

Bail Slip

The Petitioner / Accused viz., Jaganathan was relaxed on bail as per the order of this Court dated 29.06.2011 in CMP.No.1 of 2011, in CrI.R.C.No.758/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CrI.R.C.No.758 of 2011

Jaganathan

....

Petitioner

vs

State

Rep. by the Inspector of Police,
Perundurai Circle in
Kanjikoil Police Station.
(CrimeNo.24of2007)

....

Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment dated 08.02.2011 passed in C.A.No.76 of 2010 on the file of the learned Principal Sessions Judge, Erode confirming the judgment dated 03.06.2010 passed in C.C.No.90 of 2007 on the file of the learned District Munsif Cum Judicial Magistrate, Perundurai.

For Petitioner : Mr.A.K.Kumarasamy

For Respondent : Mrs.M.F.Shabana

सत्यमेव जयते
Government Advocate(Crl. Side)

O R D E R

This revision has been filed against the conviction. The sole accused in C.C.No.90 of 2007 on the file of the learned District Munsif Cum Judicial Magistrate, Perundurai is petitioner herein. The petitioner stood charges for the offence under Sections 279 and 304(A) IPC. After trial, the trial Court convicted the accused under Section 279 IPC and sentencing him to undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month and sentencing him to undergo one year rigorous imprisonment and to pay a fine of Rs.2,500/- in default to undergo simple imprisonment for six months for the offence under

Section 304(A) IPC. Challenging the above said conviction and sentence, the petitioner has filed a Criminal Appeal in C.A.No.76 of 2010 on the file of the learned Principal Sessions Judge, Erode. The appellate Court, by its judgment dated 08.02.2011, dismissed the appeal, by confirming the judgment passed by the Trial Court. Challenging the above conviction and sentence, the petitioner preferred this present criminal revision case.

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

The deceased in this case one Gurusamy is brother-in-law of P.W.1. On the date of occurrence, namely, on 02.03.2007, at about 6.00 p.m., both the deceased and P.W.1 riding two separate bi-cycles in Kanjikoil-Chithode Road from west to east direction, at that time, a tractor, carrying sugarcane, coming from east to west direction dashed against the deceased and the back wheel of the tractor trailer ran over the deceased and he died on the spot. Immediately, P.W.1 lodged a complaint to the respondent police station. P.W.9, the Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.24 of 2007 for the offence under Sections 274 and 304(A) IPC. After registering the complaint, he proceeded to the scene of occurrence and prepared Observation Mahazar[Ex.P2], Rough Sketch [Ex.P5]. Then he examined the witnesses and recorded their statements, and he sent the dead body to the Government Hospital, Erode. In the Hospital, he conducted inquest over the dead body in the presence of panchayatars and sent the body for postmortem. Thereafter, he arrested the accused and sent him for Judicial custody. He sent the Tractor for inspection and after inspection he obtained a report from the Motor Vehicle Inspector. Then, P.W.9 examined the Doctor, who conducted postmortem autopsy and other witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

3. Based on 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 9 witnesses were examined and 7 documents were marked.

4. Out of the said witnesses examined, P.W.1 is an eye witness to the occurrence. According to him, he is the brother-in-law of the deceased. On the date of occurrence, on 02.03.2007, at about 6.00 p.m., both the deceased and himself riding two separate bi-cycles in Kanjikoil-Chithode Road from west to east direction, at that time, a tractor, carrying sugarcane, coming from east to west direction dashed against the deceased and the back wheel of the tractor trailer ran over the deceased and he died on the spot. Immediately, P.W.1 lodged a complaint before the respondent police station. P.W.2 is the

another eye witness to the occurrence. According to him, on the date of occurrence, when he was going in his bicycle at Kanjikoil-Chithode Road from west to east direction, at that time, a tractor, carrying sugarcane, coming from east to west direction and dashed against the deceased and the back wheel of the tractor trailer ran over the deceased and he died on the spot. P.W.3 is turned hostile. P.W.4 is another eye witness to the occurrence. According to him, on the date of occurrence, the tractor dashed against the deceased and he died on the spot. P.W.5 is the wife of the deceased and she is only a hearsay witness. P.W.6 is witness to observation mahazar. P.W.7 is also another witness to observation mahazar. P.W.8, the Motor Vehicle Inspector, who inspected the Tractor and submitted his report. P.W.9, the Inspector of Police, working in the respondent police station. According to him, on receipt of the complaint, he registered a case and conducted investigation, examined the witnesses and recorded their statements, arrested the accused and remanded him to judicial custody, he examined the Doctor, who conducted postmortem autopsy, recorded his statement, after completing the investigation, he laid charge sheet before the jurisdictional Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

