

Bail Slip

The Appellant/Accused namely, K. Manoharan, S/o Kandasamy was directed to be released on bail as per order of this court dated 09.09.2011 made in CrI.M.P. 3/2011 in CrI.R.C.No.1218 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2018
PRONOUNCED ON : 18.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1218 of 2011

K.Manoharan ... Petitioner / Appellant / Accused
-Vs-

The State Represented by
The Inspector of Police,
Mahalingapuram Police Station,
Pollachi,
Crime No.75 of 2006

... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., praying to set aside the judgment passed in C.A.No.41 of 2009 on the file of the learned Additional District cum Sessions Judge, Fast Track Court No.I, full in-charge, Coimbatore, dated 09.07.2009, confirming the judgment in C.C.No.259 of 2006 on the file of the learned Judicial Magistrate No.2, Pollachi dated 19.02.2009.

For Petitioner : Mr.K.Selvakumaraswamy,
for Mr.S.Gunalan.

For Respondent : Mr.G.Ramar,
Government Advocate (CrI.Side).

ORDER

The convicted accused is the revision petitioner herein. He has filed this Criminal Revision Petition to aside the judgment passed in C.A.No.41 of 2009, on the file of the learned Additional District cum Sessions Judge, Fast Track Court No.1, full in-charge, Coimbatore, dated 09.07.2009, confirming the judgment in C.C.No.259 of 2006 on the file of the learned Judicial Magistrate No.2, Pollachi, dated 19.02.2009.

2.The respondent Police has filed final report, alleging that on 08.03.2006 at about 01.15 P.M, when the deceased Kabir was traveling in Honda Activa, Scooter bearing registration No.TN-41-B-4057 from Pollachi to Coimbatore, a Maruthi Car, bearing registration No.TN-37-AF-7813 driven by the accused, dashed against the Scooter from behind and thereby the victim Kabir sustained severe head injury. Immediately, he was admitted for treatment at Arun Hospital, Pollachi. Thereafter, he was shifted to PSG Medical College Hospital, Coimbatore for better treatment, from where he was sent to the Government Hospital, Coimbatore on the same day. On the next day, i.e.,09.03.2006, he was declared as dead. Based on the complaint given by Asaraf Ali / P.W.1, a case was registered in Mahalingapuram Police Station in Crime No.75 of 2006 for the offences punishable under Sections 279 and 337 IPC by the Head constable and subsequently, on the death of the victim, the offence under section 337 was altered into 304(A) IPC.

3.The Trial Court has taken the case on file and framed charges against the accused in C.C.No.259 of 2006. The prosecution examined P.W.1 to P.W.15 and Exs.P.1 to Exs.P.8 were marked. On the side of the defence, no witness was examined or no document was marked.

4.The suggestive case of the witness as could be seen from the cross-examination that the prosecution witnesses have stated that the deceased was traveling in the Honda Activa Scooter bearing registration No.TN-41-B-4057, while his son, aged about 11 years was standing in front of the Scooter and the accident as projected by the prosecution was not proved in the cross examination. It is specific case of the defence that due to overlapping portion of mud road and thaar road, on skid, he lost his balance and fell on the road. At the same time, a Car came from behind suddenly dashed against the Scooter.

5.Taking into consideration of both oral and documentary evidence, it is seen that the evidence of P.W.7 and P.W.8 is duly corroborated with the evidence of P.W.1. Accordingly, the trial Court has convicted the accused under Section 304(A) IPC and sentenced him to undergo one year simple imprisonment.

6.On appeal, in C.A.No.41 of 2009, the learned Additional District Cum Sessions Judge, Fast Track Court No.1, full in-charge, Coimbatore dismissed the same, confirming the judgment of the trial Court. Hence, the accused has approached this Court by way of filing this revision case.

7.The learned counsel appearing for the revision petitioner / accused would contend that P.W.6 to P.W.8 are chance witnesses, as they were not near the scene of occurrence.

Further, the presence of P.W.6 to P.W.8 were not spoken by P.W.1. P.W.15, Investigating Officer's report shows that neither P.W.1 nor P.W.6 to P.W.8 were never in the scene of occurrence and it is the handiwork made by the police to make it believe as a possible story.

8.The learned counsel appearing for the revision petitioner has also drawn my attention to the evidence of P.W.8 that during the cross-examination, he would probabalise the suggestive case of the defence.

9.The learned Government Advocate (Crl.Side) appearing for the respondent Police made his submissions in respect of the case of the prosecution.

10.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record carefully.

11.Points for consideration is whether the orders of conviction passed by the Courts below are sustainable in law or not? and whether the sentence passed by the Courts below is excessive or not?.

