



BAIL SLIP

The Petitioner/Accused namely M.Swaminathan aged, 32 years, S/o.Muthu is directed to be released on Bail as per order of this Hon'ble Court dated 25.1.2012 in CRL MP.3 of 2012 in Crl RC.NO.32 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13..12..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision Case No.32 of 2012

M.Swaminathan

... Petitioner/Appellant /Accused
-Versus-

State Rep. by
Inspector of Police,
Tiruttani Police Station,
Tiruvallur District.
[Crime No.1447 of 2008]

... Respondent/Complainant/Complaint

Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure against the judgment dated 19.12.2011 passed in C.A.No.29 of 2011 by the learned Additional District Judge, Fast Track Court-III, Tiruvallur, confirming the conviction and sentence recorded by the learned Judicial Magistrate, Tiruttani, in C.C.No.381 of 2008 on 31.05.2011.

For Petitioner : MR.L.Baskaran, for Mr.A.Saravanan

For Respondent : Mr.R.Prathap Kumar, AGP

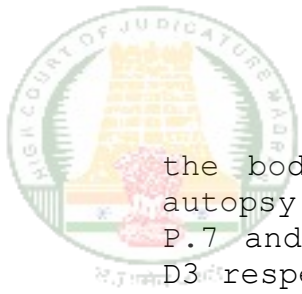
ORDER

The sole accused in C.C.No.381 of 2008 on the file of the learned Judicial Magistrate, Tiruttani, is the revision petitioner herein. The learned Magistrate found the accused guilty of offences under Section 279 and 304(A) [3 counts] of IPC. The accused was accordingly convicted under Sections 279 and 304(A) [3 counts] of IPC and was sentenced to undergo



rigorous imprisonment for six months for each count for offence under Section 304(A) [3 counts] of IPC. The sentences were ordered to run consecutively. The learned Magistrate, however, did not impose separate sentence for offence under Section 279 of IPC. Being aggrieved by the judgment dated 19.12.2011 passed in Criminal Appeal No. 29 of 2011 by the learned Addl. Sessions Judge, Fast Track Court-III, Tiruvallur, confirming the conviction of the accused under Section 304A [3 Counts] of IPC recorded by the learned Judicial Magistrate, Tiruttani, Tiruvallur District, in C.C.No.381 of 2008, the accused has come up with this criminal revision case.

2. The case of the prosecution in brief is as follows:- This is a case, where three persons, who were closely related to each other, lost their lives in a road traffic accident. The first deceased is by name Vibushnam [D1] and the second deceased is by name Sundararjan [D2]. D2 is none other than the sister's son of D1 and P.W.1. The third deceased is by name Sumathi [D3]. She is the daughter of D1. On 08.09.2008, D1 to D3 were coming in a motor cycle bearing Regn. No. TN 09 T 4155 from West to East on Tiruttani - Chennai High Ways in order to admit the daughter [D3] of D1 in a college. When they were coming near B.K.R. Engineering College Junction at 09.00 a.m. a speeding car bearing Regn. No. TN 22 BA 5061 which was being driven by the accused in a rash and negligent manner in the opposite direction dashed their motor cycle as a result D1 to D3 sustained injuries. D1 to D3 were immediately taken to the Tiruttani Government Hospital where the Doctor on duty, on examining D1-Vibushnam and D2-Sundararjan declared them as dead. D3, who was shifted to Sri Ramachandra Medical College and Hospital for higher treatment, subsequently succumbed to injuries on the next day of occurrence. P.W.1, who witnessed the occurrence, immediately went to the police station and lodged a complaint (Ex.P1) alleging that When D1 and D3 were coming in a motor cycle and D2 was walking behind the motor cycle the offending vehicle dashed against them which resulted in injuries to D1 to D3. On receiving this information, P.W.13, the Inspector of Police, Tiruttani, registered a case in Crime No. 1447 of 2008 for offence under Sections 279 and 304-A of IPC. He prepared the printed FIR (Ex.P.8). Taking up the case for investigation, he proceeded to the scene of occurrence, where he prepared an observation mahazar (Ex.P.10) and a rough sketch (Ex.P.9) in the presence of witnesses. Then he proceeded to the hospital where he conducted inquest on the body of D1 and D2 individually and prepared separate inquest reports. Subsequently, on receiving the death intimation from the hospital, on 09.06.2008, P.W.13 conducted inquest on the body of D3 also and prepared an inquest report (Ex.P.12). He forwarded