6. After elaborate trial, the trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above said conviction and sentence, the petitioner has filed a Criminal Appeal in C.A.No.76 of 2010 on the file of the learned Principal Sessions Judge, Erodi. The appellate Court, by its judgment dated 08.02.2011, dismissed the appeal, by confirming the judgment passed by the Trial Court. Challenging the above conviction and sentence, the petitioner preferred this present criminal revision case.

7. Mr.A.K.Kumarasamy, the learned counsel appearing for the petitioner would submit that even as per the prosecution evidence that the deceased was riding a bicycle in a wrong direction, in the right hand side of the road. Apart from that there is no evidence available to show that the petitioner was driving the Tractor in a rash and negligent manner. In the absence of any evidence to establish that the petitioner driven the vehicle in a rash and negligent manner, the petitioner cannot be found guilty for the offence under Sections 304-A and 279 IPC. Hence, he sought for allowing this criminal revision case.

8. Per contra, the learned Government Advocate(Crl. Side) would contend that there are three eye witnesses in the occurrence. All of them saying that the Tractor came in the

opposite direction and dashed against the deceased and he died on the spot. Hence, there is no reason to disbelieve the evidence of eye witnesses. Therefore, both the Courts below after considered the evidence of eye witnesses, concurrently held that the petitioner has found guilty of the offence under Sections 304-A and 279 IPC. Hence, she sought for dismissal of the revision case.

9. I have carefully considered the rival submissions and perused the materials available on record.

10. P.W.1, who is the brother-in-law of the deceased, also an eye witness to the occurrence. According to him, both the deceased and P.W.1 riding two separate bi-cycles in Kanjikoil-Chithode Road from west to east direction, at that time, a tractor, carrying sugarcane, coming from east to west direction and dashed against the deceased and the rear wheel of the tractor trailer ran over the deceased and he died on the spot. Immediately, P.W.1 lodged a complaint before the respondent police station. From his evidence it is clear that it is only the deceased riding a bicycle on the right an side of the road. Apart from that the evidence of P.W.8, the Motor Vehicle Inspector, found no damage in the tractor. All the eye witnesses stated that only the rear side wheel of the tractor ran over the deceased. Apart from that there is no evidence to establish that the petitioner was driving the tractor in a rash and negligent manner. In the above said circumstances, in the absence of any evidence that the petitioner has driven the tractor in a rash and negligent manner, the petitioner cannot be convicted under Section 304-A IPC. Both the Courts below without considering the evidence in a proper perspective came to the conclusion that the petitioner driving the vehicle in a rash and negligent manner and caused to death of the deceased. Hence, the Judgment of the Courts below is perverse and liable to be set aside and the petitioner is entitled for acquittal.

11. In the result, this Criminal Revision is allowed. The conviction and sentence dated 08.02.2011 passed in C.A.No.76 of 2010 on the file of the learned Principal Sessions Judge, Erode, confirming the judgment dated 03.06.2010 passed in C.C.No.90 of 2007 on the file of the learned District Munsif Cum

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Judicial Magistrate, Perundurai is stands set aside and the petitioner is acquitted. Bail bond, if any, executed by him shall stand cancelled and the fine amounts paid by him are ordered to be refunded, forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Erode,
- 2.The District Munsif Cum Judicial Magistrate,
Perundurai.
- 3.The Inspector of Police,
Perundurai Circle in
Kanjikoil Police Station.
- 4 The Superintendent of Prison,
Central Prison, Coimbatore
- 5 The Public Prosecutor
High Court, Madras
- 6 The Director General of Police, Mylapore Chennai

+lcc to Mr.A.K. Kumaraswamy, Advocate, S.R.No.667

rsk(CO)
md(01/02/2017)

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CrI.R.C.No.758 of 2011

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