

Bail Slip:

The Petitioner namely S.Samuvel, S/o. Selvaraj, was directed to be released on bail as per order this Court dated 27.04.2011 in MP.No.1 of 2011 in CrI.RC.No.621 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.621 of 2011

S.Samuvel

.. Petitioner/Accused

Vs

State by
Inspector of Police,
Traffic Investigation Section,
J-3, Guindy Police Station,
Chennai,
(Cr.No.499/S3/2005)

.. Respondent/Complainant

Prayer:- Criminal Revision Case filed under Section 397 and 401 Cr.P.C., against the conviction and sentence passed by the V Additional Sessions Court, Chennai by a judgment dated 31.03.2010 in C.A.No.295 of 2007, confirming the conviction and sentence passed by the IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.244 of 2006.

For Appellant : Mr. K.Subburam

For Respondents : Mrs. M.F.Shabana,
Gov. Advocate (Criminal)

ORDER

The sole accused in C.C.No.244 of 2006 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai, is the revision petitioner herein. He stood charged for the offences under Sections 304-A and 184, and Section 3 r/w 181, of Motor Vehicles Act. The trial Court, by judgment dated 28.11.2007, convicted the petitioner under Section 304-A IPC and sentenced him to undergo rigorous imprisonment for two years and convicted him under Section 184 of Motor Vehicle Act and imposed a fine of

Rs.1000/-, in default to undergo simple imprisonment for two weeks, and convicted him under Section 3 r/w. 181, of Motor Vehicles Act, imposed a fine of Rs.500/-, in default, to undergo simple imprisonment for two weeks. Challenging the same, the petitioner filed an appeal in C.A.No.295 of 2007 on the file of the V Additional Sessions Judge, Chennai . The lower appellate court dismissed the appeal and confirmed the conviction and sentence passed by the trial court. Aggrieved by the same, the petitioner is before this court with this revision.

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

On 07.12.2005, at 11.00 p.m., while the deceased, in this case, one Dhinesh @ Dhineshkumar, along with P.Ws.1 to 3, walking in a 100 feet road, near Ganga Colony Gate, Ashok Nagar, Chennai, a load auto bearing registration No. TN 22 A.L.7706, driven by the petitioner/accused, came in a rash and negligent manner, and dashed against the deceased, the deceased fell down and got grievous injuries on his forehead. Immediately, the deceased was taken to the Vijaya Health Centre, subsequently, on 14.12.2015, at about 10.15 a.m., the deceased succumbed to injuries. P.W.1, a friend of the deceased, who is also an eye-witness to the occurrence lodged a complaint before the respondent police. Based on the complaint, P.W.8, Sub-Inspector of Police, registered a case in Cr.No.499/S3/2005 under Section 337 IPC and Section 184 of Motor Vehicles Act and prepared First Information Report, Ex.P.6. Then, he proceeded to the scene of occurrence, prepared Observation Mahazar, Ex.P.2, and Rough Sketch, Ex.P.7 in the presence of the witnesses, and also recorded the statements of the witnesses. Then, he arrested the accused on 10.12.2015, and remanded him to judicial custody. Since, the deceased succumbed to injuries, he altered the case into 304-A IPC, and sent the alteration report, Ex.P.10 to the jurisdiction Magistrate court . Thereafter, he sent the offending vehicle for inspection, to the Motor Vehicle Inspector and handed over the case to P.W.9, a Inspector of Police, for further investigation.

3. P.W.9, took up the case for further investigation and conducted inquest on the dead body of the deceased in the presence of panchayathars. Then, he sent the body of the deceased for postmortem to the Government Hospital, Royapettah, and after completion of investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of this judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 94 witnesses were examined

and 12 documents were exhibited.

5. Out of the witnesses examined, P.Ws.1 to 3 are the eye-witnesses to the occurrence and they are all friends of the deceased studying in the college along with the deceased. According to them, on the date of occurrence, while they were all walking along the 100 feet road, near Ganga Colony Gate, Ashok Nagar, Chennai, a load auto, driven by the petitioner/accused came in a rash and negligent manner, dashed against the deceased and he fell down and sustained grievous injuries on his forehead. Immediately, they took the deceased to the Vijaya Hospital, subsequently, the deceased succumbed to injuries. P.W.1 has lodged a complaint before the respondent police.

