

BAIL SLIP

CRL.RC.NO.542/2010: The Petitioner herein namely Rajesh S/o.Jagadesan Accused NO.1 was directed to be released on bail as per order of this Court dated 02/06/2010 made in MP.No.1/2010 in Crl.RC.No.542/2010.

Crl.RC.No.801/2010: The Petitioner herein Namley Gnanasekar S/o.Ramalingam/2nd Accused was directed to be released on bail as per the order of this Court dated 06/08/2010 made in MP.No.1/2010 in CRL.RC.NO.801/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.DEVADASS

Crl.R.C.Nos.801 & 542 of 2010

Gnanasekar ... Petitioner in
Crl.R.C.No.801 of 2010/Accused No.2

Rajesh ... Petitioner in
Crl.R.C.No.542 of 2010/Accused NO.1

vs.

State, rep.by
The Inspector of Police,
Thirupalaivanam Police station,
Ponneri Taluk,
Thiruvallur District
.... Respondent in
both the Crl.R.Cs./Complainant

Criminal revisions preferred under Sections 397 and 401 Cr.P.C., against the order of conviction and sentence dated 11.05.2010 passed by the Additional District and Sessions Judge, Fast Track Court No.IV, Ponneri in Crl.A.No.72 of 2009, confirming the conviction and modifying the sentence passed in C.C.No.80 of 2007, dated 19.11.2009, passed by the Judicial Magistrate No.II, Ponneri.

For Petitioners : Mr.M.Krishnamoorthy
in both the revisions

For Respondent : Mr.R.Sekar,G.A.(Crl.side)
in both the revisions

COMMON ORDER

As these two criminal revisions arose out of a single judgement rendered by the trial Court and the appellate Court, they were heard together and are being disposed of by this common order.

2. Crl.R.C.No.542 of 2010 has been directed by A1/driver of a Government Transport Corporation bus, while Crl.R.C.No.801 of 2010 has been directed by A2/conductor of the said bus.

3.The driver and conductor were prosecuted for offences under Section 279 and 304-A I.P.C. before the Judicial Magistrate No.2, Ponneri, Tiruvallur District.

4.The case of the prosecution in brief runs as under:

(1) On 23.08.2006, at about 8.30 a.m, near Polachiammankulam bus stop, near, Ponneri, Suganya, daughter of P.W.1 and other students were waited for a bus to go to their school. At about that time, the Transport Corporation bus route No.55, came driven by A1(Rajesh) and its conductor was A2 (Gnanasekar). The school children and the passengers have entered the bus. While Suganya was stepping into the bus from its rear side entry, suddenly the bus was taken. Suganya rolled down on the steps and fallen down on ground. She sustained head injuries. This was witnessed to by P.Ws.2 to 5, 7, 8, 9 and 12. Suganya's father/P.W.1 took his injured daughter to Government Hospital, Ponneri. Then he took her to Government Head Quarters Hospital, Ponneri. Her condition became serious. She was taken to Government General Hospital, Chennai. On 24.08.2006, at about 4 p.m., she died at the hospital.

(2) On 25.08.2006, at about 10 a.m. P.W.1 gave Ex.P1, complaint, to P.W.14, Inspector, Thirupalaivanam Police Station, Ponneri Taluk. He registered this case (Ex.P6-FIR). He took up the investigation. Visited the scene place. Prepared Ex.P2, Observation mahazar, in the presence of P.Ws.6 and 7, drew Ex.P8, rough sketch of the scene of place. On the dead body of Suganya, post-mortem was done by P.W.11.

(3) P.W.10, M.V.Inspector, on inspection, found no mechanical defect in it. P.W.14 examined the material witnesses and recorded their statement under Section 161 of the Cr.P.C. Concluding his investigation, filed final report for offences

under Sections 279 and 304-A of the Indian Penal Code as against the accused.

5.To substantiate the offences, prosecution examined P.Ws.1 to 14 and marked Exs.P1 to 10.