12.As stated supra, P.W.2 to P.W.5 are the hearsay witnesses. P.Ws.10 and 12 are the Motor Vehicle Inspectors, official witnesses, who could depose for issuing the motor vehicle reports, which shows that the accident has taken place not due to any mechanical defect of the vehicle. P.W.13 is the Doctor, who deposed regarding conducting of postmortem on the body of the victim and issuance of Ex.P.8, Postmortem Certificate, shows that the deceased died due to the injuries sustained in the accident. Thus, it has to be seen that whether the prosecution has proved the charge under Sections 229 and 304 (A) IPC beyond reasonable doubt with the evidence of P.W.6 to P.W.8.

13.After perusing the prosecution witnesses P.W.1 to P.W.15 and after perusing the documentary evidence Exs.P.1 to P.8, it is seen that P.Ws.2 to 5 are hearsay witnesses and one of the independent witnesses P.W.9 was treated as hostile. P.W.10 is the Motor Vehicle Inspector, who had issued Ex.P.2 M.V. Report, while P.W.12 is another Motor Vehicle Inspector, who has given M.V. Report under Ex.P.4, regarding the accused vehicle and P.W.11 has attested the Observation Mahazar Ex.P.3 and P.W.13 is the Doctor, who had conducted postmortem and issued Ex.P.5 postmortem report, which shows that the deceased died due to the injuries sustained in the accident. P.W.14 and P.W.15 are the police witnesses, who deposed regarding the receipt of Ex.P.1 complaint and registration of Ex.P.6 First

Information Report and filing of the charge sheet, after completion of the investigation.

14.Thus, now it has to be considered that whether the evidence of P.W.1, who is projected as eyewitnesses and other witnesses namely, P.Ws.6 to 8, who are projected as chance witnesses happened to see the accident is reliable and trust worthy or not?.

15.On going through the evidence of P.W.1, who is the brother of the deceased, he had categorically stated that the deceased was driving his scooter, while his son was standing in front of him and the offending vehicle driven by the accused hit from the behind the right side rear portion of the scooter and thereby, the victim lost his balance and fell down and sustained injury.

16.At this juncture, it is relevant to refer the suggestive case of the defence. During the cross-examination of P.Ws.1, 6 to 8, it is specifically suggested by the accused that the scooter driven by the victim was on the overlapping portion of the mud road and thar road and in the process, he lost his balance and fell down and the car has not dashed against the scooter travelled by the deceased. In this regard, the prosecution witnesses have denied the said fact. In view of the above said suggestion case, the report filed by the motor vehicles inspectors under Exs.P.2 and 4 by P.W.10 and P.W.12 assumes significance.

17.During the cross-examination of P.Ws.6 to 8, it is elicited that they are belongs to the very same village of the victim and they are distant relatives to the victim and as chance witnesses, as they have happened to witness the accident.

18.The learned counsel appearing for the revision petitioner draw my attention to the cross-examination of P.Ws.6 to 8. P.W.6 Mariappan deposed in the cross-examination that while he along with P.W.7 Liyagath Ali was standing near the scene of the occurrence, they have witnessed the accident and they described the color of the offending vehicle as black color and they have not disclosed any adequate reason as to why they have come to the alleged scene of the crime, which assumes significance.

19.On perusal of the answer elicited in the cross-examination of P.W.6, description of the color of the car and also description about the road on which the accident had taken place, in the absence of any positive evidence or any adequate reason as to why he come to the alleged scene of the occurrence and also he has unable to describe the nature of the vehicle and color of the vehicle, his description of the road is

found to be at vital variation with the evidence of P.W.1 and 14. According to P.W.6, from whom it is elicited in the cross-examination, he has accompanied the injured to the hospital in the offending car. However, it remains to be stated that P.W.1, who is the brother of the deceased, has not whispered anything, regarding the presence of P.Ws.6 and 7, while he took the deceased in the very same car also assumes significance.

20.Hence, in view of the above material contradiction, I find that the evidence of P.W.6 though projected as chance witness, however, the very presence of P.W.6 is found to be doubtful. Furthermore, the damage to the scooter as spoken to by P.W.6 in the cross-examination does not corroborate with the damage as spoken to by P.W.10 Motor Vehicle Inspector. P.W.7, who is also projected as another occurrence witness has also not stated that the color and description of the car and the manner of the accident and description of road and his presence was not whispered by P.W.1.

21.At this juncture, it is relevant to refer to other occurrence witness P.W.8, Jiyavudeen. After the chief examination of P.W.8, in the cross examination he deposed that he also belongs to the very same village, where the victim is residing and he has categorically stated that while the scooter was going on the overlapping portion of thar road and mud road on the eastern side, the deceased lost his balance and fell down and in the process, he fell on the right side of the vehicle on the road, therefore, the car coming behind, has dashed against him because of the sudden fall of the scooter.

