

Bail Slip:- The petitioner viz Sivakumar aged 28 years S/o. Ganapathy Nadar was directed to be released on bail as per order of this court dated 27.4.2011 made in M.P.1/11 in CrI.R.C.No.668/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE DR. JUSTICE P. DEVADASS

CrI.R.C.No. 668 of 2011

Sivakumar ... Petitioner/ Appellant /
Accused

vs

State rep. by
Inspector of Police
GNT Road, Traffic Investigation
Chennai. ... Respondent /Respondent/
(Crime No.323/06) Complainant

PRAYER: This Criminal Revision Petition is filed under Section 397 and 401 Cr.P.C., to set aside the order of the Principal Sessions Judge at Thiruvallur in C.A.No.101 of 2010 dated 25.04.2011, confirming the conviction and sentence imposed by the Judicial Magistrate-II, Ponneri in C.C. No.187 of 2007 dated 26.11.2010 and to allow this Criminal Revision.

For Petitioner : Mr. V. Balu

For Respondent : Mr.R. Sekar
Government Advocate (CrI.side)

ORDER

The sole accused in C.C. No.187/2007 on the file of the learned Judicial Magistrate No.II, Ponneri is the revision petitioner.

2. This revision came to be filed under the following circumstances :-

On 12.11.2006, at about 3.30 p.m, on the GNT Road and Padiyanallur Junction, Sakunthala, wife of P.W-1 and mother of P.W-2 was walking towards South. At about that time, a road accident took place. Sakunthala was seriously injured. She sustained multiple injuries. On the same day, Sakunthala breathed her last.

3. The accused was prosecuted that he caused the death of Sakunthala by his rash and negligent driving.

4. The version of the prosecution is that at about that time, while Sakunthala was crossing the road, from north the accused came driving the motor cycle TN 02 J 1009 in a rash and negligent manner and dashed against her, from behind. It was witnessed to, by PWs-1 & 2 and certain other witnesses. The medical evidence has been furnished by PWs 3 and 5. PW-9 besides registering the FIR, conducted first investigation. PW-10 Inspector, on completion of investigation filed the final report for offences under Section 279 and 304A IPC.

5. Relying on the above evidence, the learned Magistrate found the accused guilty under Sections 279 and 304 A of IPC and sentenced him to undergo 3 months Simple Imprisonment with a fine of Rs.2000/-, with default, sentence for each count. He has paid the fine amount.

6. The accused has appealed in C.A. No. 101 of 2010. The learned Principal Sessions Judge, Tiruvallur, after hearing both sides, dismissed the Criminal Appeal, and confirmed the conviction and sentence.

7. It is contended by the learned counsel for the Revision Petitioner that none of the witness had spoken about the manner of accident. There is not even an iota of evidence to prove that the accused had driven the bike, in a rash and negligent manner. Even as per the evidence of prosecution witnesses, at the time of occurrence, the deceased had attempted to cross the road, neither her husband nor her son or other witnesses witnessed the actual manner of accident.

8. Learned counsel for the revision petitioner also contended that the very FIR is doubtful in this case. There is contradictory version in the FIR and in the evidence of prosecution witnesses.

9. The learned counsel for the revision petitioner would add that both the trial court as well as the Appellate Court have failed to consider the evidence in proper perspective and rendered their findings, they suffers from perversity, calling for interference of this Court.

10. On the other hand, the learned Government Advocate would submit that the Trial Court had rightly appreciated the evidence and recorded the conviction and awarded the punishment. On re-appraisal of the evidence, the Appellate court upheld the judgment of the trial court. In the facts and circumstances of this case, no interference is called for.

11. I have considered the rival submissions, perused the impugned judgment of the courts below and also the entire evidence on record.

12. This is a Criminal Revision. Here we are concerned with the fact whether the judgments under attack suffers from any legality, whether evidence which ought to have been considered has not been considered or evidence which should not be considered has been considered, whether fundamental principles of law has been overlooked.

13. Now in this case, Sakunthala, wife of PW-1 died in the road accident. The FIR has been lodged by her husband/PW-1. Whether prosecution has produced acceptable evidence showing that at the time of occurrence/ accident the accused came driven his motor cycle in a rash and negligent manner and caused the untimely death of Sakunthala. PW-1, PW-2 and PW-6 have projected to establish the manner of the road accident. In his evidence PW-1 had stated that he heard loud (damar) sound, when he turned, he saw his wife on the road. So also is the evidence of PW-2. He also did not speak about the manner of the accident. The auto driver, PW-6, spoke as an eye witness. He also did not say that he has witnessed the actual manner of accident.

14. FIR is the earliest/ first document in a criminal case. It is a blue print for the prosecution version of the case. PW-9, who registered the FIR, also conducted initial investigation. PWs-1 and 2 have stated that they have visited the police station and lodged the FIR. However, PW-9, contracted them. He states that when he visited the hospital he had recorded the FIR. Even in his cross examination, PW-9 stated that PW-1 did not attend the police station to lodge the FIR. The statement recorded under Section 161 CrPC from the witnesses have reached the trial court nearly after eight months. Considering the facts and circumstances of this case, the FIR, the delayed submission of statement recorded under Section 161 CrPC also assumes signal importance. They goes to shake the reliability of their evidence and the prosecution version of the case.

15. In such view of the matter, the findings recorded suffers from legality. A finding of guilt must be based on acceptable incriminating evidence. However, in this case it is not so. Yet the Trial Court and the Appellate Court fell into error. They have not viewed the prosecution evidence in proper perspective. In the circumstances, necessarily we have to interfere.

16. In view of the foregoing, it is ordered as under :-

- 1) This Revision is allowed.
- 2) The conviction recorded and the sentence awarded by the learned Judicial Magistrate No.II, Ponneri in C.C. No.187 of 2007 on 26.11.2010 , which has been confirmed by the learned Principal Sessions Judge, Thiruvallur in C.A.No.101 of 2010 on 25.04.2011, are set aside.
- 3) The revision petitioner is acquitted under Section 279 and 304-A IPC.
- 4) The fine amount paid, shall be refunded to the revision petitioner.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To

1. The Principal Sessions Judge,
Thiruvallur.
 2. The Judicial Magistrate II, Ponneri.
 3. do thro the Chief Judicial Magistrate
Tiruvallur
 4. The Superintendent,
Central Prison,
Puzhal, Chennai.
 5. The Public Prosecutor
High Court, Madras.
 6. The Inspector of Police
GNT Road, Traffic Investigation
Chennai
- 1 cc to Mr.V. Balu, Advocate, Sr. 60381

Cr1.R.C.No. 668 of 2011

VD (CO)
kk 23/11