

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1095 of 2011

Shanmugam ... Petitioner/Appellant/Accused
-Vs-

State rep. by
Sub-Inspector of Police,
Kalasapakkam Police Station,
Crime No.299 of 2006. ... Respondent/Respondent/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure against judgment dated 19.07.2011 passed by learned District Sessions Judge, Thiruvannamalai, in C.A.No.08 of 2009 by confirming the judgement in C.C.No.14 of 2007 dated 18.08.2009 on the file of learned Chief Judicial Magistrate, Tiruvannamalai.

Bail Slip

The Revision petition/Accused herein viz., shanmugam, aged 44 years, S/O. Annamalai, was directed to be released on bail as per order dated 10/08/2011 made in MP No.1/2011 in Crl Rc. no.1095/2011.

For Petitioner : Mr.A.Saravanan

For Respondent : Mr.V.Arul
Additional Public Prosecutor

O R D E R

This Criminal Revision Case arises against judgment of learned District Sessions Judge, Thiruvannamalai, passed in C.A.No.08 of 2009 on 19.07.2011.

2. Prosecution case is that on 30.07.2006 at about 15.15 hours, one person by name Kasi, aged about 50 years, son of Chinnamanickam of Vinnuvampattu village, Kalasapakkam was riding his cycle and returning home on the left extreme of the Thiruvannamalai to Polur Road, when, in front of the house of one Mani of Vinnuvampattu, a TATA Sumo van bearing Registration No.PY 01 W 3457 came from the opposite direction in a rash and

negligent manner and dashed against Mani, who was thrown of the cycle. He sustained injuries all over his body as also on the genital organs. He was taken for treatment and subsequently died due to injuries sustained in the accident. PW-1, Ponni, W/o.Munusamy, preferred complaint to PW-7 Sub-Inspector of Police and a case was registered in Crime No.299 of 2006 on the file of respondent. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.279 and 304 (A) IPC, the case was tried in C.C.No.14 of 2007 on the file of learned Chief Judicial Magistrate, Thiruvannamalai.

3. Before the trial Court, the prosecution examined eight witnesses and marked eight exhibits. None were examined on behalf of the defence, nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges. On appreciation of materials before it, trial Court, under judgment dated 18.08.2009, convicted the accused for offences under Sections 279 and 304(A) IPC and sentenced him 3 months R.I., and fine of Rs.500/- i/d 3 weeks R.I. for offence under Section 279 IPC and one year R.I and fine of Rs.3,000/- i/d 3 months R.I for offence under Section 304(A) IPC. There against, the petitioner/accused preferred an Appeal in C.A.No.08 of 2009 on the file of learned District Sessions Judge, Thiruvannamalai, which came to be dismissed under judgment dated 19.07.2011. Hence, this Revision.

4. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

5. The petitioner was accused of offences under Sections 279 and 304(A) IPC for having driven a car in a rash and negligent manner, resulting in the same hitting a cycle and causing the death of the rider thereof. The occurrence is alleged to have taken place on 30.07.2006.

6. Learned counsel for petitioner submitted that PW-2 had been examined as an eye-witness to the accident. In chief, he had spoken to having witnessed the accident when he was seated in front of his house. In cross, he had admitted to proceeding to the accident spot on hearing a sound. Learned counsel stressing upon such discrepancy, submitted that though PW-8, Investigation Officer had admitted to the presence of other eye-witnesses, none had been examined. The cycle allegedly ridden by the deceased has not been seized.

7. In such circumstances, there was every possibility that PW-2 had not witnessed the occurrence and none had knowledge about the manner in which the same had taken place. Learned counsel for petitioner further submitted that though PWs-3 and 4 were examined towards speaking to their having attested Ex.P7, PW-3 in cross, had admitted to signing the same at the police station and further that he alone had done so. Learned counsel for petitioner submitted that benefit of doubt ought to have been afforded to the petitioner/accused.

