

BAIL SLIP

The Appellant/Accused namely, L.Pounraj, S/o.Lakshman Gounder was directed to be released on bail as per Order dated 20.04.2011 in Crl.M.P.No.1 of 2011 in Crl.R.C.No.599 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.RC.No.599 of 2011

L.Pounraj ... Petitioner/Accused

Vs.

State by
The Inspector of Police,
Traffic Investigation Wing (East)
Coimbatore.
(Crime No.105 of 2006) ... Respondent/Complainant

Criminal Revision Case has been filed under Sections 397 & 401 of the Criminal Procedure Code, to set aside the judgment dated 28.02.2011 passed in C.A.No.260 of 2010 on the file of the Additional District and Sessions Judge, F.T.C.No.1, Coimbatore, modifying the judgment dated 09.12.2010 passed in C.C.No.90 of 2006 on the file of the Judicial Magistrate No.VIII, Coimbatore.

For Petitioner : Mr.S.Gunalan

For Respondent : Mrs.M.F.Shabana
Government Advocate (Crl.Side)

ORDER

Challenging the conviction and sentence imposed on the petitioner by the courts below, the present Criminal Revision Case has been filed.

2. The petitioner was convicted in, C.C. No.90 of 2006, on the file of the learned Judicial Magistrate No.VIII, Coimbatore for the offence punishable under Sections 279 r/w 304(A) IPC and Section 134(a)(b) r/w Section 187 of the Motor Vehicles Act and sentenced him to undergo one year simple imprisonment, and imposed a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment for the offences under Section 279 r/w 304(A) IPC and imposed a fine of

Rs.500/-, in default, to undergo one week simple imprisonment for the offence under Section 134(a)(b) r/w Section 187 of the Motor Vehicles Act. Challenging the same, the petitioner has filed CA.No.260 of 2010 before the Additional District and Sessions Court, Coimbatore. The lower appellate Court, confirmed the conviction, however, modified the sentence for the offence under section 279 r/w 304-A IPC, from one year to six months. Aggrieved over the same, the petitioner is before this court with the present criminal revision case.

3. The case of the prosecution is as follows:

On 28.03.2006 at about 3.20 pm, while the deceased Kalimuthu Kumar was riding his bicycle at Singanallur, from Trichy - Vellore Road Junction, Coimbatore, the petitioner, who driving a Tipper lorry bearing Registration No.TN-38-AF-1155, came in a rash and negligent manner and dashed against the deceased, due to which, he sustained grievous injuries. Immediately, he was taken to ESI Hospital, subsequently, was referred to Coimbatore Government Hospital, where he was declared as dead. Thereafter, PW8 has given a complaint to PW12, Sub Inspector of Police, who, in turn, registered a case in Crime No.105/2006 for the offences punishable under Section 304(A) IPC and Section 134 (a)(b) of the Motor Vehicles Act and prepared first information report and sent the same to the higher officials. Thereafter, P.W.13, Inspector of Police, during the course of investigation, visited the scene of occurrence and prepared observation magazar and rough sketch and also obtained statement from the witnesses, based on which, he arrested the accused and remanded to judicial custody. PW13, sent the deadbody for post mortem and sent the vehicle to the Motor Vehicle Inspector for inspection. He examined the witnesses and recorded their statements and after completion of investigation, he filed the charge sheet.

4. Considering the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 13 witnesses were examined and 9 documents were exhibited and no material objects were marked.

5. Out of the said witnesses examined, P.W.1 is the eye witness to the occurrence. According to him, while he was traveling in his tempo near Singanallur Police Station, at that time, the offending vehicle driven by the petitioner/accused came in a rash and negligent manner, overtook the tempo vehicle and dashed the bicycle, in which the deceased was riding. Immediately, the deceased was taken to the Hospital. P.W.2 is the witness to the observation mahazar. P.W.3 went to the scene of occurrence after hearing the noise and found the deceased with serious injuries. P.Ws.4 and 5 are the brothers of the deceased and their evidence is only hearsay evidence. P.W.6, the Motor Vehicle Inspector, examined the offending vehicle and given a report.

P.W.7 is the Doctor, who conducted postmortem autopsy on the dead body of the deceased and given postmortem certificate. P.W.8 is another eye witness to the occurrence. According to him, while he was riding his bicycle and going behind the deceased, at that time, the lorry driven by the accused came in a rash and negligent manner and dashed against the deceased and caused serious injuries. Immediately, he took him to ESI Hospital, where, the deceased was referred to Government Hospital, Coimbatore and on the way to hospital, he died. Then, he has given complaint before the respondent police station. P.W.9 is also another eye witness to the occurrence. According to him, he saw the tipper lorry came in a rash and negligent manner and dashed against the deceased and caused serious injuries. Then, he took the deceased to the ESI Hospital, where, he was referred to the Government Hospital, Coimbatore and on the way to Hospital, the deceased died. P.W.10 is another eye witness to the occurrence. He also reiterated the evidence of P.Ws.8 and 9. P.W.11, the Doctor, who received the dead body of the deceased and given Accident Register. P.W.12 is the Sub Inspector of Police working in the respondent police station. On receipt of the complaint, registered the case and prepared first information report and sent the same to the higher officials. P.W.13, the Inspector of Police working in the respondent police station. He stated that on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared observation mahazar and rough sketch, conducted inquest over the dead body and sent the dead body to the Government Hospital for postmortem autopsy, examined the witnesses and recorded their statements, sent the offending vehicle to the Motor Vehicle Inspector for inspection and after completion of investigation, he laid the charge sheet.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not examine any witness nor marked any document.

