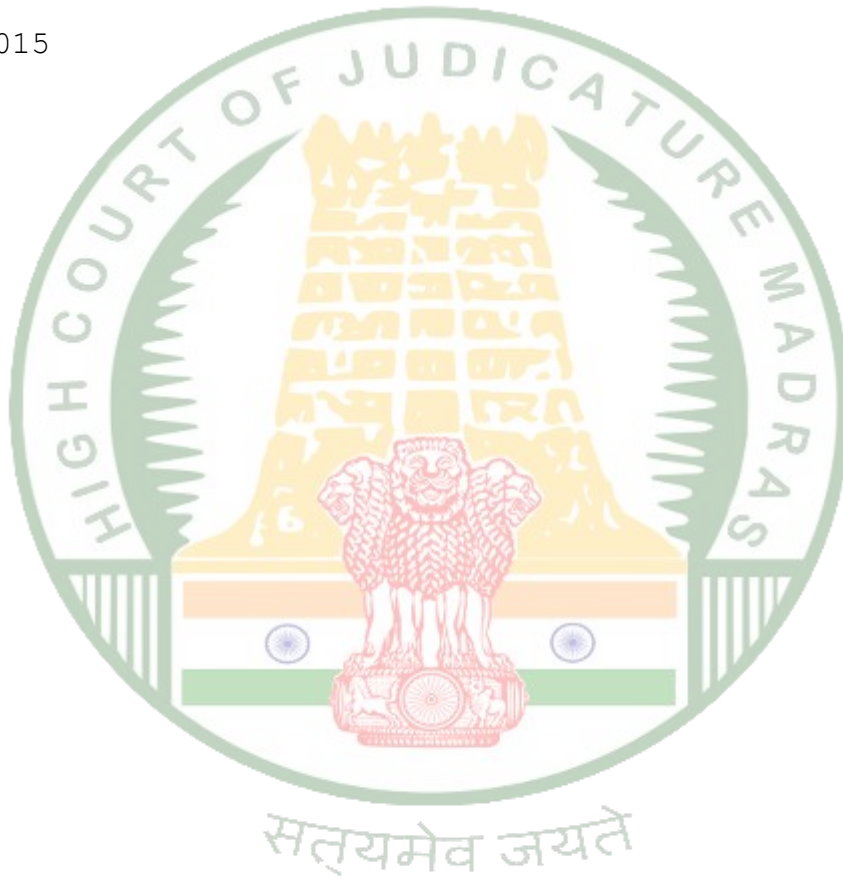
3. The Public Prosecutor,
High Court, Madras.

4. The Chief Judicial Magistrate,
Coimbatore (for information)
5. The Inspector of Police,
Thiruppur North Police Station,
Thiruppur

+1 C.C. To MR.P.JAGADEESAN, Advocate in SR.NO.45592

CrI. R.C. No. 489 of 2009

KM(CO)
sd : 07/10/2015



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