6. P.W.4 is a witness to the observation mahazar. P.W.5 is the Doctor, who conducted postmortem on the dead body of the deceased. P.W.6, Motor Vehicles Inspector, inspected the offending vehicle and has given a report that there was no mechanical failure in the auto. P.W.7, Doctor, admitted the deceased in the hospital and given treatment to the deceased. P.W.8, Sub-Inspector of Police, registered the case and conducted investigation, subsequent to the death of the deceased, he altered the case into 304-A IPC. P.W.9, investigating officer, continued the investigation, recorded the statements of the witnesses, conducted inquest on the dead body of the deceased and after completion of investigation, he laid charge sheet.

7. 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 examine any witness or mark any documents on his side.

8. Having considered all the above materials, 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 said conviction and sentence, the petitioner/accused preferred an appeal in C.A.No.295 of 2007 on the file of the V Additional Sessions Judge, Chennai and the lower appellate court dismissed the appeal and confirmed the conviction and sentence imposed on the petitioner. Aggrieved by the same, the petitioner/accused is before this Court with this revision.

9. I have heard the Mr.K.Subburam, learned counsel for the petitioner and Mrs. M.F.Shabana, learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

10. There are 3 eye-witnesses to the occurrence. All of them were studying in one Hardware I.T. Academy at the time of occurrence. According to them, on the date of occurrence, namely, 07.12.2005, at about 11.00 p.m., while they were walking in the 100 feet road, near Ganga Colony Gate, Ashok Nagar, the load auto driven by the petitioner/accused came behind them and dashed against the deceased and the deceased sustained grievous injuries on his forehead. They have took the deceased to the private hospital, where, after 7 days he succumbed to injuries.

11. It is the consistent evidence of all the 3 witnesses that while they were walking in the road, the offending vehicle came behind them in a rash and negligent manner and dashed against the deceased. Apart from that, as per Ex.P.4, report given by P.W.6, Motor Vehicles Inspector, on the date of occurrence, the petitioner /accused did not have a valid driving licence, and the earlier license issued to him expired on 05.10.2005 and the occurrence took place on 07.12.2005. Hence, it is clear that on the date of occurrence, the petitioner also does not possess a valid licence to drive the vehicle. Apart from that, Motor Vehicles Inspector, P.W.6, also given a report that there is no mechanical failure in the vehicle. It is the consistent evidence of all the eye-witnesses that it is the petitioner/accused driven the vehicle in a rash and negligent manner and dashed against the deceased from his behind and caused grievous injuries. There is no reason to disbelieve their evidence as all the P.Ws.1 to 3 are friends of the deceased and they were walking together at the time of occurrence.

12. Considering all the above materials, both the courts below convicted the petitioner/accused and I find no infirmity or irregularity in the findings of the courts below and I find no reason to interfere with the same.

13. So far as the quantum of sentence is concerned, the petitioner/accused is a young and poor man and he is having a big family to maintain, it is stated that now he is working as a driver in the State Transport Corporation, and he has no bad antecedent and his subsequent conduct is also good. Taking into consideration of all the above fact, the sentence is modified to that of the period already undergone and the petitioner/accused is directed to pay a fine of Rs.50,000/- for an offence under Section 304-A IPC and the above fine amount should be paid to the deceased's family as compensation.

14. In the result, the Criminal Revision Case is partly allowed and the conviction imposed on the petitioner by the

courts-below are confirmed and the sentence is modified to that of the period already undergone by the petitioner/accused and the petitioner/accused is directed to pay a fine of Rs.50,000/- for the offence under Section 304-A IPC and the above fine amount should be paid to the deceased's family as compensation. Fine amounts imposed by the trial court against the accused for the offences under Sections 184, and 3 r/w.181 of Motor Vehicles Act are confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The IV Metropolitan Magistrate,
Saidapet, Chennai.
2. V Additional Sessions Court,
Chennai.
3. The Chief Metropolitan Magistrate,
Egmore.
4. The Superintendent,
Central Prison, Puzhal, Chennai.
5. The Inspector of Police,
Traffic Investigating Section, J-3 Guindy Police Station,
Chennai.
6. The District Collector,
Chennai.
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Mr.K.Subburam, Advocate, S.R.No.5764

Cr1.R.C.No.621 of 2011

SR(CO)
RS(21/06/2017)