

Bail Slip

the petitioner/Accused Namely, Ramajeyam, in C.C.No.161/2006 on the file of the Principal District and Sessions Judge, Salem, was directed to be released on bail in and directed to be released on bail in and by the order of this court dt.15.07.2016 in Crl.MP.7212/2016 in Crl.RC.928/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.928 of 2016

Ramajeyam
S/o.Kailasam

.. Petitioner

vs.

State by
The Inspector of Police,
Thammampatti Police Station,
Salem District.
Crime No.35 of 2006

.. Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned Principal Sessions Judge, Salem, passed in C.A.No.110 of 2015 on 20.04.2016, confirming the judgment of learned Judicial Magistrate II, Attur, passed in C.C.No.161 of 2006 on 07.07.2015.

For Petitioner : Mr.A.Padmanaban

For Respondent : Mr.K.Madhan

Government Advocate (Crl.side)

O R D E R

This revision is preferred against two concurrent judgments of the Courts below convicting the petitioner for offences under sections 279 and 304(A) IPC, sentencing him to fine of Rs.1,000/- i/d one month S.I for offence u/s.279 IPC and 1 year

S.I. and fine of Rs.2,000/- i/d one month S.I for offence u/s. 304 (A) IPC.

2. The prosecution case was that on 03.04.2006 at about 09.40 p.m., on Malliakarai to Attur main road, Echampatti, the petitioner/accused drove a motorcycle in a rash and negligent manner and hit one Mangayarkarasi resulting in fatal injuries. She died at hospital. Upon completion of investigation, a charge sheet was laid informing commission of offences u/s.279 and 304(A) IPC and the same was taken on file in C.C.No.161 of 2006 on the file of learned Judicial Magistrate II, Attur.

3. Before the trial Court, the prosecution examined thirteen witnesses and marked seven exhibits. None were examined on behalf of the defence nor were any exhibits marked.

4. On examination of materials before it, the trial Court found the charges proved and convicted the petitioner for offence u/s.279 IPC and sentenced him to pay a fine of Rs.1,000/- i/d. one month S.I and for offence u/s. 304(A) IPC to undergo 1 year S.I and to pay a fine of Rs.2,000/- i/d. One month S.I. There against, petitioner/accused preferred C.A.No.110 of 2015 on the file of learned Principal Sessions Judge, Salem, which came to be dismissed under judgment dated 20.04.2016. Hence, this revision.

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

6. Learned counsel for petitioner submitted that as per FIR and the charge sheet, the prosecution case is that on 03.04.2006, at 09.40 p.m the petitioner/accused drove motorcycle bearing registration No. TN-48-D-3138 in a rash and negligent manner and hit one Mangayarkarasi, resulting in fatal injuries. He was thus charged of offences punishable u/s. 279 and 304(A) IPC.

7. Learned counsel for petitioner submitted that as per the FIR and charge sheet, the prosecution case is of the deceased having suffered accident while crossing the road. However, it is the consistent evidence of P.Ws.1 to 3 that the accident took place when the deceased was standing on the side of the road after having alighted from a bus P.W.1/defacto complainant is the son of the deceased, while P.W.2 and 3 are husband and another son. The immediate family members, husband and sons have been cited as eye witnesses to the occurrence and their deposition in Court contradicts the prosecution version. Learned counsel submits that the Trial Court erred in informing P.ws. 1 to 5 to be eye witnesses.

8. The Appellate Court has merely followed the version informed in the FIR and charge sheet in stating that the accident took place while the deceased was crossing the road.

9. Referring to the judgment of the Appellate Court wherein the learned Judge has informed that the occurrence could not have taken place but for the rash and negligent driving of the motorcycle by the petitioner as such was the position borne out by Ex.P.6- Rough sketch. Learned counsel relied on the judgment of the Apex court in State of Rajasthan vs. Bhawani and Another, 2003 SCC (Cri) 623, wherein it has been held as follows:

".... A rough sketch map prepared by the Sub-Inspector on the basis of statements made to him by witnesses during the course of investigation and showing the place where the deceased was hit and also the places where the witnesses were at the time of the incident would not be admissible in evidence in view of the provisions of Section 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the sub-Inspector that the eyewitnesses told him that the deceased was at such and such place at the time when he was hit. The sketch map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of Section 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation. Therefore, such marks on the map cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch map."