8. Heard learned Additional Public Prosecutor in the above submissions.

9. Prosecution version of PW-2 having witnessed the occurrence, indeed is suspect in the light of the discrepancy pointed out by the learned counsel for petitioner. PW-8 Investigation Officer admits to the presence of other witnesses at the scene. He has further spoken to not recording their statements and that such persons were not put up as witnesses, since they were not inclined to be called as such. Such contention of PW-8 Investigation Officer does not merit acceptance. This Court would take the view that material witnesses stand not examined and the possibility of prosecution cooking up a tale, is borne out through the evidence of PW-3 that he alone had attested the Mahazar Ex.P7 and that too at the police station.

10. The Criminal Revision Case shall stand allowed. The judgment dated 19.07.2011 passed by learned District Sessions Judge, Thiruvannamalai, passed in C.A.No.08 of 2009 by confirming the judgement in C.C.No.14 of 2007 dated 18.08.2009 on the file of learned Chief Judicial Magistrate, Tiruvannamalai, shall stand set aside. Petitioner/accused is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kmi

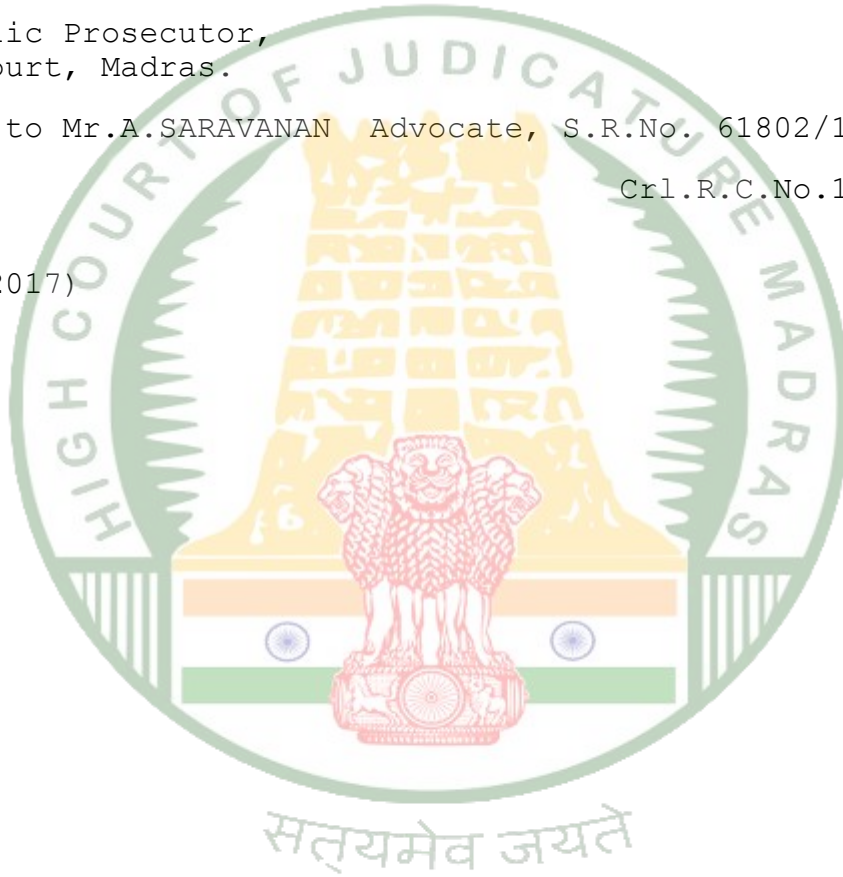
To

- 1.The District Sessions Judge,
Thiruvannamalai.
- 2.The Chief Judicial Magistrate,
Tiruvannamalai.
- 3.The Sub-Inspector of Police,
Kalasapakkam Police Station.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.SARAVANAN Advocate, S.R.No. 61802/17

Cr1.R.C.No.1095 of 2011

VGI (CO)
TR(21/11/2017)



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