

Bail Slip

The Petitioner /Accused namely Dillibabu S/o Natarajan was directed to be released on bail by the order of this court dated on 01.02.2012 and made in CrI.M.P. No. 1/2012 in CrI.R.C.No.144 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.144 of 2012

Dillibabu .. Petitioner/Accused

Vs

State by
The Inspector of Police,
Sivakanche Police Station,
Kancheepuram.
Crime No.551 of 2009

.. Respondent/Complainant

Prayer:- Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgement of the Principal District Judge (FTC - 11 Kancheepuram) in C.A.No.30 of 2011 dated 02.01.2012 and the Judgement of the Judicial Magistrate - I, Kancheepuram in C.C.No.243 of 2009 convicting the petitioner under Section 279 of IPC and 304 A IPC and sentencing him to a fine of Rs.500/- in default SI for 2 weeks in respect of the offence Under section 279 IPC and 3 months simple imprisonment in respect of the offence under Section 304 A IPC.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : Mr.V.Arul

Additional Public

Prosecutor

JUDGEMENT

The sole accused in C.C.No.243 of 2009 on the file of the Judicial Magistrate No.I, Kancheepuram, is the revision petitioner herein. He stood charged for an offence under Sections 279 and 304-A IPC. The trial Court, by judgment dated 11.07.2011, convicted the petitioner for the offence under

Section 279 IPC and imposed a fine of Rs.500/-, in default, to undergo simple imprisonment for 2 weeks and convicted him under Section 304-A IPC and sentenced him to undergo simple imprisonment for 3 months. Challenging the same, the petitioner had preferred an appeal in CrI.A.No.30 of 2011 on the file of the District Sessions Court No.2, Kanchipuram. The lower appellate Court confirmed the conviction and sentence and dismissed the appeal. Now, challenging the same, the present revision has been filed.

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

The deceased, in this case, one Elumalai is the father of PW1. On 27.08.2009 at 9.30 a.m, while he was riding a bicycle near Sankara Madam at Kancheepuram, a mini bus driven by the petitioner came in a rash and negligent manner and dashed against the deceased and both the legs of the deceased were fractured. Then, the deceased was taken to Government General Hospital, Kanchipuram, where he was referred to Government General Hospital, Chennai. Subsequently, the deceased succumbed to injuries on 07.09.2009.

3. Immediately, after the accident, P.W.1, who is son of the deceased has filed a complaint(Ex.P.1) before the respondent police. On receipt of the complaint, PW.12, Inspector of Police, registered a case in Crime No.551 of 2009 for the offences under Sections 279 and 337 IPC and prepared First Information Report (Ex.P.6). Then he proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.7) in the presence of the witnesses. Subsequently, after the death of the deceased, he altered the charge into Section 304-A IPC. Then, he conducted inquest on the dead body of the deceased in the presence of the panchayathars and prepared Inquest Report(Ex.P.8). P.W.10, Doctor, working in the Government General Hospital, chennai, on 07.09.2009, at 2.10 p.m., conducted postmortem/autopsy on the dead body of the deceased and given a Postmortem Report (Ex.P.4) and he has given a opinion that the deceased would appear to have died due to the effect of multiple injuries. Then, P.W.12, continued the investigation, recorded the statements of the witnesses and after completion of investigation, he laid the charge sheet.

4. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 8 documents were exhibited.

5. Out of the witness examined, PW1 is the son of the deceased. He has admitted the deceased in the hospital and also given a complaint before the respondent police. PW2 is an eye witness. According to him, on the date of occurrence, at about 9.00 a.m., while he was standing near the bus stand, the deceased was riding a bicycle and a mini bus driven by the petitioner came behind him and dashed the deceased and he suffered injuries in both his legs. Then, he along with others sent the injured person to the Hospital.

6. PW.3 is also an eye-witness. He has also stated that while the deceased was riding a bi-cycle, a minibus driven by the petitioner came behind him and dashed the injured person. PW4 and P.W.5 are witnesses to the Observation Mahazar and Rough Sketch. PW.6 is another son of the deceased. According to him, he went to the hospital after the deceased was admitted there. PW7 is a Doctor, working in Government General Hospital, Kanchipuram. He admitted the deceased and issued an Accident Register (Ex.P.3) and he refereed the deceased to Government General Hospital, Chennai. P.W.8 and P.W.9 are hearsay witnesses. P.W.10, Doctor, conducted postmortem on the dead body of the deceased and issued the Postmortem Report(Ex.P.4). P.W.11, Motor Vehicle Inspector, inspected the offending vehicle and has given a report(Ex.P.5) stating that there is no damage in the vehicle and he has also given an opinion that the accident has not taken place due to mechanical fault of the offending vehicle. PW12 Inspector of Police, registered the case and sent the First Information Report(Ex.P.6) to the jurisdictional Magistrate and higher officials, recorded the statement of the Doctor, who conducted postmortem on the dead body of the deceased and recorded the statements of the witnesses and after completion of investigation, he laid charge sheet against the accused.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness or marked any documents.

