

BAIL SLIP

1.Purushothaman  
2.Subramani

The above said Petitioners were directed to be released on bail as per order of this Court dated 18.12.2015 made in CrI.M.P.No.1 of 2015 in CrI.R.C.No.1302 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2017

PRONOUNCED ON : 06.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.1302 of 2015

1.Purushothaman  
2.Subramani

....Petitioners

Vs

State rep by  
Inspector of Police,  
M.G.R.Nagar Police Station,  
Chennai.

.... Respondent

Prayer:-

This Criminal Revision is filed under Section 397 r/w. 401 of Cr.P.C., to call for the records in C.A.No.102 of 2014 and set-aside the judgment dated 20.11.2015 on the file of the XIX Additional Sessions Judge, City Civil Court, Chennai, confirming the Judgment dated 11.03.2014 in C.C.No.11020 of 2010 on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai.

For petitioner : Mr. S.Kadarkarai

For respondent : Mr.R.Ravichandran,  
Government Advocate (CrI. Side)

O R D E R

A1 and A2 in C.C.No.11020 of 2010, on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai, are the appellants herein. They stood charged for an offence under Section 304(A) IPC. The trial Court, by judgment dated 11.03.2014, convicted the petitioners/accused for the offence

under Section 304(A) IPC, and sentenced them to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for 3 months each, and the said amount was to be paid as a compensation to the legal heirs of the deceased. Challenging the same, the petitioners filed an appeal in C.A.No.102 of 2014 on the file of the XIX Additional sessions Court, City Civil Court, Chennai and the lower appellate court, confirmed the conviction and sentence and dismissed the appeal, by a judgment dated 20.11.2015. Aggrieved over the same, the petitioners are before this court with this revision.

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

The deceased, in this case, one Robert was a mason. A1 in this case is the owner of a building which was under Construction, and A2 is the supervisor of the construction work. On 24.06.2010, at about 9.00 a.m., while the deceased was working in the second floor of the building, the deceased slipped and fell down from the second floor and sustained injuries. Then, he was taken to the hospital, where he succumbed to injuries. Then, P.W.1, the brother of the deceased, who was also a co-worker in the construction site has given a complaint before P.W.9, Sub-Inspector of Police, attached to the respondent police and based on the complaint, he registered a case in Crime No.636 of 2010, for the offence under Section 304(A) IPC, and prepared an First Information Report(Ex.P.6), and then handed over the same to P.W.10, Inspector of Police attached to the respondent police.

3. On receipt of the First Information Report, P.W.10, proceeded to the scene of occurrence and there, he prepared an Observation Mahazar(Ex.P.8) and a Rough Sketch and also recorded the statements of the witnesses. Then he sent the dead body of the deceased to the Government Hospital, Royapettah, where he conducted inquest on the dead body of the deceased in the presence of the panchayathars, and prepared Inquest Report(Ex.P.9) and then he arrested the accused.

4. P.W.9, Doctor, working in the Government Hospital, Royapettah, conducted autopsy on the dead body of the deceased and given a postmortem report (Ex.P.7) and he was of the opinion that the deceased died due to shock and hemorrhage. P.W.10 recorded the statement of the Doctor and after completion of investigation, he filed a final report.

5. Based on the above materials, the trial Court framed a charge for an offence under Section 304(A) IPC and the accused denied the same. In order to prove its case, prosecution examined 10 witnesses and marked 9 exhibits.

6. Out of the witnesses examined, P.W.1 is the brother of the deceased, who was also working in the construction site, where the occurrence took place. According

to him, on the date of occurrence, he along with the deceased were laying concrete in the second floor of the building belongs to A1. At that time, the deceased slipped and fell down from the second floor, and sustained injuries and he was taken to Vijaya Hospital, at about 9.00 p.m., there he succumbed to injuries. Then, he lodged a complaint before the respondent police. P.W.2 is also a co-worker working along with the deceased, and P.W.1. According to him, while they were laying concrete in the third floor, due to the vibration in the lift carrying the construction material, the deceased fell down and sustained injuries on his chest.

7. P.W.3 is a mason, and related to the deceased. He is only a hearsay witness. P.W.4 is a witness to the observation mahazar. P.W.5 is yet another witness to the observation mahazar and rough sketch.

8. P.W.6 is a Doctor, working in the Vijaya Hospital, Vadapalani. According to him, the deceased sustained injuries on his head and chest and he issued an Accident Register, (Ex.P.3) and death memo, (Ex.P.5). P.W.7 is a doctor, working in the Vijaya Hospital, has given evidence regarding the treatment given to the deceased based on the records. According to him, the deceased was admitted in the hospital by one Subramanian, who was a co-worker and he told him that the deceased slipped his leg and fell down from the construction site from 15 feet height. P.W.8 is the Sub-Inspector of Police, who registered the complaint. P.W.9 is the Doctor, who conducted postmortem/autopsy. P.W.10 is the Inspector of Police, who conducted investigation and filed a final report.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not examine any witness nor marked any documents.

10. Having considered all the above materials, the trial Court convicted the petitioners/accused as stated in the first paragraph of this order. Challenging the same, the petitioners filed an appeal in C.A.No.102 of 2014 before the XIX Additional Sessions Judge, City Civil Court, Chennai and the lower-appellate court dismissed the appeal and confirmed the conviction and sentence passed by the trial Court, by judgment dated 20.11.2015. Aggrieved over the same, the petitioners/accused are before this Court with this revision.

11.I have heard Mr.S.Kadarkarai, learned counsel appearing for the petitioners and Mr.R.Ravichandran, learned Government Advocate(Crl. Side) appearing for the respondents.

