

BAIL SLIP

The petitioner/Accused namely Mr. Perumal, S/o Manickkam was directed to be released on bail as per the order of this Court dated 28/09/2011 in M.P.1/2011 in Crl.RC.No.1027/2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.1027 of 2011

Perumal

... Petitioner

Vs.

The state represented by
The Inspector of Police,
Mecheri Police Station,
Salem District,
Crime No.260 of 2008
Respondent

...

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure Code against the judgment passed by the Additional District and sessions Judge, Salem, in C.A.No.174 of 2001 dated 06.05.2011, confirming the judgment dated 31.08.2010 in C.C.No.124 of 2008 on the file of the Judicial Magistrate No.II, Mettur.

For Petitioner : Mr. R.Nalliappan

For respondent : Mrs. M.F.Shabana,
Gov. Advocate (Crl. Side)

O R D E R

The sole accused in C.C.No.124 of 2008 on the file of the Judicial Magistrate No.2, Mettur. He stood charged for the offences under Sections 279, and 304(A) IPC. The trial court, by judgment dated 31.08.2010, convicted the petitioner/accused under Section 279 IPC and imposed a fine of Rs.500/- in default to undergo simple imprisonment for 4 weeks and convicted him under Section 304(A) IPC and sentenced him to undergo simple imprisonment for 6 months and also to pay a fine of Rs.2000/- in default to undergo simple imprisonment for 6 months. Challenging the above said conviction and sentence, the petitioner/accused filed an appeal in

C.A.No.174/2011 on the file of the Additional District and Sessions Judge, Fast Track court No.II, Salem and the lower appellate court, by judgment dated 06.05.2011, confirmed the conviction and sentenced passed by the trial Court. Aggrieved over the same, the petitioner/accused is before this Court.

2. The case of the prosecution, in brief , is as follows:-

On 14.05.2008, at about 5.45 a.m., while the deceased was walking on the extreme left side of the Mechalur to Omalur main road, a tempo, driven by the accused came from East to west in a rash and negligent manner and dashed the deceased from behind and caused serious injuries to him. Immediately, P.W.1, father of the deceased took him to the Government Hospital, Salem, where he was admitted and after some time, he succumbed to injuries. Then, P.W.1 lodged a complaint before the respondent police.

3. P.W.10, Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in crime No.260/08, for the offences under Sections 279 and 304 (A) IPC and prepared the express First Information Report, Ex.P.6. Then, he commenced investigation and proceeded to the scene of occurrence at about 10.45 a.m., and prepared an Observation Mahazar, Ex.P.2, and drew a Rough Sketch, Ex.P.7, in the presence of witnesses. He has also recorded the statement of the witnesses. Then, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared inquest report between 12.00 p.m., to 1.30 p.m. Thereafter, he sent the dead body of the deceased for postmortem to the Government Hospital, Salem.

4. P.W.9, Doctor, working in the Government Hospital, Salem, conducted autopsy on the dead body of the deceased. Thereafter, P.W.10, sent the offending vehicle for inspection. P.W.7., Motor Vehicle Inspector, inspected the offending vehicle and has given a report stating that the windscreen of the tempo was broken, left side head light and view mirror assembly were damaged and he has also given a opinion that the accident has not taken place due to mechanical fault of the tempo. Then, P.W.10, recorded the statement of the Doctor, who conducted postmortem on the dead body of the deceased and the Motor vehicle Inspector. After completion of investigation, he laid charge sheet against the accused.

5. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 10 witnesses were examined and 10 documents were exhibited.

6. Out of the witnesses examined, P.W.1 is the father of the deceased. According to him, on the date of occurrence, at

about 5.45 p.m., while P.W.1 was standing in front of his house, the deceased after having tea in the tea shop, came on the extreme left side of the road. At that time, a tempo, driven by the accused came in a high speed and in a rash and negligent manner, came to the left end of the road and dashed against the deceased. Immediately, they took him to the hospital, where he succumbed to injuries. Thereafter, P.W.1 gave a complaint before the respondent police.

7. P.W.2 is the mother of the deceased. According to her, in the morning, at about 5.45 a.m., while she was standing in front of their house, the deceased came from the tea shop and at that time, the offending van, which was driven by the petitioner/accused came from East to West and dashed against the deceased behind and he fell down and sustained serious injuries. Then, they called ambulance and took him to the Government hospital, Salem, where he succumbed to injuries at about 8.40 p.m.

