

BAIL SLIP

The petitioner/Accused viz., K.R. Subramaniam, S/O. Ramasamy Gounder is directed to be released on bail as per the order of this court, dt.23-02-2011 in MP.No.1/2011 in CRL.RC.154 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.154 of 2011

K.R.Subramaniam ... Petitioner

Vs.

The Inspector of Police,
Kamanayakenpalayam Police Station,
Tiruppur District,
Crime No.299 of 2005. ... Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure to call for the records in C.A.No.141 of 2010 on the file of the Additional District & Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur and set aside the judgment passed in C.A.No.141 of 2010 by the Additional District & Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur dated 23.12.2010, confirming and modifying the conviction and sentence passed by the Judicial Magistrate Palladam in C.C.No.446 of 2005 dated 10.06.2010.

For Petitioner : Mr. R.Ganeshkumar

For Respondent : Mrs. M.F.Shabana

[Govt. Adv.(Crl.S)]

O R D E R

The Criminal Revision has been filed challenging the order in C.A.No.141 of 2010 passed by the learned Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur.

2. The petitioner/accused stood charged for the offences under Sections 279, 337 and 304(A) IPC. By the judgment dated 10.06.2010, in C.C.No.446 of 2005, the trial Court convicted and sentenced him to undergo Simple Imprisonment for one month for the offence under Section 279 IPC and to undergo Simple Imprisonment for one month for the offence under Section 337 IPC

and to undergo Simple Imprisonment for one year and to pay a fine of Rs.2000/- in default to undergo Simple Imprisonment for one month for the offence under Section 304(A) IPC. Challenging the above, the petitioner filed an appeal in C.A.No.141 of 2010 before the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur and the trial Court dismissed the appeal, however, reduced the sentence under Section 304(A) IPC to six months Simple Imprisonment.

3. The case of the prosecution in brief is as follows:

The deceased, in this case, Markendayan, is the uncle of P.Ws.1 and 2. On 08.06.2005, the deceased, P.W.1 and P.W.2 along with some other persons, went for a consecration ceremony of a temple at Kungumapalayam village. When they were returning from the festival in a Omni Van driven by the accused, he drove the vehicle in a rash and negligent manner and dashed against the electric post near Vijaya Mills at Kamanaiakenpalayam and the deceased was seriously injured in the above accident. Immediately, the injured was taken to one Purushothaman Hospital, where he was declared dead. Thereafter, the body of the deceased was taken to Government Hospital, Palladam. Then, P.W.1 went to Kamanaiyakanpalayam police station and lodged a complaint. P.W.10, Head Constable, working in the Kamanaiyakanpalayam police station, registered a case in Crime No.299 of 2005 for the offences under Sections 279, 337 and 302 (A) IPC and sent the First Information Report to the higher officials.

4. P.W.11, the Inspector of Police, on receipt of the First Information Report, visited the scene of occurrence and prepared Observation Mahazar(Ex.P2). Then he went to Purushothaman Hospital and conducted inquest over the dead body of the deceased. Thereafter, he sent the body of the deceased for postmortem to the Government Hospital, Palladam. P.W.8, Doctor, working in the Government Hospital, Palladam, conducted postmortem over the dead body and issued a postmortem certificate, Ex.P.4. On 16.11.2005, the accused surrendered before the police and he was remanded to judicial custody. Then, P.W.12, another Inspector of Police, after recording some other witnesses and after completing investigation filed the charge sheet.

5. Based on the above material, the trial Court framed charges under Sections 279, 337 and 304(A) IPC as against the accused and the accused denied the charges. After full fledged trial, the trial court convicted the petitioner under Sections 279, 337 and 304(A) IPC. Challenging the said conviction and sentence, the petitioner preferred appeal in C.A.No.141 of 2010 before the Additional District and Sessions Judge, Fast Tract

Court No.IV, Coimbatore at Tiruppur . The appellate Court has also dismissed the appeal confirming the conviction, however, reduced the sentence under Section 304(A) IPC to six months simple imprisonment and confirming the sentence with respect to other offences.

6. Challenging the legality of the above said conviction and sentence, the present revision has been filed.

7. The learned counsel appearing for the petitioner would submit that the identity of the petitioner has not proved by the prosecution. Even P.Ws.1 and 2, who are eye-witnesses also not identified the accused at any point of time. Even, the Investigating Officer, P.W.11 also has not taken any steps to the identity of the accused, and he has not even examined the owner of the vehicle to find out, who was the driver at the time of occurrence. Apart from that, he has not recovered the driving licence or other records relating to the accused to establish that he alone driven the vehicle at the time of accident. Another eye-witness P.W.9 has also turned hostile, Hence, there is no evidence available on record to show that it is only the petitioner/accused had driven the vehicle. Apart from that there is no evidence available to prove that the petitioner had driven the vehicle in a rash and negligent manner. Hence, in the absence of any evidence with regard to the identity of the accused, the courts below erroneously convicted the accused holding that it is this accused who has driven the vehicle and therefore, he prayed for setting aside the judgment of the courts below.

8. The learned counsel appearing for the respondent would submit that there are two eye-witnesses. P.Ws.1 and 2, who were traveling along with the accused has clearly stated that it is only this accused has driven the vehicle in a rash and negligent manner and caused the accident and due to that, the accused died, and there is no reason to disbelieve their evidence. Hence, he sought for dismissal of the appeal.

9. I have considered the rival submissions.

10. As rightly contended by the learned counsel for the petitioner, P.Ws.1 and 2, who alleged to have traveled along with the deceased in the van, have not identified the accused at any point of time, another eye-witness, namely, P.W.9 also turned hostile. P.W.11, investigating officer in his cross-examination has admitted that he has not conducted the Test Identification Parade, and he has not taken any steps to identify the accused through the witnesses. Even after arrest, he has not taken any steps to get a statement from the accused and he has not even examined the owner of the van to find out,

who has driven the van at the time accident and even his evidence would go to show that he has not even taken any steps to know, who was the driver of the van at the time of accident. Hence, from the available evidence, it is clear that nobody has identified the accused, as he has driven the vehicle at the time of accident. In the absence of any such evidence to establish that only the petitioner has driven the vehicle at the time of accident, the judgment of the court below are liable to be interfered and the appellant is entitled for acquittal.

11. The Criminal Revision is allowed and the judgment dated 23.12.2010 made in Crl.A.No.141 of 2010 on the file of the learned Additional District & Sessions Judge, Fast Track Court No.IV, Coimbatore, confirming the order dated 10.06.2010 made in C.C. No. 446 of 2005 on the file of the learned Judicial Magistrate, Palladam, is set aside and the petitioner is acquitted from all the charges. Fine amount if any paid by the petitioner shall be refunded.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrp

To

- 1.The Additional District and Sessions Judge,
Fast Track court No.IV,
Coimbatore at Tiruppur.
- 2.The Judicial Magistrate,
Palladam.
- 3.Do Through the chief Judicial Magistrate,
Coimbatore.
- 4.The Public Prosecutor,
High Court , Madras.
- 5.The Inspector of Police,
Kamanagakenpalayam police station,
Tiruppur District.

PA(CO)
CB(20/01/2017)