12.The learned counsel appearing for the petitioner submitted that, the first petitioner/A1 is the owner of a building which was under construction, and A2 is a supervisor

and from the evidence available on record, absolutely, there is no material to show that the death occurred due to the rash and negligent act of the petitioners. Even in the evidence of P.Ws.1 and 2, there are lot of contradictions. P.W.1 in his evidence has stated that while laying concrete in the second floor the deceased slipped and fell down and P.W.2 has stated that due to the vibration in the lift carrying construction materials, he fell down. Even though P.W.1 claims to have admitted the deceased in the hospital, P.W.7, Doctor has stated that one Subramanian has admitted the deceased in the hospital and at the time of admission, he has stated that the deceased slipped and fell down from the building. The cause of death was not proved by the prosecution as to whether the deceased was fell down due to slip of his leg or due to vibration of lift carrying construction materials. Apart from that, to bring home an offence under Section 304(A) IPC, the prosecution should establish that there is a proximity between the death of the deceased and the alleged rash and negligent act. But in this case, absolutely, there is no material available on record to show that only because of the negligent act of the petitioners, the death has occurred and the petitioners cannot be convicted on a vicarious liability. The Court below without considering the evidences in the proper perspective convicted the petitioners.

13. Per contra the learned Government Advocate (Crl. Side) submitted that P.W.1 and P.W.2 are the witnesses to the occurrence and they were co-workers working along with the deceased. Their evidence was that the deceased fell down from the second floor while he was laying concrete. Since no safety measures have been provided by them like putting a net around the building, and the death has occurred only due to the negligence of the petitioners, the deceased, a construction worker fell down from the building and died. The prosecution has clearly established from the evidences that it is only because of the rash and negligent act of the petitioners, death has occurred, considering all the materials, both the courts-below convicted the petitioners, there is no illegality or irregularity in the judgment and there is no reason to interfere with the concurrent findings.

14. I have considered the rival submissions and perused the materials available on records carefully.

15. Before going into the factual aspects of the matter, it is useful to refer, Section 304(A) IPC, which reads as follows:

"Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both"

To bring home an offence under Section 304-A IPC, the prosecution should establish that the death of the victim was the result of the rash and negligent act of the accused and that such act was proximate and effective cause without the intervention of another's negligence. The prosecution should also show that there is a proximity between the death of the deceased and the alleged rash and negligent act.

16. But in the instant case, A1 is the owner of the building under construction and A2 is the supervisor. P.W.1, the brother of the accused, is an eye-witness to the occurrence. According to him, on 24.06.2010, at about 3.30 p.m., while they were laying concrete in the second floor, the deceased slipped and fell down and sustained injuries. Then, he took the deceased to Vijaya hospital and admitted him. P.W.2, another co-worker and eye-witness to the occurrence, has stated that while they were laying concrete in the third floor, due to the vibration of the lift carrying construction materials, the deceased fell down and sustained injuries. P.W.7, Doctor, working in the Vijaya Hospital, has stated that at about 3.30 p.m., one Subramanian brought the deceased to the hospital and he told him that the deceased slipped his legs and fell down from the building and sustained injuries and an accident register(Ex.P.3) was also issued to that effect. But the said Subramanian was not examined by the prosecution. From their evidence, it is not clear what was the actual cause for the accident. But, from their evidence it could be seen that the deceased fell down from the building under construction and sustained injuries and he succumbed to injuries subsequently.

17. Now, the question to be decided is whether the death was caused due to the rash and negligent act of the petitioners.

18. From the evidence of P.Ws.1 and 2 , it could be seen that the deceased had slipped and fell down and sustained injuries. There is no evidence to show that it is because of the negligent act of the petitioners, the deceased slipped and fell down from the building. From their evidence it could be seen that it is only an accident, while the deceased was working in the building, he slipped and fell down, for which, the first petitioner, being the owner of the building and the second petitioner, who is a supervisor cannot be held responsible. While the deceased was working in the second floor without adequate precautions, he slipped and fell down. Absolutely there is no proximity between the death of the deceased and the alleged rash and negligent act of the petitioners and for that the petitioners cannot found fault and made them criminal.

19. Apart from that as stated above, even there are lot of contradictions in the evidence of P.Ws.1 and 2. Regarding the said accident, P.W.1 says that while he was

working in the second floor, he slipped his leg and fell down. P.W.2 has stated that while they were working in the third floor due to the vibration in the lift he fell down and sustained injuries. From their evidence the prosecution did not establish the actual cause of the accident.

20. In the above circumstances, I am of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. The Court below without considering the evidence in proper perspective erroneously convicted the petitioners. Hence, the judgment of the courts below is liable to be set aside and the petitioners are entitled for acquittal.

21. In the result, the Criminal Revision Petition is allowed. The conviction and sentence imposed on the petitioners is set-aside and they are acquitted from the charge under Section 304(A) IPC. Bail bond, if any, executed by the petitioners shall stand cancelled. Fine amount, if any, paid by them is directed to be refunded.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrp

To

- 1.The XIX Additional Sessions Judge,  
City Civil Court, Chennai.
- 2.The XXIII Metropolitan Magistrate,  
Saidapet, Chennai.
- 3.The Inspector of Police,  
MGR Nagar Police Station,  
Chennai.
- 4.The Principal Sessions Judge,  
City Civil Court, Chennai.
- 5.The Chief Metropolitan Magistrate,  
Egmore, Chennai.
- 6.The Public Prosecutor,  
High court, Madras.

+1cc to Mr.S.Kadarkarai, Advocate, S.R.No.71648

CrI.R.C.No.1302 of 2015

KS (CO)

<https://hcservices.ecourts.gov.in/hcservices/>

CA(01/11/2017)