10. Heard learned Government Advocate (Crl.side) on the above submissions.

11. We find force in the submissions of the learned counsel for petitioner. The very deposition of alleged eye witnesses P.Ws1 to 3/immediate relatives of the deceased runs contra to

the prosecution case which is of the deceased having suffered the accident while crossing the road. The occurrence has taken place at 9.40 p.m i.e in the dark of night. It appears that P.Ws 1 to 3 immediate relatives of deceased are put up eye witnesses and such would be the reason why their deposition in Court contradicts the prosecution case. It is seen that the trial court is in error even regards the number of eye witnesses in the case, while the Appellate Court has failed to note the important contradiction between the prosecution version and the deposition of witnesses in the Court. In decision of this Court in 2012 4 MLJ (Cr1) 486 , Mohan Doss vs. State, this Court has taken note of the vital contradiction between prosecution witnesses on whether the accident occurred when the deceased was standing on the road or when she was crossing the same in rendering a finding of acquittal. We would follow such reasoning.

12. The reliance placed on the rough sketch Ex.P.6 by the Appellate Court is erroneous in the light of the decision of the Apex court referred to supra.

13. In the result, the Criminal Revision Petition shall stand allowed and the judgment of learned III Principal Sessions Judge, Salem, passed in C.A.No.110 of 2015 on 20.04.2016, confirming the judgment of learned Judicial Magistrate II, Attur, passed in C.C.No.161 of 2006 on 07.07.2015, shall stand set aside. Petitioner is acquitted of all the charges. Fine amount, if any, paid by him shall be refunded. Bail bonds, if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.Principal Sessions Judge, Salem

2.The Judicial Magistrate II, Attur

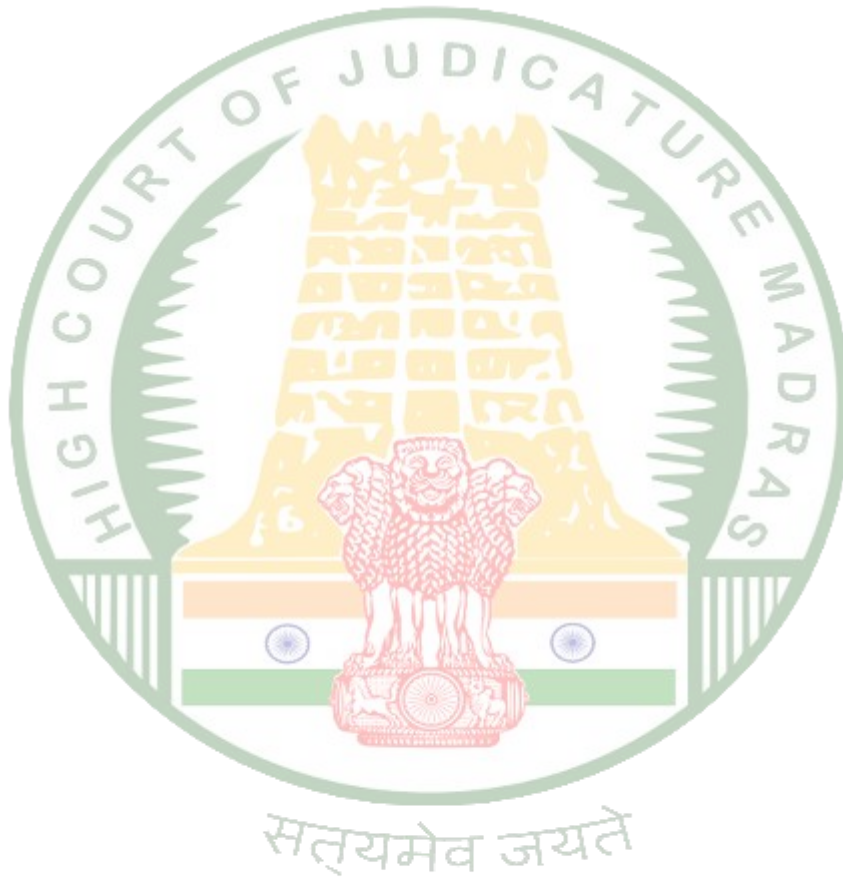
3 The Chief Judicial Magistrate, Salem

4 The Inspector of Police
Thammampathi Police Station, Salem

+1cc to Mr.A. Padmanabhan, Advocate, S.R.No.61267

cnr (CO)
md(23/12/2016)

Cr1.R.C.No.928 of 2016



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