8. P.W.3 is the brother of the deceased. He came to the scene after hearing the noise. P.W.4 is also another relative of the deceased. According to him, the deceased after having tea in the nearby tea shop, was walking on the left side of the road and at that time, the offending van dashed against the deceased from behind. Then, they took him to the Government Hospital, Salem, where he succumbed to injuries. P.W.5 is the owner of the Tea shop. At the time of occurrence, he was in the tea shop and after hearing the noise he went there and found the deceased with serious injuries. Then, they sent the deceased to the Government Hospital, Salem. He is also a witness to the observation mahazar. P.W.7 is the Motor Vehicle Inspector, inspecting the offending tempo and given a report stating that the windscreen of the tempo has been brooken and the left hand side headlight was also damaged and he has also given a report that there was no mechanical fault in the offending vehicle.

9. P.W.8, is the Doctor, who admitted the deceased in the hospital and given an accident register, Ex.P.4. P.W.9, Doctor, who conducted post-mortem on the dead body of the deceased and gave a report. P.W.10, Inspector of Police, registered the case and conducted investigation. He recorded the statement of the witnesses and after completion of investigation he laid charge sheet.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witnesses on his side.

11. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence

the petitioner/accused filed an appeal before the additional District and Sessions Court, Salem and the lower appellate court dismissed the appeal, by confirming the judgment of the trial court. Aggrieved over the same, the petitioner/accused is before this Court with this appeal.

12. I have heard Mr.R.Nalliappan, learned counsel appearing for the petitioner and Mrs.M.F.Shabana, Government Advocate, appearing for the respondent.

13. P.Ws.1 and 2 are father and mother of the deceased. From their evidence it could be seen that their house is situated 100 feet away from the scene of occurrence and the occurrence took place early in the morning, at about 5.45 a.m. According to them, after having a tea in the tea shop, the deceased was going from west to east in the left hand side of the road. At that time, the offending tempo van, driven by the accused came in a rash and negligent manner and dashed behind the deceased. P.Ws.4 has stated that after having a tea, the deceased was walking alone in the road. At that time, a tempo van dashed against the deceased. P.W.5 is the owner of the tea shop. According to him, after having tea in the tea shop, the deceased was walking alone in the road in the left side. At that time, he heard the noise and he also identified the accused.

14. It is the consistent evidence of all the witnesses, P.Ws.1 to 5 that while the deceased was walking on the left side of the road, the offending tempo van dashed against the deceased from behind. Even though P.Ws.1 and 2 are the father and mother, who are interested witnesses, since their evidence is consistent and inspiring, there is no reason to disbelieve the same and their evidence was also corroborated by the other two witnesses, namely, P.Ws.4 and 5. Apart from that, from seeing the rough sketch and the report filed by the motor vehicle inspector, the accident took place in the extreme left hand side of the tar road and the windscreen of the van and the left side head light of the van was also damaged.

15. Considering all the above materials, I am of the considered view that the prosecution has clearly proved the guilt of the accused beyond any reasonable doubt. As rightly held by both the court below, it is only this accused who has driven the offending van in a rash and negligent manner and caused the death of the deceased. In the above circumstances, I find no illegality or irregularity in the judgment of the courts below.

16. So far as the sentence is concerned, the accused is a poor and young man and he has no bad antecedent. The occurrence also took place in the year 2008. Considering all the mitigating as well as the aggravating circumstances, the sentence is reduced to rigorous imprisonment for 3 months and too pay a fine of Rs.1000/- in default to under go rigorous

imprisonment for one month.

17. In the result, the criminal revision case is partly allowed and the conviction imposed on the appellant under Sections 279 and 304(A) IPC is confirmed and the sentence for the offence under Section 304-A IPC is modified into rigorous imprisonment for 3 months and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for one month, and to pay a fine of Rs.500/- for the offence under Section 279 IPC, in default, to undergo simple imprisonment for 4 weeks.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

mrp

To

1. The Additional District and Sessions Judge,
Salem.
- 2 The Principal District and Sessions Judge, Salem
3. The Judicial Magistrate NO.II,
Mettur, Salem.
- 4 The Chief Judicial Magistrate, Salem
- 5 The Inspector of police,
Mecheri police station, Salem District
6. The Public Prosecutor,
High Court, Madras.

1cc to MR.R.NALLIYAPPAN Advocate SR.NO. 3234/17

copy to

The Section officer,
record section[Criminal]
High court, Madras

br[co]

RD 21/11/2017

Cr1.R.C.No.1027 of 2011