

BAIL SLIP

The Petitioner/Accused herein viz, Moorthy, S/o.Pitchai Chettiyar, was directed to be released on bail as per order of this Court dated 26.09.2011 made in M.P.No. 1 of 2011 in Criminal R.C.No.1323 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Cr1.R.C.No.1323 of 2011

Moorthy
S/o.Pitchai Chettiyar ... Petitioner/Accused

vs

State by:
Inspector of Police,
Baluchetty Chathiram Police Station,
Kancheepuram District.
Cr.No.386/07 ... Respondent/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of learned Principal District and Sessions Judge II, Kancheepuram, passed in C.A.No.109 of 2010 on 20.08.2011 confirming the judgment of learned Judicial Magistrate II, Kancheepuram, passed in C.C.No.60 of 2008 on 27.10.2010.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.V.Arul
Additional Public Prosecutor

O R D E R

This revision arises against concurrent judgments of Courts below convicting petitioner/accused for offences u/s.279 and 304-A IPC and sentencing him to pay fine of Rs.500/- i/d 1 month S.I. for offence u/s.279 IPC and 6 months S.I. and fine of Rs.5,000/- i/d 3 months S.I. for offence u/s.304-A IPC.

2. Prosecution case is that on 23.10.2007 at about 19.15 hours, while the deceased was attending to a mechanical defect in a lorry, petitioner/accused drove van bearing No.TN-07-AM-3313 in a rash and negligent manner, dashed against deceased, owing to which deceased sustained grievous injuries and died. A case in Crime No.386 of 2007 on the file of respondent for offences u/s.279 and 304-A IPC was registered. Upon completion of investigation and filing of charge sheet, the case was taken on file in C.C.No.60 of 2008 on the file of learned Judicial Magistrate II, Kancheepuram.

3. Before trial Court, prosecution examined 14 witnesses and marked 9 exhibits. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 27.10.2010, convicted petitioner/accused and sentenced him to pay fine of Rs.500/- i/d 1 month S.I. for offence u/s.279 IPC and 6 months S.I. and fine of Rs.5,000/- i/d 3 months S.I. for offence u/s.304-A IPC. There against, petitioner/accused preferred C.A.No.109 of 2010 on the file of learned Principal District and Sessions Judge II, Kancheepuram, which came to be dismissed under judgment dated 20.08.2011. Hence, this revision.

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

5. A case has been registered in Crime No.386 of 2007 on the file of respondent on 24.10.2007 at 09.15 a.m. relating to the accident which took place on 23.10.2007 at 07.15 p.m. PW-11 is the Sub-Inspector of Police, who had registered the First Information Report. PW-7 is the Motor Vehicle Inspector. PW-10 is the Doctor, who conducted postmortem. PW-12, Head Constable, who handed over the body of the deceased to the relatives after postmortem. PW-14 was the initial investigation officer. PW-13 was the investigation officer who has filed the final report. The veracity of the prosecution case is to be tested on the evidence of PWs.1 to 6. PW-1 is the younger brother of the deceased, who admittedly has preferred the complaint, after hearing there about. Neither he nor PW-3, nephew of the deceased or PW-4 another brother of the deceased or PW-8, another relative of the deceased claimed to have witnessed the occurrence and they all speak to having gone over to the scene after hearing there about. PW-9 was a co-traveller in the Van driven by petitioner/accused. He has spoken to having been asleep at the time of occurrence. The prosecution is thus left with the evidence of PW-2. PW-2 is the owner of the lorry which was driven by deceased and which had been stationary on the road since it had developed a mechanical defect. PW-2 claimed of having been present at the scene on being informed of the mechanical defect. PW-2 admits to the lorry having been stationary on the road, of it being attended to by the deceased

and particularly that the deceased was standing to the right of the lorry. The vehicle driven by petitioner has approached from behind the lorry and hit the deceased who as above noted admittedly was standing to the right of the lorry. In such circumstances, the defence theory of the deceased suddenly having stepped out from behind the lorry and thereby come into contact with the Car driven by petitioner and thus suffering injury and death cannot be ruled out. In any event, PW-2 has not spoken to the vehicle having been driven rashly and negligently by petitioner. In the circumstances, petitioner/accused is entitled to benefit of doubt.

The Criminal Revision Case shall stand allowed. The judgment of learned Principal District and Sessions Judge II, Kancheepuram, passed in C.A.No.109 of 2010 on 20.08.2011 confirming the judgment of learned Judicial Magistrate II, Kancheepuram, passed in C.C.No.60 of 2008 on 27.10.2010, shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District and Sessions Judge II,
Kancheepuram.
- 2.The Judicial Magistrate II,
Kancheepuram.
- 3.The Inspector of Police,
Baluchetty Chathiram Police Station,
Kancheepuram District.
- 4.The Section Officer,
Criminal Section, High Court,
Madras.
- 5.The Public Prosecutor,
High Court, Madras.

CrI.R.C.No.1323 of 2011

MR(CO)
GN(02/11/2017)