8. Having considered all the above materials, the trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the said conviction and sentence the petitioner/accused filed an appeal in CrI.A.No.30 of 2011 before the District and Sessions Court No.II, Kanchipuram and the lower appellate court dismissed the appeal, by a judgment dated 02.01.2012, and confirmed the judgment of the trial court. Aggrieved over the same, the petitioner/accused is before this Court with this revision.

9. I have heard Mr.S.Kalyanaraman, learned counsel appearing for the petitioner and Mr.V.Arul, Additional Public Prosecutor, appearing for the respondent and perused the materials available on record carefully.

10. The learned counsel appearing for the petitioner would contend that P.Ws. 2 and 3 are the eye-witnesses to the occurrence. But, from their evidence, the prosecution did not prove that the petitioner has driven the vehicle in a rash and negligent manner. P.Ws.2 and 3 simply stated that while the deceased was riding a bicycle, a mini bus driven by the accused dashed him and caused injuries in both his legs. In the absence of any evidence to show that the petitioner has driven the vehicle in a rash and negligent manner, he cannot be convicted for the offence under Section 304-A IPC. Even though the occurrence took place on 27.08.2009, the deceased succumbed to the injuries only on 07.09.2009 and the cause of the death was also established by the prosecution and that the death was due to the accident. The learned counsel further submitted that both the courts without considering the evidence in proper perspective, convicted the petitioner.

11. Per contra, the learned Additional Public Prosecutor would contend that P.Ws.2 and 3 are the eye-witnesses and they are independent witnesses, they were standing in the bus stand at the time of accident. According to them, the petitioner had driven the mini bus in a rash and negligent manner and dashed against the deceased and caused his death and there is no reason to disbelieve the evidence of P.Ws.2 and 3 and both the Court, after considering the evidence in proper perspective convicted the petitioner and there is no reason to interfere with the well considered judgment of the Court below.

12. I have considered the rival submissions made on either side and perused the materials available on record carefully.

13. P.Ws.2 and 3 are the eye-witnesses to the occurrence. According to P.W.3, on the date of occurrence, at about 9.30 a.m., while he was standing in a bus-stand, the deceased was riding a bicycle and a mini bus came behind him and dashed against him and he suffered injuries on both his legs. Then, he was taken to the hospital. P.W.3 has also stated that while he was standing in the bus stop, the deceased was riding bicycle and the mini bus came behind him and dashed against him and caused injuries and then they took the deceased to the hospital. Except P.W.2 & P.W.3 there is no other evidence available on record to speak about the occurrence. Other witnesses came to the scene only after coming to know about the occurrence. But, both witnesses did not say that the petitioner

has driven the vehicle in a rash and negligent manner or with high speed. Both of them simply said that the mini bus dashed against the deceased and from their evidence it cannot be presumed that the petitioner has driven the vehicle rashly and negligently and caused the accident.

14. In a criminal trial, the burden of proving charge against the accused always rest on the prosecution and there is always a presumption of innocence in favour of the accused, unless his conduct is proved and the criminality cannot be presumed subject to some of the statutory assumption and there is no statutory assumptions pleaded in the present case. In the above circumstances, in the absence of any material on record to prove that the petitioner has driven the vehicle in a rash and negligent manner, the presumption of rashness and negligence cannot be drawn by invoking the maxims of res ipsa loquitur.

15. Apart from that, as already stated, there is no evidence on record to show that the accused was responsible for the accident, which resulted in the death of the deceased and the petitioner's rash and negligent act that has caused the death of the deceased. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charge beyond any reasonable doubt. Therefore, both the Courts below, without considering the materials available on record in proper perspective, convicted the petitioner and hence, the conviction of the Courts below is liable to be set aside.

16. In the result, the Criminal Revision is allowed and the conviction and sentence imposed on the petitioner/accused are set aside and the petitioner/accused is acquitted from all the charges. Bail bond, if any, executed by the petitioner/accused, shall stand cancelled. Fine amount, if any paid by him, shall be refunded to him.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

mrp
To

1. The Judicial Magistrate - I,
Kancheepuram
2. The Chief Judicial Magistrate
Chengalpatu.

3.The Principal District Judge
(FTC -11 Kancheepuram)

4. The Inspector of Police,
Sivakanche Police Station,
Kancheepuram.

5. The Public Prosecutor
High Court, Madras.

+1 CC to Ms.S. Kalyanaraman, Advocate sr 72830.

Cr1.R.C.No.144 of 2012

VGII (CO)
SP(10/05/2018)



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