

Bail Slip

Crl Rc.No.943/11

Chennan

Petitioner

The above said Petitioner was directed to be released on bail as per order of this court dated 14/07/2011 made in Crl.Mp.No.1/11 in Crl Rc.No.943/2011 on the file of this court

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.943 of 2011

Chennan

..

Petitioner

Vs

The State. Rep. by
The Inspector of Police,
Sivakanchi Police Station,
Kancheepuram.

..

Respondent

Prayer:-

This Criminal Revision is filed under Section 397 & 401 of Cr.P.C., to set aside the order of the learned District & Sessions Judge-II, Kancheepuram in Crl.A.No.100 of 2010 dated 07.07.2011 in S.C.No.236 of 2008 on the file of the Assistant Sessions Judge, kancheepuram.

For petitioner : Mr.V.Parthiban
for Mr.A.Shiv Kumar

For respondent : Mrs. M.F.Shabana,
Gov. Advocate (Crl. Side)

O R D E R

The sole accused in S.C.No.236 of 2008 on the file of the Assistant Sessions Court, Kancheepuram, is the revision petitioner herein. He stood charged for the offences under Sections 279 and 304-(ii) IPC. The trial court, by judgment dated 05.03.2010, convicted the accused under Section 279 IPC and imposed a fine of Rs.250/-, in default, to undergo rigorous imprisonment for one month and convicted him under Section 304-A

IPC and sentenced him to undergo rigorous imprisonment for one year. Challenging the above said conviction and sentence, the petitioner/accused filed an appeal in C.A.No.100 of 2010 on the file of the District and Sessions Court No.2, Kanchipuram. The lower Appellate Court dismissed the appeal and confirmed the conviction and sentence passed by the trial court. Aggrieved by the same, the petitioner/accused is before this court with this revision petition.

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

On 12.03.2008, at about 12.30 p.m., the deceased, in this case, one Giridharan, who was studying in 9th standard, while riding a bicycle near Taluk Office, Kanchipuram, a lorry bearing registration No.TN 22-4959, carrying sand, driven by the accused was coming in a rash and negligent manner and dashed against the deceased from behind and the deceased fell down and the rear wheel of the lorry ran over the deceased and he died instantaneously. P.W.1, an eye-witness to the occurrence, immediately, lodged a complaint before the respondent police.

3. P.W.8, Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.212 of 2008 for the offences under Sections 279 and 304(ii) IPC and prepared First Information Report, Ex.P.6. Then, he proceeded to the scene of occurrence, where he prepared an Observation Mahazar, Ex.P.2 and drew a Rough Sketch, Ex.P.7. Thereafter, he conducted inquest on the dead body of the deceased in the presence of Panchayathars and sent the dead body for post-mortem to the Government Hospital, Kanchipuram.

4. P.W.7, Doctor, working in the Government Hospital, Kanchipuram, on 12.03.2008, conducted post-mortem/autopsy on the dead body of the deceased and he has given a post-mortem report, Ex.P.5 and he has also given an opinion that the deceased died of head injury. Then, P.W.8 sent the offending lorry for inspection and P.W.6, Motor Vehicle Inspector, inspected the vehicle and gave a report, stating that the accident did not take place due to the mechanical failure. P.W.8, recorded the statement of the Doctor, who conducted post-mortem on the dead body of the deceased and Motor Vehicle Inspector, who inspected the offending vehicle. After completion of the investigation, he laid the charge sheet.

5. Considering the above materials, the trial Court framed the charges as mentioned in the first paragraph of this judgment order and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 3 witnesses were examined and 8 documents were exhibited, besides, one material object was marked.

6. Out of the witnesses examined, P.Ws. 1 to 4 are eye-witnesses to the occurrence. P.W.1 is running a C.D. shop in Jawaharlal street, Kancheepuram. On the date of occurrence, he came to the Taluk Office, Kancheepuram, for renewing his license. At that time, he saw a lorry, coming from North to South, in a rash and negligent manner, he and other witnesses shouted to drive the lorry slowly, but the petitioner/accused drove the vehicle in high speed and dashed against the deceased. The deceased fell down and the rear wheel of the lorry ran over him. Thereafter, P.W.1 gave a complaint.

