

BAIL SLIP

The Appellant/Accused viz., Chinnasamy was directed to be enlarged on bail vide order at this Court dt.22.6.11 in MP.1/11 in CrI.RC.No.759/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision Case No.759 of 2011

Chinnasamy ... Petitioner

Versus

State by Inspector of Police,
Vellithiruppur Police Station. ... Respondent

Revision Petition filed under Section 397 and 401 of Cr.P.C., against the order of the Learned Additional District and Sessions Judge (Fast Track Court No.IV), Bhavani, Erode District in C.A.No.118 of 2010, dated 03.03.2011 confirming the conviction and sentence passed by the learned Judicial Magistrate, Bhavani in C.C.No.26 of 2008, dated 10.08.2010.

For Petitioner : Mr.A.K.Kumaraswamy

For Respondent : Mrs. M.F.Shabana,

Government Advocate (Crl. Side)

ORDER

This accused in CC.No.26 of 2008 on the file of the learned Judicial Magistrate, Bhavani is the petitioner herein. He stood charged for the offences under section 279, 337 and 304(A) of IPC and Section 3 read with Section 181 of Motor Vehicles Act.

2. The trial Court found the accused guilty of all the offences and imposed punishment of Rs.500/- for offence under Section 279 of IPC, in default to undergo one month Rigorous Imprisonment; convicted him under Section 337 of IPC and imposed punishment of Rs.300/-, in default to undergo two weeks Rigorous Imprisonment and also convicted him under Section 304-A of IPC and sentenced him to undergo one year rigorous Imprisonment and also imposed a fine of Rs.3,000/-, in default to undergo three months Rigorous Imprisonment. The petitioner was also convicted for the offence under Section 3 read with 181 of Motor Vehicles Act and imposed a fine of Rs.500/- in default to undergo three weeks Rigorous

Imprisonment. Challenging the above said conviction and sentence, the petitioner filed an appeal in C.A.No.118 of 2010 on the file of learned Additional District and Sessions Court (Fast Track Court No.IV), Bhavani. The Appellate Court confirmed the conviction and sentence imposed on the accused, against which the present revision has been filed.

3. The case of prosecution is as follows :-

On 13.12.2006 at about 08.30 p.m., the deceased and PW1 in this case were travelling in a vehicle - TVS 50 moped from South to North in Anthiyur-Bhavani road. At that time, the accused was driving a TVS star motor cycle, in the opposite direction - from North to South. Both the vehicles collided against each other. In the impact, the deceased, PW1 as well as the accused sustained grievous injuries. PW2, who was standing nearby the scene of occurrence, immediately took the injured to the Anthiyur Government Hospital where the deceased was declared brought dead. Thereafter, on receipt of information, the Sub Inspector of Police attached to Vellithiruppur Police Station, within whose jurisdiction the occurrence took place, proceeded to the hospital, obtained statement from PW1 and based on the same a case was registered in Crime No. 352 of 2006 for the offences punishable under Sections 279, 337, 304(A) of IPC and Section 3 read with Section 181 of Motor Vehicles Act. On receipt of FIR, PW12, the Inspector of Police proceeded to the scene of occurrence, preferred observation mahazar and rough sketch and also recorded the statement of other witnesses. Then he went to the General Hospital, Anthiyur and conducted inquest on the dead body of the deceased then he sent the body for post mortem. Since, the petitioner /accused also sustained injuries in the accident, he was also admitted in the same hospital, subsequently, after treatment, the petitioner was arrested on 21.12.2006, and remanded to Judicial custody. During the course of investigation, PW12 sent both the vehicles for inspection to the Motor Vehicle Inspector. After recording the statement of postmortem Doctor and other witnesses, PW12 filed a charge sheet in the case.

4. Based on the above material, the Trial Court framed charges as mentioned above. In order to prove the guilt of the petitioner, the prosecution examined as many as 7 witness and marked 10 documents. Out of witnesses examined PW1 is the eye witness in this case. On the date of occurrence at about 8 p.m., both the deceased and PW1 were travelling in the TVS moped vehicle at Anthiyur-Bhavani road. It was the deceased who was driving the moped, in which PW1 was travelling as a pillion rider. At that time, the accused was driving the TVS Star motor cycle, came in the opposite direction in a rash and negligent manner and dashed against the TVS moped driven by the deceased. In the impact, the deceased sustained head injuries and PW1 also sustained injuries.