6. Upon hearing both sides and on appreciation of evidence, the learned Magistrate convicted and sentenced the accused as under:

Sl.N o.	Offence	Accused	Punishment
1.	Section 304-A IPC	A1	1 year R.I. and fine Rs.5,000/-, in default, 3 months S.I.
2.	Section 304-A I.P.C.	A2	1 year R.I. and fine Rs.5,000/-, in default, 3 months S.I.
3	Section 279 I.P.C.	A1	No separate sentence was imposed under Section 279 I.P.C.

The accused have paid the fine amount.

7. Aggrieved, the accused have directed Criminal Appeal in CrI.A.No.72 of 2009. The learned Additional Sessions Judge, Ponneri, (FTC No.4) after hearing both sides, while confirming the conviction, modified the sentence of imprisonment by reducing it to two months simple imprisonment, however, maintained the fine amount.

8. In these circumstances, the bus driver and the conductor have directed these revisions in this Court.

9. The learned counsel for the revision petitioners would contend that in this case, the prosecution has thoroughly failed to establish that A1 had driven the bus in a rash and negligent manner. The prosecution also failed to establish that A2 has committed a rash and negligent act. There is no acceptable evidence that because of their rash and negligent act, death has occasioned to P.W.1's daughter.

10. The learned counsel for the revision petitioners further contended that in this case, there is no direct evidence

that the accused have committed any rash and negligent act. None of the witnesses substantiated the prosecution version of the case.

11. The learned counsel for the revision petitioners also contended that the place of occurrence was not clearly established. At one point of time it is stated that it was at Polachiammankulam bus-stop and at another point of time, the witnesses say that it took place near the Pakkam bus-stop. There is two days delay in lodging the F.I.R. This delay has not been explained. The F.I.R. is not free from doubt.

12. On the other hand, the learned Government Advocate submitted that there is overwhelming evidence, implicating that the accused are responsible for the untimely death of P.W.1's daughter. It is because of their rash and negligent act, a school girl lost her life. There is no material contradiction between the prosecution witnesses.

13. The learned Government Advocate further contended that it is an accident case. P.W.1 is very much concerned with saving his daughter's life than giving a complaint to the police. In these circumstances, the trial Court as well as the appellate Court, appreciating the evidence on record, rightly convicted the accused under Sections 279 and 304-A of I.P.C. and awarded them punishment.

14. I have deeply considered the rival submissions and perused the impugned judgements and the entire materials on record.

15. Now the question is whether the impugned judgements of the trial Court and the appellate Court suffers from legality and propriety?

16. To punish a person under section 279 I.P.C. the prosecution is bound to establish rash or negligent act on the part of the accused. That has to be established by acceptable legal evidence. When such rash and negligent act, results in death of a person, then it is an offence under Section 304-A I.P.C. Thus, in both the offences, the crux of the matter is establishment of a rash or negligent act on the part of the accused.

17. On 23.08.2006, at about 8.30 a.m., an untoward incident had taken place near Polachiammankulam bus-stop, near Ponneri in Tiruvallore District. The Government Transport Corporation bus, driven by A1, had been involved. A2 was its conductor. When P.W.1's daughter Suganya, a school going girl, entered the bus on its rear side entry, she rolled down on the steps, fell on the road, sustained injuries and after two days,

she died at the hospital.

18. The specific case of the prosecution is that while Suganya was in the process of entering into the bus from the rear side entry, A1 suddenly took the bus, A2 failed to whistle and Suganya rolled down on the steps, fell down and sustained injuries.

19. Certain co-passengers, students and a teacher, who have travelled in the bus have been examined as eyewitnesses to the occurrence. They are P.Ws.2 to 5, 8, 9 and 12. Though they have stated that they have seen the occurrence, in the cross-examination they have stated, only after hearing a loud sound, they have seen Suganya falling down from the bus. P.W.12, although stated that even while Suganya was entering into the bus, suddenly the bus was taken, in his cross-examination she had stated that Suganya's School bag had fallen down and thereafter she fell down. She also did not see the actual manner of accident.

