

Bail Slip

The Revision Petitioner/Accused Viz, S.Tamilselvan S/O Shanmugam was directed to be released on bail as per Order of this Court dated 06.08.2010 made in M.P.No.2 of 2010 in CrI.R.C.796 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.796 of 2010

S.Tamilselvan ... Petitioner

Vs.

The state represented by
The Inspector of Police,
J-2, Adyar Police Station,
Traffic Investigation,
Chennai.

...Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure Code to set aside the judgment in C.A.No.248 of 2009 on 29.07.2010 by the learned Additional District and Sessions Judge, Fast Track Court-III, Chennai, confirming the judgment passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.12028 of 2008 dated 26.11.2009.

For Petitioner : Mr. B.Thirumalai,
for,
Mr.S.Nagarajan.

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

O R D E R

The sole accused in C.C.No.12028 of 2008 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai., is the revision petitioner herein. He stood charged for the offences under Section 279 and 304(A) IPC. The trial court, by judgment

dated 26.11.2009, convicted the petitioner/accused under Section 279 IPC and imposed a fine of Rs.1000/- 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 and also to pay a fine of Rs.3000/- in default to undergo rigorous imprisonment for 3 months. Challenging the above said conviction and sentence the petitioner/accused filed an appeal in C.A.No.248/2009 on the file of the Additional District and Sessions Judge, Fast Track court No.III, Chennai and the lower appellate court, by judgment dated 29.07.2010, confirmed the conviction and sentence passed by the trial Court. Aggrieved over the same, the petitioner/accused is before this Court.

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

On 11.06.2008, at about 9.50 p.m., while the deceased and P.W.1 were riding in a motorcycle, near Kamal Book Store of Adyar Bus Stand, a water tanker lorry, driven by the accused came in a rash and negligent manner and dashed against the handle bar of the motorcycle and the deceased had fallen on the right side of the motor cycle and the left wheel of the lorry ran over the head of the deceased and he died on the spot. P.W.1 fell on the left side of the motor cycle and sustained injuries. On hearing the news through control room, P.W.6, Sub-Inspector of Police, proceeded to the scene of occurrence and received the complaint from P.W.1 and registered a case in Crime No.447/2008 for the offences under Sections 279 and 304 (A) IPC. P.W.7, Inspector of Police, commenced investigation and went to the scene of occurrence and prepared Observation Mahazar, Ex.P.2, and Rough Sketch, Ex.P.6, in the presence of the witnesses. Then, he conducted inquest on the dead body of the deceased in the scene of occurrence and sent the dead body for postmortem to the Government Hospital, Royapettah. Thereafter, he sent the vehicles to Motor Vehicle Inspector. Then, he recorded the statement of the witnesses and the doctor, who conducted postmortem on the dead body of the deceased and the Motor Vehicle Inspector, after completion of investigation, he laid the charge sheet.

3. 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 7 witnesses were examined and 10 documents were exhibited.

4. Out of the witnesses examined, P.W.1 is the pillion rider in the vehicle, and an eye-witness to the occurrence.

According to him, he was working as a painter and on 11.06.2008, at about 9.50 p.m., he along with the deceased went on a motorcycle, belonging to the deceased, he was travelling as a pillion rider. At that time, the offending tanker lorry, driven by the accused came in a high speed and dashed on the right side handle of the bike, due to which he fell down on the left side of the road and sustained injuries. The deceased fell down on the right side of the road and the back wheel of the lorry ran over the deceased and he died on the spot. Then, he lodged a complaint before the respondent police.

5. P.W.2 is a witness to the observation mahazar. P.W.3 is another eye-witness to the occurrence. He is the brother of the deceased. According to him, at the time of occurrence, he was standing in the Adayar Bus-stop. At that time, the deceased and P.W.1 came in a motorcycle and the tanker lorry which came in the same direction, while the offending lorry overtake the motorcycle, dashed the deceased on the right side and the deceased fell down on the right side of the road and the back wheel of the lorry ran over the head of the deceased and he died on the spot.

6. P.W.4 is the owner of the lorry. P.W.5 is the Motor Vehicle Inspector. He filed a report stating that there is no damage in the offending lorry and there is also no mechanical defect in the lorry. P.W.6 is the Sub-Inspector of Police, who registered the First Information Report. P.W.7 is the Inspector of Police, who conducted further investigation and prepared Observation Mahazar. He recorded the statement of the witnesses and also received the postmortem report and motor vehicle inspector's report and recorded their statements. After completion of investigation, he laid charge sheet.

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 of the witnesses on his side.

8. Having considered all the above, the trial Court found the accused guilty of the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence the petitioner/accused filed an appeal before the Additional District and Sessions Judge, Fast Track Court, No.III, Chennai and the lower appellate court dismissed the appeal by confirming the judgment of the trial court. Aggrieved over the same, the petitioner/accused is before this Court with this appeal.

9. I have heard Mr.Thirumalai, learned counsel appearing for the petitioner and Mrs.M.F.Shabana, Government Advocate, appearing for the respondent.

10. P.W.1 is the injured eye-witness in this case. According to him, he along with the deceased were riding a motorcycle in the L.B.Road. At that time, the offending tanker lorry came behind the motorcycle and dashed against the right side handle/bar of the motorcycle and the deceased fell down on the right side of the road and the back wheel of the lorry ran over the head of the deceased and he died on the spot. P.W.1 also sustained injuries in the said accident. P.W.3 is the brother of the deceased. He is also said to have seen the occurrence.

11. On considering the evidence of P.W.1 and also the rough sketch and the motor vehicle inspector report, it could be seen that the petitioner/accused, who has driven the offending lorry in the busy L.B.Road at Adyar, Chennai, while overtaking the motorcycle, has dashed against the right side handle of the bike and with that impact, the deceased fell down and the back wheel of the lorry ran over his head and because of the rash and negligent driving of the driver, the accident have taken place.

12. After considering the materials, both the courts below have rightly convicted the accused and I find no illegality or irregularity or perversity in the findings. Hence, the conviction of the petitioner is confirmed. So far as the quantum of sentence is concerned, the petitioner is a poor young man and he is maintaining a big family and has no bad antecedents. The learned counsel for the petitioner would submit that already he was in jail for more than 15 days and the occurrence also took place in the year 2008. Considering the mitigating as well as the aggravating circumstances, the sentence is modified to the period already undergone.

13. In the result, the Criminal Revision is partly allowed and the conviction of the petitioner by the courts-below is confirmed and the sentence is modified to that of the period already undergone.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Additional District and Sessions Judge,
Fast Track Court NO.III,
Chennai.
 2. -do thro the Principal Ssessions Judge,
Chennai.
 3. The IV Metropolitan Magistrate,
Saidapet,
Chennai.
 4. -do- thro the Chief Metropolitan Magistrate,
Egmore, Chennai-8.
 5. The Public Prosecutor,
High Court, Madras.
 6. The Superintendent, Central Prison,
Puzhal, Chennai.
 7. The Inspector Of Police,
J2, Adyar Police Station,
Traffic Investigation, Chennai.
 8. The Section Officer,
Criminal Section (Records)
High Court, Madras-104.
- +lcc to Mr.S.Nagarajan, Advocate Sr. 3251

Cr1.R.C.No.796 of 2010

MSM(CO)
VR(22/06/2017)

सत्यमेव जयते

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