7. P.W.2 is another eye-witness to the occurrence. He also says that lorry came in rash and negligent manner and dashed against the deceased and the rear wheel of the lorry ran over him and he died on the spot. P.W.3 is also eye-witness to the occurrence. According to him, he came to the Taluk Office, Kanchipuram and when he was waiting for a bus, opposite to the Taluk Office, the lorry driver has driven the lorry in a rash and negligent manner and the people shouted to slow down the lorry, but without listening to it, he dashed against the deceased and the lorry driver ran away. P.W.4 is yet another eye-witness to the occurrence and he also reiterates the same.

8. P.W.5 is a witness to the observation mahazar and his evidence no way supports the case of the prosecution. P.W.6 is the Motor Vehicle Inspector, who inspected the offending lorry and gave an opinion that there is no mechanical fault in the lorry. P.W.7, Doctor, who conducted post-mortem on the dead body of the deceased, gave a post-mortem report. P.W.8, Inspector of Police, investigated the case, conduct inquest on the dead body of the deceased and recorded the statement of the witnesses. After completion of the investigation, he laid charge sheet against the accused.

9. When the above incriminating materials were put to the accused, he denied the same, however, he did not examine any witness nor marked any documents.

10. Having considered all the above materials, the trial Court convicted the petitioner/accused as mentioned in the first paragraph of the order. Challenging the same, the petitioner preferred an appeal before the District and Sessions Judge, Kancheepuram and the lower appellate court dismissed the appeal by confirming the judgment of the trial court. Aggrieved by the same, the petitioner/accused is before this court with this present revision.

11. I have heard Mr. V.Parthiban, learned counsel appearing for the petitioner and Mrs. M.F.Shabana, learned Govt. Adv.(crl. Side) appearing for the respondent.

12. There are four eye-witnesses to the occurrence. All of them are independent witnesses. They came to the Taluk Office for their personal work. It is the consistent evidence of all the eye-witnesses that the lorry came in a rash and negligent manner, despite the warning given by them and dashed against the deceased, with that impact, he fell down under the rear wheel of the lorry and the lorry ran over him and the deceased died instantaneously. P.W.6, Motor Vehicle Inspector has also given a report stating that there is no mechanical fault in the offending lorry. The evidence of eye witness is consistent and their presence in the scene of occurrence is also natural and there is no reason to disbelieve their evidence.

13. Considering the above materials, the trial court came to a conclusion that no offence has been made out under Section 304(ii) IPC and convicted the petitioner/accused under Section 304-A IPC. I find no illegality or irregularity or perversity in the findings of the courts below and the same does not warrant interference by this Court.

14. The learned counsel appearing for the petitioner/accused submits that the petitioner is a poor man and he has no bad antecedent and now his wife is also suffering from terminal stage of cancer. He alone should take care of his entire family. He was also inside the jail for more than one month. Taking into consideration all the mitigating as well as the aggravating circumstances, the sentence is modified to rigorous imprisonment for 3 months.

15. Accordingly, this Criminal Revision Case is partly allowed and the conviction imposed on the petitioner by the courts-below is confirmed and the sentence is modified to Rigorous Imprisonment for 3 months. The period of sentence already undergone by petitioner/accused shall be set off under Section 428 Cr.P.C. Since, the petitioner is on bail, the trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

mrp

To

1. The Additional District and Sessions Judge,
Kancheepuram.

- 2.The Assistant Sessions Judge,
Kancheepuram.
- 3.The Judicial Magistrate,
Kancheepuram.
- 4.The Chief Judicial Magistrate,
ChengalPattu.
- 5.The Inspector of Police,
Sivkanchi police station,
Kancheepuram.
- 6.The Superintendent central prison
Vellore.
- 7.The Public Prosecutor,
High court, Madras.

+lcc to Mr.A.SHivakumar, Advocate in sr.no.3415

Cr1.R.C.No.943 of 2011

KS (CO)
NR 23/06/2017



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