20. Evaluation of the evidence of ocular witnesses does not disclose that they have witnessed the actual manner of accident. There is no clear cut evidence that because the bus driver/A1 has suddenly took the bus, while Suganya was entering into the bus, she had fallen down. The defence contended that the possibility of Suganya having herself slipped and fallen down also could not be ruled out.

21. Both the Courts below have failed to notice all the above aspects in this case. They have not appreciated the evidence in proper perspective. Suspicion and surmises are not equivalent to legal proof. Thus the findings recorded by both the Courts below cannot stand the test of law. The findings recorded by both the Courts suffers from legality and propriety.

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

- (1) This Criminal Revisions are allowed.
- (2) The conviction and sentence awarded by the trial Court as well as the appellate Court upon A1 and A2 are set aside.
- (3) First appellant/A1 under Section 279 and 304-A I.P.C. and second appellant/A2 under Section 304-A I.P.C. are acquitted.
- (4) They shall be refunded the fine amount.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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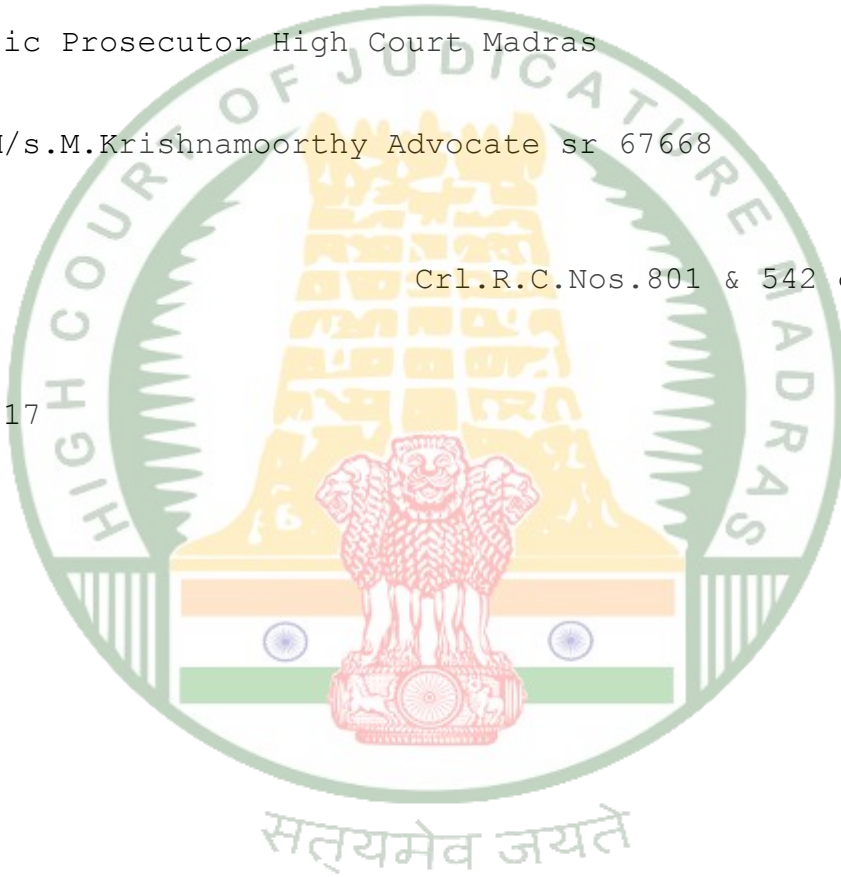
- 1.-do-Thro The Principal Sessions Judge, Thiruvallur
- 2.The Additional Sessions Judge, Ponneri
(formerly F.T.C.No.IV) Ponneri
- 3.The Judicial Magistrate No.II, Ponneri.
- 4 -do- Thro The Chief Judicial Magistrate Thiruvallur
- 5.The Inspector of Police,
Thirupalaivanam Police station,
Ponneri Taluk,Tiruvallur District

6.The Public Prosecutor High Court Madras

+1 cc to M/s.M.Krishnamoorthy Advocate sr 67668

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