

BAIL SLIP

That the Sole Revision Petitioner namely Murugan s/o.Muthusamy, aged about 29 years was directed to be released on bail as per the order of this Court dated the 18th day of June, 2010 in CrI.MP.No.3/2010 in CRL.RC.No.548/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2016

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CrI.R.C.No.548 of 2010

Murugan .. Petitioner

Vs

State represented by
The Inspector of Police
Sangagiri Police Station
Salem District.
(Crime No.570/2007)

.. Respondent

Revision filed under Sections 397 and 401 of Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Salem, in C.A.No.11 of 2010 dated 25.03.2010 confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate No.I, Sangagiri, in C.C.No.145 of 2007 dated 17.12.2009.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mrs.M.F.Shabana
Government Advocate (CrI. Side)

JUDGMENT

Challenging the order of conviction and sentence under Sections 279, 304(A) IPC and Section 132 r/w.187 of Motor Vehicles Act, this Revision has been filed.

2. The petitioner is the sole accused in C.C.No.145 of 2007 (Crime No.570/2007) on the file of the learned Judicial Magistrate No.1, Sankari. Earlier he stood charged for offences under Sections 279, 304(A) IPC and Section 132 r/w.187 of Motor

Vehicles Act. The trial Court convicted the accused on all the charges and sentenced him to undergo three months simple imprisonment and imposed a fine of Rs.900/- in default to undergo one month simple imprisonment for the offence under Section 279 IPC, and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment for the offence under Section 304(A) IPC and sentenced to pay fine of Rs.500/- in default to undergo one month simple imprisonment for the offence under Section 132 r/w.187 of Motor Vehicles Act. Challenging the above said conviction and sentence, the accused filed an appeal before the learned Additional District and Sessions Judge, Salem, in C.A.No.11 of 2010. The appellate Court dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court. Challenging the judgment of the appellate Court, the petitioner/accused preferred the present revision.

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

The deceased in this case one Chinnaponnu, is the resident of Nagichettipatti village and on 26.07.2007, at about 5.45 a.m, when the deceased was walking on the left side of the Sankari Pallipalayam Branch Road, near R.S.Nagichettipatti, a mini van bearing Registration No.TN-34-E-3487 driven by the petitioner/accused came in a rash and negligent manner and dashed against the deceased and fled away from the scene of occurrence and in the impact, the deceased was thrown away 20 feet from the branch road. PW.1, who is the resident of the same village, was taking tea in the nearby tea shop, immediately, he along with PW.2 - grandson of the deceased, took the deceased to Government Hospital, Sankari, where first-aid was given to the deceased and the deceased was referred to the Government Hospital, Erode, then PW.1 and PW.2 took the deceased to Erode, and on the way, the deceased succumbed to injury, thereafter, PW.1 lodged a complaint before the respondent police. PW.15 - a Sub Inspector of Police attached to the respondent police registered a case in Crime No.570 of 2007 for the offence under Sections 279 and 304 (A) IPC and PW.16 - Inspector of Police of the same police station, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared Observation Mahazar and also sent the dead body for postmortem to the Government Hospital, Sankari. Thereafter, he obtained statement from other witnesses and arrested the accused on 27.07.2007, and also sent the van for Motor Vehicle Inspector's report. PW.14, the Doctor working in Sankari Government Hospital conducted postmortem on the dead body and also gave postmortem report Ex.P4. Then PW.16, recorded the statement from the postmortem Doctor and after completion of investigation, he filed the charge sheet.

4. Based on the above materials, the trial Court has

framed charges as stated in paragraph-2 of the judgment. The accused denied the same as false. In order to prove its case, the prosecution examined 16 witnesses and marked 8 exhibits.

5. Out of the above witnesses examined, PWs.1 and 2 are the eye witnesses to the occurrence. PW.1 is the resident of Nagichettipatti Branch Road and according to him, at about 5.45 - 6.00 a.m on 26.07.2007, when he was taking tea in the tea shop, the offending vehicle came in a rash and negligent manner and dashed against the deceased, who was walking in the left side of the road, and fled away from the scene of occurrence, immediately, he along with PW.2 took the deceased to Government Hospital, Sankari, where first-aid was given to the deceased and the deceased was referred to Erode Government Hospital, and on the way, the deceased succumbed to injury. PW.2 is the grandson of the deceased and according to him, at about 5.45 to 6.00 a.m, he went to the shop for purchasing milk and while he returning back, he saw the offending vehicle dashed against the deceased and fled away from the scene of occurrence, immediately, he along with PW.1 took the deceased to Government Hospital, Sankari, and thereafter to Erode Government Hospital, and on the way, the deceased succumbed to injury. PW.3 is the nephew of the deceased. He is only a hearsay witness. PWs.4, 5 and 6 are also hearsay witnesses. PW.7 is also resident of the same village and turned hostile. PW.8 is also a hearsay witness. PW.9 is a witness to the Observation Mahazar (Ex.P2). PW.10 is the person, who is running a tea shop near the scene of occurrence. He is also a hearsay witness. PW.11 turned hostile. PW.12 is related to the deceased and he is also a hearsay witness. PW.13 is the Motor Vehicle Inspector and according to him, he inspected the offending vehicle and found the left hand side head light and indicator was broken, and also found two bends in the body of the vehicle on the left hand side. The vehicle has 64% break capacity. PW.14 is the Doctor, who conducted postmortem. PW.15 is the Sub-Inspector of Police, who registered the complaint. PW.16 is the Investigating Officer and he arrested the accused and filed the charge sheet.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. He did not examine any witnesses nor marked any documents.

