

Bail Slip

The Petitioner/Accused namely P. Rajasekar S/o. Pariyasamy was directed to be released on bail as per order at this Court dated 15.07.2016 made in MP.No.3/2010 in CrI.RC.No.707/2010 on the file at this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.R.C.No.707 of 2010

P.Rajasekar

Petitioner

Vs.

State represented by
Inspector of Police,
N2, Traffic Investigation Police Station,
Chennai.
Crime No.36 N3/2008.

Respondent

This Criminal revision is filed under Section 397 & 401 of Cr.P.C., against the order dated 09.06.2010 passed in C.A.180 of 2009 on the file of the learned V Additional Sessions Judge, Chennai, confirming the conviction and sentence dated 17.09.2009 passed in C.C.No.3176 of 2008 on the file of the learned III Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.A.Kumaraguru
For Respondent : Mr. R.Sekar,
Gov. Advocate (CrI.side)

ORDER

The accused, in C.C.No.3176 of 2008 on the file of the learned III Metropolitan Magistrate, George Town, Chennai, is the revision petitioner.

2. He has been prosecuted for offences under Sections 184 M.V. Act and Section 304-A IPC before the said Court.

3. To establish the offences, prosecution examined P.Ws.1 to 10 and marked Ex.Ps.1 to 9.

4. Relying on the said evidence, the learned Magistrate convicted and sentenced the accused as under :

Offence	sentences
Section 304-A IPC	6 months R.I.
Section 184 M.V. Act	Fine Rs.200/-, i/d one week S.I.

He has paid the fine amount.

5. The case of the prosecution in brief is stated as under:

On 20.03.2008, at about 1.45 p.m., on the S.N.Chetty street, in Royapuram, Chennai, the deceased was riding an Honda Activa Bike. P.W.2 travelled in the bike as a pillion-rider. At that time, the container lorry No.KA 01 A 7162 came driven behind. The lorry hit on the rear side of the bike. P.W.2 suddenly jumped and escaped, however, the deceased could not. The lorry ran over the deceased. He died on the spot. This accident was witnessed by P.Ws.1 and 4. P.W.1 reported this accident to P.W.10 (Ex.P.1-Complaint). This case has been registered.(Ex.P.6-F.I.R.). P.W.3 conducted postmortem on the dead body of the deceased. In the presence of P.Ws.6 and 7, P.W.10 prepared Ex.P.3, Observation Mahazar and drew Ex.P.7, Rough Sketch. P.W.8 inspected the bike and the container lorry. He found no mechanical defects in the vehicles.

6. The learned counsel for the revision petitioner contended that the findings recorded by both the Courts below are not based on proper appreciation of the evidence. P.Ws.1 and 4, would not have witnessed the manner of accident. There are lot of inconsistencies in their evidence. There is no evidence that at the time of accident, the accused had driven the container. Both the Courts have not properly appreciated the evidence of P.W.9, the Manager of the transport company.

7. On the other hand, the learned Government Advocate would submit that the accused having driven the container lorry on that day have been stated by P.Ws.1 and 4. Further P.W.9, the Manager of the company, in which the accused was employed also has been examined. All goes to show that at the time of accident, the accused had driven the container lorry and caused the road accident.

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

9. In a road accident case, fixing the identity of the accused is very important. Then, comes the question whether he has driven the vehicle in a rash and negligent manner. By the mere death of the deceased, punishment could not be awarded to the accused under Section 304-A IPC. The incident of road accident resulting in death of a person should be by a rash and negligent act of the accused. The involvement of the accused must be established by the prosecution beyond all reasonable doubts. Less of it, it will be only suspicion and surmises. They are not equalent to legal proof.

10. Now, in this case, P.Ws.1 and 4 were examined as ocular witnesses. During the trial, the accused was present in the Court. P.Ws.1 and 4 did not pin point that at the time of accident the accused had driven the container lorry. To fix his identity, prosecution examined P.W.9, the Manager of transport company, in which the accused was employed. In his evidence, P.W.9 has stated that they are maintaining Attendance Register for their employees. The container lorry is a huge vehicle. There will be records as to the entrustment of the vehicle to a driver. No record has been produced to show that on that day, the container lorry was entrusted with the accused and he has driven the lorry. There is nil acceptable evidence that at the time of accident the accused had driven the container lorry. This aspect has been missed by both the Courts. Thus, the findings recorded by both the Courts suffers from legality.

11. In view of the foregoing, ordered as under:-

- (i) This Criminal Revision is allowed.
- (ii) The conviction and sentence recorded by the trial Court as well as the appellate Court are set aside.
- (iii) The accused is acquitted under Section 184 M.V. Act and 304 IPC.
- (iv) The accused shall be refunded the fine amount.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The V Additional Sessions Judge, Chennai,
2. The III Metropolitan Magistrate, George Town, Chennai.
- 3 The Government Advocate (Crl.side), High Court, Madras
- 4 The Superintendent, Central Prison, Puzhal
- 5 Inspector of Police, N2, Traffic Investigation Police Station, Chennai.

+1cc to Mr.A. Kumaraguru, Advocate, S.R.No.65334

rp(CO)
md(10/12/2016)

Crl.R.C.No.707 of 2010



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