

Bail Slip

The Petitioner/Accused namely Arumughan, S/o Ganesan, was directed to be released on bail as per the order of this court dated 05.04.2011 in CrI.MP.No.1/2011 in CrI.RC.No.517/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

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THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.R.C.No.517 of 2011

Arumugham

... Petitioner/Accused

Vs.

The State rep. by
The Inspector of Police,
Minjur Police station,
Thiruvallur District

..

Respondent/Complainant

This Criminal revision is filed under Section 379 & 401 of Cr.P.C., against the judgment made in C.A.No.100 of 2010, dated 31.03.2011 on the file of the Principal Sessions Judge, Thiruvallur confirming the conviction and sentence awarded by the Judicial Magistrate No.2, Ponneri in C.C.No.364 of 2004, dated 29.11.2010.

For Petitioner : Mr.Rahamath Ali

For Respondent : Mr.R.Sekar, G.A. (CrI.side)

O R D E R

The accused in C.C.No.364 of 2004 is the revision petitioner.

2. According to the prosecution, on 13.10.2003 at 12 noon, when the deceased was walking at T.H. road, near electric transformer at Padmavathy Nagar, Minjur, the accused came driven a tractor bearing No.T.N.20-U 7980 in a rash and negligent manner hit the passerby who sustained injuries and died of the accident injuries. He was prosecuted for the offences under section 279, 304(A) I.P.C. before the learned Judicial Magistrate No.II, Ponneri. The complaint was lodged by

one Dilli Babu who died subsequently in some other incident. Prosecution examined P.Ws.1 to 8 and exhibited Ex.P1 to P9.

3. The trial Court came to the conclusion that the prosecution has established the charges beyond all reasonable doubts, convicted the accused under Section 279 and 304(A) I.P.C. and sentenced him to 3 months S.I. and imposed a fine of Rs.2000/- with default sentence.

4. Aggrieved, the revision petitioner/accused filed an appeal in C.A.No.100 of 2010. The learned Principal Sessions Judge, Thiruvallur confirmed the conviction and sentence and dismissed the Criminal appeal. In these circumstances, the accused is before us by way of Criminal revision.

5. The learned counsel for the revision petitioner/accused would contend that absolutely there is no incriminating evidence implicating the accused in this case. None of the witnesses spoken that the accused came driven the tractor in a rash and negligent manner. The trial Court placed heavy reliance on Ex.P8 Rough sketch. Ex.P8 will give topography of the accident place. It will not tell in what manner, the revision petitioner came driven the tractor. The learned Appellate Judge also fell into error. The trial Court as well as the Appellate Court instead of finding out whether the appellant was rash and negligent in driving the tractor, decided the same based on accident injuries. Injuries sustained by a person in road accident is not an indicia to decide whether the driver driven the vehicle in a rash and negligent manner. It is not a hurt case. It is an accident case. Absolutely, there is nil evidence depicting the person of rash and negligent on the part of the accused at the time of occurrence. Both the Courts have not viewed the evidence in proper perspective. They have taken into account the evidence which they ought not to have taken into account. Whereas they failed to consider the evidence which they ought to have considered. The impugned judgment is not based on legal evidence. Thus, they suffer from legality and propriety calling for interference of this Court under Sections 379 r/w 401 of Cr.P.C.

6. On the other hand, the learned Govt. Advocate (Crl.side) has stated that evidence adduced would show that the accused involved in the road accident and also the vehicle involved in the accident. Witnesses have spoken about the accident took place and involvement of the accused. In the circumstances, the trial Court recorded conviction and awarded sentence to the accused. The Appellate Court confirmed the same. Thus, no interference is called for.

7. I have anxiously considered the rival submissions and perused the impugned judgments and also the entire materials on record.

8. The question before us is whether the findings recorded by both the Courts and the sentence imposed upon the accused suffers from any legality, propriety calling for interference of this Court under section 397 r/w 401 Cr.P.C.

9. In this case, the road accident took place on 13.10.2003 at 12 noon at T.H. road in Padmavathy Nagar, Minjur. The Minjur police implicated the revision petitioner as tractor driver who is alleged to have been responsible for the road accident which resulted in untimely death of the deceased. Thus, specific version of the prosecution is that the accused driven the tractor in a rash and negligent manner and the rashness has resulted in death of the deceased.

10. The complaint has been lodged by one Dilli babu. Dilli babu who is no more, but not the case given by him. In such circumstances, inspite of the death of the complainant, the prosecution is able to establish the offence alleged, by acceptable evidence and the Court can record conviction.

11. In this case, P.W.1 has been examined to speak about the actual manner of the road accident. P.W.1 was projected as ocular witness. A reading of his evidence would show that he did not spoken about the actual manner of the accident. His evidence would not show that the tractor driver was rash and negligent at the time of occurrence. P.W.2 is an after-occurrence witness. P.Ws.3 and 4 were examined only to speak about the complaint lodged with the Investigation officer. P.W.5 Motor Vehicle Inspector gave report that there was no mechanical defect in the tractor at the time of occurrence. Thus, sheer anchor of the prosecution version of the case is non other than the evidence of P.W.1. As already pointed out, there is nothing in the evidence of P.W.1 that the tractor was driven in a rash and negligent manner at the time of accident. This aspect has been completely overlooked by the trial Court as well as the Appellate Court.

12. In convicting the accused, the trial Court had taken a strange route heavily relied on Ex.P8. The author of Ex.P8 is Investigation officer. It will give an idea or topography of the accident area. But Ex.P8 inanimate document which does not speak about the actual manner of accident. The Appellate Judge instead of concentrating on the evidence adduced, more particularly by P.W.1, concentrated on medical evidence and the nature of injuries on the dead bodies and came to the conclusion that the tractor driver was rash and negligent.

13. As rightly pointedly by the learned counsel for the revision petitioner, it is not the hurt case, it is a road accident case. Rashness or negligence on the part of the driver of the vehicle cannot be decided on the nature and cause of the injuries. Thus, the learned Appellate Judge taken into account the evidence which ought not to have taken into account.

14. Thus, in the light of the above, this Court is of the view that findings recorded by the trial Court as well as the Appellate Court suffers from legality and propriety. In such circumstances, sentence imposed based on such finding must go.

15. In view of the foregoing, ordered as under:

- (1) This revision is allowed.
- (2) The conviction recorded and sentence awarded by the trial Court as well as Appellate Court are set aside.
- (3) The revision petitioner/accused is acquitted from the charges under Section 279 and 304(A) I.P.C.
- (4) Fine amount paid by him shall be refunded to him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The Principal Sessions Judge, Thiruvallur
- 2 The Judicial Magistrate No.2, Ponneri, Thiruvallur
- 3 The Chief Judicial Magistrate, Tiruvallur
- 4 The Government Advocate (Crl.side), High Court, Madras
- 5 The Superintendent, Central Prison, Coimbatore
- 6 The Inspector of Police, Rasipuram, Thiruvallur district

+lcc to Mr.A.M. Rahamath, Advocate, S.R.No.64463

nri(CO)
md(03/01/2017)

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