5. PW2, at the time of such accident was said to be standing near the scene of occurrence. On hearing a noise, PW2 saw the deceased, PW1 and the petitioner on the road. He also saw that there was a collision between two vehicles. PW2 has taken the deceased, PW1 and the petitioner to the Government Hospital and admitted them. During the course of trial, PW3 turned hostile, PW4 is the wife of the deceased. PW5 is the son of the deceased, PW6 to 8 are brother in laws of the deceased. All the witnesses have visited the hospital after hearing the news of the accident and their evidence are not helpful to the prosecution. PW9 is the motor vehicle Inspector, who inspected both the vehicles and filed a report. According to PW9, the TVS motor cycle driven by the petitioner/accused sustained damages in front side mud guard, front side wheel, fork and front side number plate, handle bar and brake pedal and there is no mechanical fault in it. Likewise TVS moped driven by the deceased also sustained damage in front side rim, mudguard, fork, handle bar and head light. PW10 is a hear-say witness. PW11 is the Doctor, who has given treatment to the PW1 and the accused. PW12 is the Inspector of Police, who registered a case and filed the charge sheet.

6. With the above material on record, the trial Court, after trial, convicted the accused as stated in para 1 of this judgment. Challenging the above said conviction, the petitioner filed an appeal in C.A.No.118 of 2010 and the Appellate Court also dismissed the appeal, thereby confirming the conviction and sentence imposed by the trial Court.

7. I heard the submissions of Mr.A.K.Kumaraswamy, learned counsel for the petitioner and Mrs. M.F. Shabana, learned Government Advocate for the respondent.

8. The learned counsel for the petitioner would submit that there is no evidence available on record to prove that the accident has taken place due to the rash and negligent driving of the petitioner especially when the accident took place at night hours at about 8.30 p.m.. Even as per evidence of PW1, it was a head on collision between the vehicle driven by the deceased and that of the petitioner. PW1 has not attribute any negligence in driving the vehicle by the petitioner. Apart from the evidence of PW1, PW2 also stated that the petitioner was not driving the vehicle in a rash and negligent manner. In view of the above and in the absence of any evidence to prove the negligence on the part of the petitioner, the judgment of conviction passed by the Courts below is legally not sustainable.

9. Per contra, the learned Government Advocate appearing for the respondent would submit that PW1 is the injured eyewitness in this case and he has clearly stated that it is only the petitioner who has driven the vehicle in a rash and negligent manner and dashed against the TVS moped driven by the deceased which led to the accident. Admittedly when

the injured witness has clearly spoken about the overt act on the part of the petitioner, it cannot be ignored. The courts below, after considering the evidence in detail convicted the accused and there is no reason to interfere with the well considered judgment of the Courts below.

10. I have considered the rival submissions. The occurrence took place in the night hours at about 8.30p.m in the 14 feet road. The petitioner and the deceased were driving the vehicle in the opposite directions and it was a head on collision between two vehicles. From the evidence available on record and the report of the motor vehicle Inspector, it could be seen that there were damages in the front side of both the vehicles. PW1 is the one and only eye witness to the accident who was pillion rider in the vehicle driven by the deceased. In his evidence, he (PW1) has not stated that the petitioner was riding his motor cycle in a rash and negligent manner. Even according to him the deceased does not possess a valid licence to drive the TVS vehicle moped. Even though PW2 was said to be an eye witness standing near the scene of occurrence, he has stated that he saw a person came in a motor cycle and subsequently he heard a noise. On hearing such noise, he went to the scene of occurrence and found that 3 persons were lying in the road with injuries. In the cross examination, PW2 has categorically stated that the petitioner did not drive the vehicle in a rash and negligent manner. In the above circumstances, considering the evidence of PW1 and PW2 and also the report of motor vehicle Inspector. The prosecution did not prove that there is a negligence on the part of the petitioner and driven the bike rashly, which resulted in the accident in which the deceased died and there is no other evidence available to hold that the petitioner had driven the vehicle in a rash and negligent manner. In the said circumstances, both the Courts below, without considering the evidence of PW1, PW2 and the report of the Motor Vehicle Inspector in a proper perspective came to an erroneous conclusion that the petitioner had driven the vehicle in a rash and negligent and which has resulted in the accident. In the above circumstances, I am of the considered view that the prosecution has not proved the guilt of the accused beyond reasonable doubt, hence, the petitioner is entitled for acquittal.

11. In the result, the judgment of both the courts below are set aside. The Criminal Revision Case is allowed and petitioner / accused is acquitted. The fine amount, if any, paid by the petitioner/accused is directed to be refunded to him.

Sd/-

Asst.Registrar (CS III)

/true copy/

To :

1) The Additional District and Sessions Judge
(Fast Track Court No.IV), Bhavani,
Erode District

2) The Judicial Magistrate,
Bhavani.

3.The Judicial Magistrate,
Bhavani.

4.The Public Prosecutor, High Court, Madras.

5.The Inspector of Police,
Velithiruppur Police Station.

6.The Superintendent, central Prison,
Coimbatore.

+1 cc to M/s.A.K.Kumarasamy, advocate, sr.953

pp(co)
krd 31/1

Cr1. RC No.759 of 2011



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