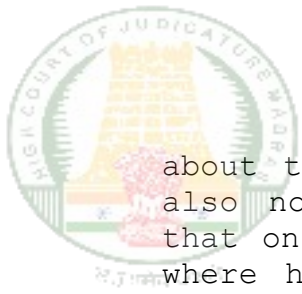


the bodies of D1 to D3 for postmortem. The doctors conducted autopsy on the bodies of D1, D3 and D2 respectively. ExsP.6, P.7 and P.2 are postmortem certificates relating to D1, D2 and D3 respectively. In the mean time, the offending vehicle and the motor cycle involved in the accident were seized by the police and they were mechanically inspected by the Motor Vehicle Inspectors from the Office of Regional Transport Authority at Tiruvallur. P.W.13 obtained the reports from the respective Motor Vehicle Inspectors. On completing the investigation, P.W.13 laid charge sheet against the accused for offences under Section 279 and 304(A) (3 counts) of IPC.

3. Based on the above materials collected by the prosecution during investigation, the trial court framed charges under Sections 279 and 304(A) (3 counts) of IPC. The accused denied the commission of the offence, therefore, he was put to trial. In order to prove the charges levelled against the accused, the prosecution examined as many as 13 witnesses and marked 12 documents. No material object was marked.

4. Out of the above said witnesses, P.W.1 is a close relative of D1. He claimed to be the eye witness of the occurrence. He had stated that on the date of occurrence, D3 desired to admit D2 in BKR College of Engineer at Tiruttani. For that purpose, D1 asked him to go to the college well in advance and wait there. D1 and D3 decided to go in a motor cycle. P.W.1 had further stated he, accordingly, boarded a bus and reached the college in advance. He was waiting at the entrance of the college for the arrival of D1 and D3. While he was waiting so, he saw D1 and D3 were coming in the motor cycle and D2 coming by walk behind the motor cycle. When they were waiting for crossing, the offending car which was being driven by the accused in a rash and negligent manner, dashed against the motor cycle in which D1 to D3 sustained multiple injuries. They were immediately taken to Tiruttani Government Hospital. On examining them, the Doctors declared D1 and D2 dead. D3 was admitted in the hospital for treatment. Subsequently, she was referred to SRMC for further treatment. But, on the next day, D3 also succumbed to injuries. He lodged a complaint to the police under Ex.P.1 regarding the occurrence.

5. P.W.2 is the brother of D2 and the maternal uncle of D1. He had stated that he also planned to go to the college for the purpose of admitting D2 in the college. He, therefore, boarded a bus and alighted at the bus stop where the college is situated. After alighting from the bus, when he was walking along the side of the road, he heard a noise and when he rushed to the spot, he found D1 to D3 lying with injuries. He had not stated anything



about the rash and negligent driving of the accused. P.W.3 had also not stated anything about the occurrence. He had stated that on hearing about the occurrence, he rushed to the hospital where he was informed that D1 to D3 died in a road accident. P.W.4 also had not stated anything about the occurrence. P.W.5, the Doctor, had stated that he conducted autopsy on the body D3. The post-mortem report submitted by him is Ex.P.2. He opined that D3 would appeared to have died of effects of head injury.

6. P.W.6 has turned hostile. He had not supported the case of the prosecution. P.W.7 was the then Motor Vehicle Inspector at the Office of the Tiruvallur Regional Transport Authority. He had stated that he mechanically inspected the motor bearing Regn. No. TN 09F 4155 which was involved in the accident and submitted a report (Ex.P.4). P.W.8 was also the then Motor Vehicle Inspector at Tiruvallur. He had stated that he mechanically inspected the offending car bearing Regn. No.TN 22 BA 5061 and submitted a report (Ex.P.5). According to him, the accident would not have occurred due to any mechanical failure in the offending vehicle. P.W.9 was working as a Teaching Staff in BKR Engineering College. She turned hostile and she had not supported the prosecution in any manner.

