

Bail Slip:- The petitioner/Accused was directed to be released on bail in and by the order of this Court dated 7.7.2010 made in M.P.No.2 of 2010 in Cr1.R.C.No.669 of 2010 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Cr1.R.C.No.669 of 2010

Mahendran

... Petitioner

vs.

State Rep. by
The Inspector of Police,
Paramathi Police Station,
Namakkal District.

... Respondent

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the conviction and sentence passed by the District Munsif cum Judicial Magistrate, Paramathi, Namakkal District in C.C.No.215 of 2005 by judgment dated 05.06.2008 confirmed by the Appellate Court Additional District Sessions Judge, Namakkal (Fast Track Court), Namakkal in C.A.No.28 of 2008 by judgment dated 27.04.2010.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.C.Iyyapparaj,
Government Advocate (Cr1. Side)

O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offences u/s.279 and 304-A (3 counts) IPC and sentencing him to undergo 6 months S.I and fine of Rs.750/- i/d 1 month S.I. for offence u/s.279 IPC and 12 months S.I. and fine of Rs.3,000/- on each count i/d 3 months S.I. for offence u/s. 304-A (3 counts) IPC.

2. The case of the prosecution is that on 15.05.2005 at about 8.30 a.m., the petitioner drove a lorry bearing Registration No.TAN-9907 from North to South in a rash and

negligent manner and dashed against the TVS-50 Moped, bearing Registration No.28-A-6599, as a result of which three children died. A case was registered in Crime No.143 of 2005 on the file of the respondent and upon completion of investigation, a charge sheet was filed informing commission of offences under Sections 279 and 304-A (3 counts) IPC. The case was tried in C.C.No.215 of 2005 on the file of learned District Munsif cum Judicial Magistrate, Paramathi, Namakkal District.

3. Before the trial Court, the prosecution examined thirteen witnesses and marked twelve exhibits. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, the trial Court, under judgment dated 05.06.2008, rendered a finding of conviction for offences u/s.279 and 304-A (3 counts) IPC and sentenced the petitioner to undergo 6 months S.I and fine of Rs.750/- i/d 1 month S.I. for offence u/s.279 IPC and 12 months S.I. and fine of Rs.3,000/- for each count i/d 3 months S.I. for offence u/s.304-A (3 counts) IPC. There against, the petitioner filed an appeal in C.A.No.28 of 2008 on the file of learned Additional District and Sessions Judge (Fast Track Court), Namakkal, which came to be dismissed under judgment dated 27.04.2010. There against, this revision.

4. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

5. The present is a case where three young children have met their death. A perusal of Ex.P.2, Observation Mahazar, would suggest that the accident took place owing to this petitioner, then aged 23 years, taking a turn to the left from one road to other in a rash manner. However, this Court is unable to sustain the conviction entered into by the Courts below for the following reasons:

A perusal of the complaint in the case informs that upon the oral statement of PW-1, the FIR has been registered. However, in his evidence before Court PW-1 has spoken to a written complaint having been prepared at a petty shop close to the occurrence spot. In the complaint, P.W.1 has informed of having been with P.W.4 at the panchayat union office when the accident took place. As per Ex.P7-sketch, such office is at a distance of 100 feet from the scene of crime and particularly, owing to a bend in the road, the accident could not have been witnessed therefrom. In evidence before Court, PW-1 informs of having been with P.W.4 at the corner of the road and thereby having witnessed the accident. P.W.4 has admitted to hearing a noise and thereafter, be coming to aware of the accident. Therefore, he has not witnessed the accident. These circumstances render doubtful the prosecution case of P.Ws.1 and 4 having witnessed the occurrence. P.Ws.1 and 4 alleged eyewitnesses concur in informing that four persons

travelled on the TVS-50 Moped. The Investigating Officer adamantly would inform that only three persons were travelling thereupon. Even the complaint-Ex.P1 informs of one Kokulaselvi also having travelled on the TVS-50 Moped and that she also had sustained injuries. Therefore, it is clear that the investigation in the case is most wanting. The evidence of the alleged eyewitness is rendered doubtful and hence, the benefit of doubt is to be afforded to the accused/petitioner.

6. Accordingly, this Criminal Revision shall stand allowed. The judgment of learned Additional District and Sessions Judge (Fast Track Court), Namakkal passed in C.A.No.28 of 2008, on 27.04.2010 confirming the judgment of learned District Munsif cum Judicial Magistrate, Paramathi, Namakkal District, passed in C.C.No.215 of 2005 on 05.06.2008 shall stand set aside. Petitioner is acquitted from all charges. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vsm

To

1.The District Munsif cum Judicial Magistrate,
Paramathi, Namakkal District

2. Do thro the Chief Judicial Magistrate
Namakkal (For information)

3.The Additional District and Sessions Judge
(Fast Track Court), Namakkal.

4. The Inspector of Police,
Paramathi Police Station,
Namakkal District.

5. The Superintendent
Central Prison
Coimbatore

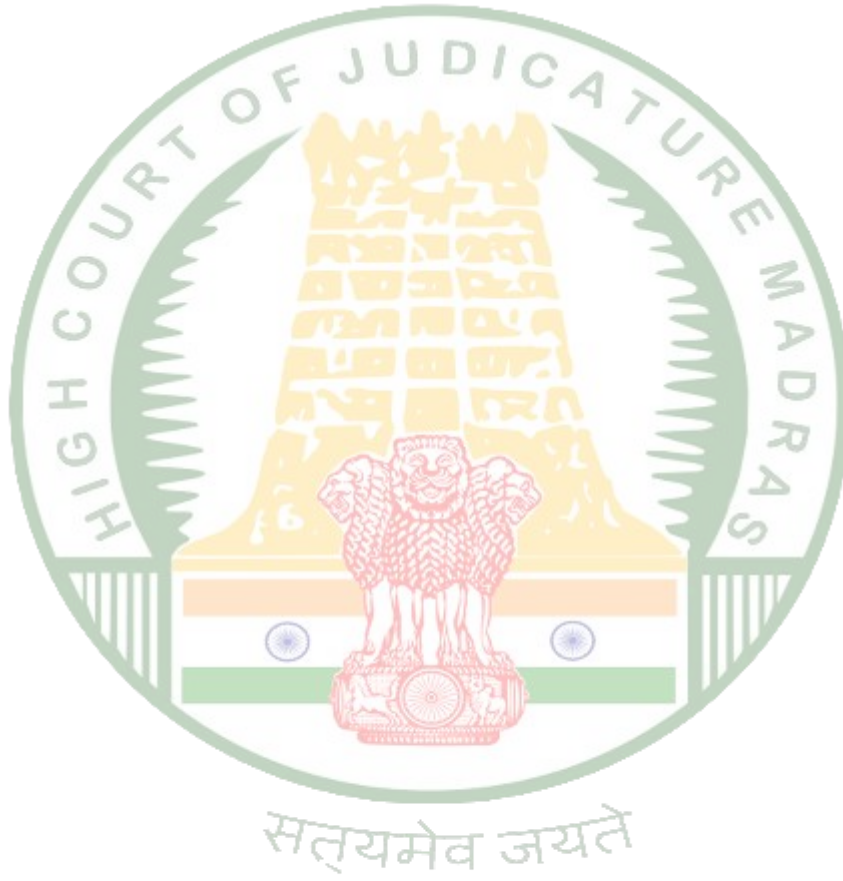
6. The Public Prosecutor,
High Court, Madras

Copy to

The Section Officer
Criminal Section,
High Court, Madras

Cr1.R.C.No.669 of 2010

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