7. Considering the above materials, the trial Court convicted the accused and sentenced him as stated above. Challenging the same, the accused preferred an appeal before the Additional District and Sessions Judge, Salem and the first appellate Court dismissed the appeal by confirming the judgment of conviction and sentence passed by the trial Court. Challenging the same, the petitioner/accused preferred the present revision.

8. The learned counsel for the revision petitioner would submit that PWs.1 and 2 are only chance witnesses and they cannot be eye witnesses to the occurrence. According to the learned counsel for the revision petitioner, as per PW.9 - Mahazar witness, the occurrence took place at 5.45 a.m and police came to the scene of occurrence at 6.15 a.m. only, whereas the First Information Report was given only at 9.00 a.m. Hence, there is a doubt regarding First Information Report and PW.1 ought not to have given the complaint as stated by the prosecution. Apart from that, the learned counsel also stated that PWs.1 and 2 are closely related to the deceased and they are interested witnesses, and in the absence of any corroboration from any independent witness, their evidence cannot be believed.

9. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent would submit that PW.1 and PW.2 are the residents of the same village and are residing near to the scene of occurrence and even though they are related, their presence in the scene of occurrence is also natural and PW.1 and PW.2 alone took the deceased to the Government Hospital, Sankari, and PW.1 alone lodged the complaint and therefore, their evidence cannot be disbelieved. Both the Courts below, on considering the evidence of the witnesses, concurrently come to the conclusion that this petitioner/accused alone drove the vehicle in rash and negligent manner and committed the accident.

10. I have considered the rival submissions and perused the records carefully.

11. PW.1 and PW.2 are the eye witnesses to the occurrence and they have clearly stated about the occurrence. According to them, at about 5.45 a.m, when the deceased was walking on the left side of the road, a mini van driven by the petitioner came with high speed and in rash and negligent manner, dashed against the deceased and on the impact, the deceased was thrown away 20 feet from the place of occurrence and the van fled away from the scene of occurrence without stopping and immediately, they admitted her in the hospital. PW.2 is the grandson of the deceased. He is also residing near the scene of occurrence. He came to the shop for purchasing milk and while returning back, he saw the accident. Immediately, PW.2 along with PW.1 took her to the Government Hospital, Sankari and thereafter, to Erode Hospital and on the way to Erode Hospital, the deceased succumbed to injury.

12. The presence of PWs.1 and 2 in the scene at the time of

occurrence cannot be doubted for two reasons:-

They are residing near the scene of occurrence. Both PW.1 and PW.2 took the deceased to Sankari Government Hospital and thereafter, to Erode Hospital and PW.1 lodged the complaint at about 9.00 a.m. It is the consistent evidences of PW.1 and PW.2 is that a mini van came in high speed when the deceased was walking on the left side of the road and dashed against the deceased and fled away from the scene of occurrence. In the above circumstances, there is no reason to disbelieve the evidences of PW.1 and PW.2 as it is natural. The evidences of PW.1 and PW.2 cannot be brushed aside for the simple reason that they are residents of the same village and also the relatives of the deceased.

13. The next contention of the learned counsel for the revision petitioner is that according to PW.9 the police came to the scene of occurrence at about 6.15 to 6.30 a.m is concerned, he is a villager and he may not know the exact time when the police came to the scene of occurrence and based on his evidence, the evidences of PWs.1 and 2 - eye witnesses cannot be rejected. According to PW.15, Sub-Inspector of Police, he only registered the complaint at 9.00 p.m. Whereas PW.16, Inspector of Police also says that he received the complaint. On perusal of the original records, it is seen that the Sub-Inspector of Police registered the complaint and immediately, First Information Report was also sent to the Judicial Magistrate No.I, Sankari.

14. In the above circumstances, this Court is of the view that the Courts below have correctly analysed the evidence and convicted the accused and this Court finds no reason to interfere with the findings of the Courts below as it is not perverse and there is no reason to interfere with the judgments of the Courts below and therefore, the conviction is confirmed.

15. However, taking into consideration the age of the accused and as he has no bad antecedents and considering all other mitigating circumstances, the sentence imposed under Section 304(A) IPC is reduced to six months.

16. In the result, the Appeal is partly allowed and conviction under Section 304(A) and 279 IPC is confirmed and the sentence imposed under Section 304(A) IPC is modified to six months and the sentence imposed under Section 279 IPC is confirmed and both the sentences are ordered to run concurrently. The period of sentence already undergone by the revision petitioner shall be set off under Section 428 Cr.P.C. The trial Court is directed to secure the accused to undergo the

remaining period of the sentence.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Salem.
 - 2.Thro The Principal district and Sessions Judge
Salem
 - 3.The Judicial Magistrate No.1 Sankari
 - 4.The Chief Judicial Magistrate Salem (for Information)
 - 5.The Superintendent, Central Prison, Coimbatore
 6. The Inspector of Police
Sangagiri Police Station
Salem District.
 - 7.The Public Prosecutor,
High Court, Chennai.
- +1 cc to Mr.B.vasudevan Advocate sr 74763

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