

BAIL SLIP

The Petitioner/Accused namely Arumughan, Aged 46 years, S/o.Samayan, is directed to be released on bail as per order of this Honourable Court dated 06.05.2015 in Crl.M.P.No.2 of 2015 in Crl.R.C.No.444 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.444 of 2015  
and  
Crl.M.P.No.1845 of 2017

Arumugham

... Petitioner/Accused

Vs.

State represented by  
The Inspector of Police  
Chettipalayam Police Station  
Coimbatore District  
(Crime No.205 of 2012)

... Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned V Additional District and Sessions Judge, (FAC), Coimbatore passed in C.A.No.172 of 2014 on 20.03.2015 confirming the judgment of learned Judicial Magistrate VII, Coimbatore, passed in C.C.No.533 of 2012 on 27.10.2014.

For Petitioner : Mr.C.R.Malavyannan

For Respondent : Mr.V.Arul,  
Additional Public Prosecutor

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O R D E R

This revision arises against two concurrent findings of conviction for offence u/s. 279 and 304A IPC. The petitioner faced trial for such offences in C.C.No.533 of 2012 on the file of the learned VII Judicial Magistrate, Coimbatore.

2. Prosecution case is that on 29.06.2012 at about 6.45 p.m the deceased, two in number were on a motorcycle traveling from Coimbatore to Pollachi. The petitioner/driver of a lorry in an attempt to overtake the motorcycle drove the lorry in a rash and negligent manner resulting in both coming under the rear wheel of the lorry and instantly meeting death.

3. In support of its case prosecution examined 13 witnesses and marked 10 exhibits. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 27.10.2014 convicted petitioner/accused for offences u/s.279 and 304(A) and sentenced to 1 year S.I for offence u/s. 304(A) IPC. No separate sentence has been imposed for offence u/s. 279 IPC. There against, petitioner preferred C.A.No.172 of 2014 on the file of learned V Additional District and Sessions Judge, Coimbatore, which came to be dismissed under judgment dated 20.03.2015. Hence, this revision.

4. Learned counsel for petitioner submits that according to the prosecution P.W.1 and P.W.5 were eye witnesses to the occurrence. P.W.1 has spoken to one of the deceased riding pillion on his motorcycle when on the way they met the other deceased. His pillion rider got off his motor cycle and got on to the motorcycle driven by the other deceased. In an attempt to overtake the motorcycle of the deceased the rear left wheel of the lorry bearing registration No.TN-59-C-9925 ran over both deceased. The driver of the lorry ran away. P.W.5 has claimed to be on the spot since the motorcycle driven by him had suffered a puncture and hence he was pushing the same to a nearby shop. It is in the evidence of P.W.5 that since the driver of the lorry had run away a distance, he could not identify him. The evidence of P.W.1 is to the effect that he came to know of the petitioner being the driver of the lorry on examination of the log/trip sheet found in the lorry. P.W.8, owner of the lorry has in chief, deposed that the lorry was under the management of his brother and the job of driving the same on the fateful day was entrusted to petitioner. However, in cross he has spoken to his brother having more than five drivers and of not knowing whether it was the appellant who had driven the vehicle on the fateful day. Learned counsel submits that in the circumstances, Court below has erred in rendering a finding of conviction.

5. We have heard the learned Additional Public Prosecutor on the above submissions.

6. Learned Additional Public Prosecutor submitted that the petitioner had surrendered at the Police station on 03.07.2012 and therefore no occasion to doubt the involvement of the petitioner in the occurrence arose.

7. This Court would express the view that mere fact of surrender of the accused cannot lead to inference of his being guilty of offence. The law of the country places the onus on the prosecution, to prove its case beyond all reasonable doubt. When both P.W.1 and 5 have not deposed to identifying the petitioner/accused at the time of occurrence though they were allegedly eye witness thereto, P.W.5 has admitted to being unable to do so and P.W.1 has admitted to fixing the

petitioner/accused as the driver going through the log/trip sheet and such document has not been marked before Court and P.W.8-owner is also indefinite about the petitioner/accused being the driver of the lorry at the time of occurrence, the yardstick of proof beyond all reasonable doubts has not been met.

8. The Criminal Revision Case is allowed. The judgment of learned V Additional District and Sessions Judge, (FAC), Coimbatore passed in C.A.No.172 of 2014 on 20.03.2015 confirming the judgment of learned Judicial Magistrate VII, Coimbatore, passed in C.C.No.533 of 2012 on 27.10.2014, is set aside. Petitioner shall stand acquitted of all charges. Bail bonds, if any, executed by the petitioner shall stand cancelled. Connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The V Additional District and Sessions Judge (FAC), Coimbatore.
- 2.The Judicial Magistrate VII, Coimbatore.
- 3.The Inspector of Police  
Chettipalayam Police Station  
Coimbatore District
- 4.The Public Prosecutor  
High Court, Madras.

+1cc to Mr.N.Mohideen Basha, Advocate, S.R.No.60678

Cr1.R.C.No.444 of 2015

NMI (CO)  
CA(13/11/2017)

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