7. P.W.10, the Doctor, had stated that he conducted autopsy on the body D1 and D2. The post mortem reports submitted by her are Ex.P.6 and P.7 respectively. She opined that D2 would have died of injuries to the vital internal organs and D1 would have died of injuries to the vital organs and also due to fracture of bones and hemorrhagic shock.

8. P.W.11 was the then Assistant Surgeon, Tiruttani Government Hospital. She had stated that on 11.09.2008, when she was on duty, she conducted optometry test on the accused. According P.W.11, the accused was not suffering from any vision problem. P.W.12 had turned hostile. He did not support the case of the prosecution in any manner. P.W.13, the investigating officer, has spoken about the investigation done by him and the filing of charge sheet against the accused.

9. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false, but however, he did not choose examine any witnesses nor did he mark any documents.

10. Having considered the above evidences, the learned Magistrate convicted and sentenced the accused as referred to above, therefore, the accused took-up the matter in appeal. The appellate Judge maintained the conviction and sentence recorded



by the learned Magistrate. Therefore, the accused has come to this Court with the present criminal revision.

11. I have heard the learned counsel for the revision petitioner/accused and the learned counsel for the respondent/State.

12. The learned counsel for the revision petitioner would submit that P.W.1 is the only eye witness projected by the prosecution. According to him, the testimony of P.W.1 is not reliable. He challenged his testimony on the ground that he is closely related to D1 to D3 and his presence at the spot is doubtful. Even assuming that he was waiting at the college entrance as projected by the prosecution, he would not have seen the occurrence as the college entrance is situated far off from the accident spot and the entrance was south facing. He further submitted that P.W.1 suppressed in his evidence the very fact that D1 to D3 were coming in a single motor cycle. For the first time in court, P.W.1 cleverly deposed that at the time of accident, D1 and D3 alone were coming in the motor cycle and D2 was coming behind the motor cycle by walk.

13. The learned counsel for the revision petitioner further submitted P.W.1 had not identified the accused in court and had not deposed anything about the rash and negligent driving of the accused. He submitted that P.W.1 remained absolutely silent about the manner in which the accused was driving the offending vehicle and there is no scope of raising any presumption about rash and negligent driving merely because the accident resulted in death of three persons. P.W.1 suppressed the material fact that D1 to D3 traveled in a motor cycle. He pointed out that when it was confronted to him, he simply denied the fact. He has not offered any explanation for the same. He seems to have suggested that accident resulted because D1 to D3 were crossing the road in a senseless manner without caring for the running traffic and D1 who was riding the motor cycle would have lost his balance. The learned counsel, therefore, submitted that there is no cogent evidence to arrive at a finding that accident was caused by the accused or he was driving the offending vehicle in rash or negligent manner. Both the trial court as well as the appellate court placed reliance on the untrustworthy testimony of P.W.1. The trial court has not properly appreciated both, oral and documentary evidences, placed by the prosecution. If the evidence of P.W.1 is disbelieved, there is absolutely no other evidence to support the case of the prosecution that the accused was guilty of rash and negligent driving. The learned appellate Judge has also failed to take note of these factual as well as the legal position in this regard. He, therefore,



prayed for acquittal of the revision petitioner.