7. Having considered all the above materials, the Trial Court convicted the accused as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the petitioner/accused filed a Criminal Appeal in C.A.No.260 of 2010 on the file of the learned Additional District and Sessions Court, Fast Track Court No.I, Coimbatore. The lower appellate Court, confirmed the conviction, however, modified the sentence for the offence under section 279 r/w 304-A IPC, from one year to six months. Challenging the same, the present criminal revision case has been filed.

8. I have heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the materials available on record.

9. There are four eye witnesses to the occurrence, namely, P.Ws.1, 8, 9 and 10. All of them are independent witnesses. It is the consistence evidence of all the eye witnesses that at the time of occurrence, the deceased was riding his bicycle on the left side of the road and at that time, the Tipper Lorry driven by the petitioner/accused came in a rash and negligent manner, after overtaking the tempo driven by P.W.1, dashed against the deceased and caused serious injuries. Immediately, P.Ws.9 and 10 took him to the ESI Hospital, where, he was referred to the Government Hospital and on the way to Government Hospital, the deceased died. Then, P.W.8 has given a complaint before the respondent police station. From their evidence, it could be seen that P.W.1 is the driver of another tempo and P.W.s.8 and 9 were riding a bicycle along with the deceased. Hence, the presence of the eye witnesses in the scene of occurrence cannot be doubted and all of them are independent witnesses and their evidence is also consistent and natural and hence there is no reason to disbelieve their evidence. Apart from that the Motor Vehicle Inspector has examined the offending vehciel and given a report stating that there is no mechanical failure in the vehicle. Considering the above evidence, the Courts below convicted the petitioner/accused, I find no illegality or irregularity in the findings of the Court below.

10. So far as the quantum of sentence is concerned, the petitioner is young men and he has a big family to maintain and he has no bad antecedents and he has chance to reform. Taking into consideration of all the mitigating circumstances, sentencing him to undergo three months rigorous imprisonment.

11. In the result, the criminal revision case is partly allowed. The conviction of the petitioner under Section 279 r/w 304-A IPC is confirmed and sentence to undergo three months rigorous imprisonment and to pay a fine of Rs.1000/- in default, to undergo simple imprisonment for four weeks. If the petitioner is not in custody, the trial Court is directed to take appropriate steps to secured him to undergo the remaining period of sentence. It is directed that the period of detention already undergone by the petitioner/accused shall be given set off as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

adl

To

1.The Additional District and Sessions Judge,
F.T.C.No.1, Coimbatore.

2.The Judicial Magistrate No.VIII,
Coimbatore.

3.Do Through the Chief Judicial Magistrate,
Coimbatore.

4.The Inspector of Police,
Traffic Investigation Wing(East)
Coimbatore.

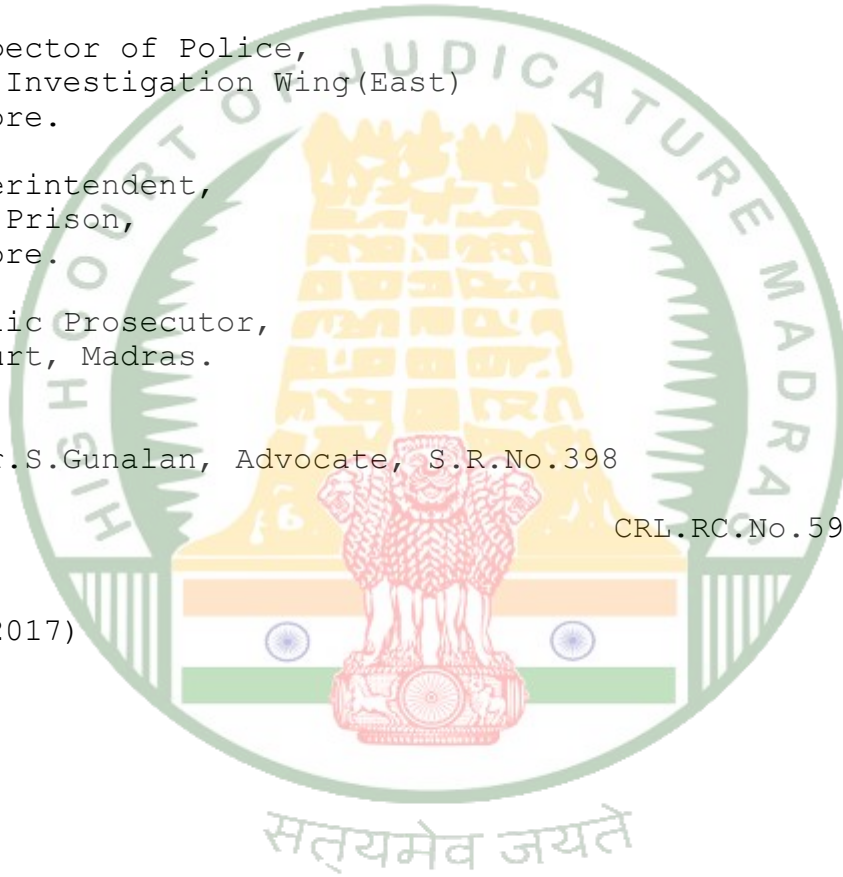
5.The Superintendent,
Central Prison,
Coimbatore.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Gunalan, Advocate, S.R.No.398

CRL.RC.No.599 of 2011

KK(CO)
CA(28/06/2017)



WEB COPY