

The Accused in Crl.RC.No.654/2010 i.e. GopalaKrishnan (sole Accused in CC.No.152/2006 on the file of the Judicial Magistrate, No.2, Ponneri) was released on bail vide order of this Court, dated 19/07/2010 made in Crl.MP.NO.3 of 2010 in Crl.Rc.No.654/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CRL.RC.No.654/2010

Gopalakrishnan ..Petitioner/Appellant/Accused

Versus

The Inspector of Police
Manali New Town Police Station
Manali New Town.
Cr.NO.176/2004

..Respondent/Respondent/
Complainant

Criminal Revision filed under section 397 r/w 401 Cr.P.C., against the order of conviction and sentence dated 24.05.2010 passed by the learned Additional District Judge/Fast Track Court-IV, Ponneri, in CA.No.64/2009 by modifying the judgment of conviction dated 15.10.2009 passed by the learned Judicial Magistrate No.2, Ponneri passed in CC.No.152/2006.

For Petitioner : Mr.T.P.Sekar

For Respondent : Mr.C.Iyyapparaj, GA [Crl.Side]

ORDER

Challenging the judgment of conviction and sentence passed by the learned Judicial Magistrate No.2, Ponneri in CC.No.152/2006 dated 15.10.2009 as modified by the learned Additional District Judge, Fast Track Court, No.IV, Ponneri in CA.No.64/2009 dated 24.05.2010, the present revision has been filed.

2 In brief, the case of the prosecution is that on 23.07.2004 at about 07.30 a.m., when the victim Munusamy Udayar and his wife Backiammal were standing in the Manali Pudunagar Bus Stop, the Omni Van, bearing Registration No.TN-20-V-3900,

driven by the petitioner/accused in a rash and negligent manner hit the said persons, causing injuries to Backiammal and death of Munusamy Udayar. A case in Crime No.176/2004 on the file of the respondent was registered. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.279, 337 and 304[A] IPC, the case was tried in C.C.No.152/2006 on the file of learned Judicial Magistrate, No.2, Ponneri.

3 Before the trial Court, the prosecution examined ten witnesses and marked nine exhibits. None were examined and no documents were marked on behalf of the defence. On appreciation of materials before it, the trial Court, under judgment dated 15.10.2009, convicted the accused for the offences as stated above and sentenced him to undergo three months simple imprisonment and to pay a fine of Rs.500/- and in default, to undergo one month simple imprisonment for each of the offences u/s.279 and 337 IPC and to undergo one year rigorous imprisonment and to pay a fine of Rs.5000/- and in default, to undergo three months simple imprisonment for the offence u/s.304[A] IPC.

4 Upon appeal, the Lower Appellate Court confirmed the aforesaid conviction but modified the sentences, necessitating the accused/petitioner to approach this Court by way of revision.

5 Heard the learned counsel for the petitioner and the learned Government Advocate [Crl.side] for the respondent and perused the materials placed before this Court.

6 The present is one other case, where even in the absence of oral evidence regards rash and negligent driving of the offending vehicle, viz., Omni Van, it is apparent that the accident could not have been occasioned but for the rash and negligent driving thereof. In the instant case, the Omni Van, proceeding from one road to another and taking a turn to the right, has reached the extreme outer end of the other road and dashed against persons standing at a bus stop, resulting in the death of one and injuries to another. Clearly, the principle of res ipso locutor applies. Even so, this Court is unable to confirm the findings of conviction entered upon by the Courts below since none of the eyewitnesses, viz., P.Ws.1 to 3, have identified the accused as the driver of the vehicle. The prosecution has failed to conduct a Test Identification parade towards identifying the accused. It is the suggestion of the defence to P.W.2 that the petitioner stands falsely charged. It is for the prosecution to prove its case against the particular accused. Such requirement having not been met in this case, the petitioner/accused would be entitled to acquittal.

7 Accordingly, the Criminal Revision is allowed and the judgments of the Courts below, viz., the judgment of the trial court in CC.No.152/2006 dated 15.10.2009 and the Judgment of the Lower Appellate Court in CA.No.64/2009 dated 24.05.2010 are hereby set aside.

8 It is reported that the sentence of the petitioner/accused has been suspended by this Court. Hence, the bail bond, if any, executed by him, shall stand terminated. Fine amount if any paid, shall be refunded to the accused/petitioner.

sd/-

Assistant Registrar (Cs-VII)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

- 1.The Additional District Judge
FTC-IV, Ponneri.
- 2.The Judicial Magistrate,
No.2, Ponneri.
- 3.The Chief Judicial Magistrate,
Thiruvallur.
- 4.The Superintendent
Central Prison, Puzhal, Chennai
- 5.The Inspector of Police
Manali New Town Police Station
Manali New Town.
- 6.The Public Prosecutor
High Court, Madras.

+1 CC to MR.T.P.Sekar Advocate. SR.NO. 1599

Cr1.RC.No.654/2010

CO-GJ

JD 08/02/2016