14. Per contra, the learned Additional Government Pleader appearing for the State would contend that P.W.1 had clearly stated that when he was waiting in front of the college, as already planned by D1, the motor cycle in which D1 and D3 were coming from Tiruttani towards Chennai, was hit by a speeding car, which was being driven by the accused in a rash and negligent manner resulting in injuries to D1 to D3. It is the medical evidence that D1 and D2 were reported dead at Tiruttani Government Hospital and D3, who was shifted to a private hospital for higher treatment, subsequently succumbed to the injuries on the next day of occurrence. The reports from the Motor Vehicle Inspectors would show that the accident was not occurrence due to any mechanical defect. P.W.1's evidence cannot be discarded merely because he happened to be a close relative of D1 to D3. The evidence of P.W.1 is cogent and reliable. Having satisfied with the solitary eye witness account of P.W.1, the learned Magistrate proceeded to convict the accused and the learned appellate Judge affirmed the conviction finding no perversity in the judgment of the learned Magistrate. Regarding the identity of the accused, the learned Additional Government Pleader contended that it was not the defence that the accused was not the driver of the offending vehicle. The two Courts have relied upon the solitary testimony of P.W.1 to convict the revision petitioner, and there is no scope for any interference, in the present revision.

15. I have considered the rival submissions and also perused the available material carefully.

16. Admittedly, P.W.1 is the maternal uncle of D1 and brother of D2. D3 is none other than the daughter of D1. It is the case of the prosecution that D1 to D3 were coming to B.K.R. College to admit D3 in a college. P.W.1 stated to have arrived at to the spot in advance and when he was waiting in front of the college, he saw D1 and D3 coming in the motor cycle and D3 walking behind the motor cycle. When they were waiting for crossing, the offending vehicle, which was being driven by the accused in a rash and negligent manner, hit the motor cycle resulting in multiple injuries to D1 to D3. The very complaint [Ex.P.1] which was made by P.W.1 would go to show that D1 to D3 were proceeding in a single motor cycle at the time when the accident occurred. But, the evidence of P.W.1 is otherwise. According to him, D2 was just walking behind the motor cycle which was driven by D1 and D3 was on the motor cycle as a



pillion. The learned counsel for the revision petitioner raised a doubt over the presence of P.W.1 at the time of occurrence. As rightly pointed out by the learned counsel for the revision petitioner, when the defence counsel in order to undermine the credibility of P.W.1 confronted her with her previous statement, in the cross examination, P.W.1 has simply denied the suggestion and he had not offered plausible explanation. That apart, P.W.1, did not identify the accused, in court, that it was this accused who drove the vehicle at a high speed in a rash and negligent manner.

17. The rough sketch (Ex.P.9) would go to show that the accident took place on the middle of the road. It is the case of the prosecution that P.W.1, who had already come to the college, as already planned to admit D3 in the college, was waiting in front of the college, the accident took place. But, it could be seen from the rough sketch that the entrance of the college was not main road facing, but, it was on the farther south of the main road. There was a separate road leading to the college from North to South and the entrance of the college was East facing. Thus, from the evidence of P.W.1, it does not appear that he had witnessed the incident. If the evidence of P.W.1 is found to be untrustworthy, there is absolutely no other evidence to establish that accused was driving the offending vehicle in rash and negligent manner and that the said act or the said negligence on the part of accused resulted in an accident wherein three persons had lost their lives. The prosecution has miserably failed to prove the charges beyond any reasonable doubt. The courts below have not considered the materials placed on record in a proper perspective. Thus, this court is of the view that the judgment of conviction and sentence of the revision petitioner which was recorded by the learned Magistrate and as confirmed by the learned Additional Sessions Judge require interference at the hands of this court and the revision petitioner is entitled for acquittal.



18. In the result, this criminal appeal is allowed; the judgment of conviction and sentence recorded by the court below against the revision petitioner and confirmed by the appellate court are hereby set aside and the revision petitioner is acquitted of the charges under Section 279 and 304(A) (3counts) of IPC. The bail bond executed by the revision petitioner shall stand terminated.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

- 1.The Addl. District Judge, FTC-III, Tiruvallur, Tiruvallur District.
- 2.The Judicial Magistrate, Tiruttani, Tiruvallur District.
- 3.The Inspector of Police, Tiruttani Police Station, Tiruvallur District.
- 4.The Chief Judicial Magistrate Tiruvallur (for Information)
- 5.The Public Prosecutor, High Court, Madras.

COPY TO: The Section Officer,
Criminal Section, High Court Madras

CrI.R.C.No.32 of 2012

CO (AD)

RRI 03/02/2018