22.From the answer elicited in the cross-examination of P.W.8, who is also a resident of the same village of the victim that at the time of the accident, the victim drove the scooter on the edge of the thar and mud road and in view of the differentiate in height between the mud road and thar road, the victim lost his balance and fell down on the road on his right side, therefore, the car, which is coming behind dashed against him and in the process, the right side of the scooter on falling on the right side has crashed and damaged as spoken to by P.W.8 has been duly stands corroborated from Ex.P.2 M.V. Report marked by P.W.10 Motor Vehicle Inspector assumes significance and lends support to the suggestive case of the accused.

23.Thus, the contention of the revision petitioner that the deceased was riding scooter, while his son was standing in front of him on the edge of the road on the over lapping portion of the mud road, and thar road he lost his control, stands probablised through the independent witness P.W.9, who is listed as an eyewitnesses to the occurrence by the prosecution. Furthermore, as pointed out earlier, P.W.9, who is an independent witness, has categorically deposed that the

petitioner / accused is not responsible for the accident. It remains to be stated that P.W.9 is also belonging to the very same village of the deceased and thus, this Court finds that the defence theory was probabalised through the evidence of P.W.9 and his evidence regarding nature and description of road is duly corroborated by P.W.10 and his evidence regarding damage of the vehicle of the victim also stands corroborated by P.W.10 Motor Vehicle Inspector.

24.At this juncture, it is to be stated that the alleged eyewitnesses P.Ws.1, 6, 7 and 9 are not occurrence witnesses as per Ex.P.8 inquest report filed by the investigating officer, which also causes serious doubt. It is also to be stated that the Inspector of Police has stated that prior to the inquest report they have been enquired. However, the names of P.Ws.1, 6 and 7 were not reflected in Ex.P.8 inquest report, which also causes serious doubt as to the very presence in the scene of the occurrence. Furthermore, in view of the material contradiction in the evidence of P.W.1 regarding the presence of P.Ws.6 and 7 and also the material contradiction with regard to the evidence of P.W.6 and 7 regarding the color of the car and the manner of the accident with that of the evidence of P.W.1 and that of the police witnesses caused serious doubt as to the alleged presence of P.Ws.1, 6 and 7.

25.At this juncture, it is relevant to note the decision rendered in the case of Baby @ Sebastian and another Vs. Circle Inspector of Police, Adimaly reported in 2016(3) Crimes 310 (SC), wherein the Hon'ble Apex Court has relied upon the case of Raju Vs. State of Maharashtra reported in (1998) 1 SCC 169, in which it has been held as follows:-

"....they were chance witnesses is also wholly unmerited for in respect of an incident that takes place on a public road, the passerby would be the best witnesses....".

26.In the case of Baby @ Sebastian as stated supra, the Hon'ble Apex Court also held that it is well settled legal principle that the evidence of a chance witness cannot be brushed aside simply because he is a chance witness but his presence at the place of occurrence must be satisfactory explained by the prosecution so as to make his testimony free from doubt and thus, reliable.

27.The Hon'ble Apex Court in the case of Jarnail Singh Vs. State of Punjab reported in (2009) 9 SCC 719 has elaborately explained the reliability of a chance witness.

28.The Hon'ble Apex Court in the cases of Satbir Vs. Surat Singh, reported in 1997(4) SCC 1920, Harjinder Singh Vs.

State of Gujarat, reported in 2004(11) SCC 253, Acharaparambath Pradeepan and another Vs.State of Kerala reported in 2008(1) SCC (Cr1) 241 and Sarvesh Narain Shukla Vs. Daroga Singh reported in 2009(1) SCC (Cr1) 188, has held that the evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence.

29.The Hon'ble Apex Court in the case of Shankarlal Vs. State of Rajasthan reported in 2005 SCC (Cr1) 1284, has held that deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded.

30.In the instant case, the presence of the alleged occurrence witnesses P.Ws.6, 7 and 9 is found to be doubtful for the reasons stated in the preceding paragraphs. Hence, following the decisions in the case of Baby @ Sebastian, as stated supra, their presence itself is doubtful, when the presence is not adequately explained, the Court cannot place his relevance. Therefore, this Court holds that the evidence of P.Ws.6, 7 and 9 are not reliable and trust worthy, since the same does not pass the list of credibility and in view of the specific evidence of the independent witness P.W.8, I find that the suggestive case of the defence is more probabilized.

31.In this view of the matter and on the re-evaluation of the evidence as discussed supra, I find that the suggestive case of the defence is more probabalised than the prosecution theory and the conviction and sentence passed by the learned Judicial Magistrate No.2, Pollachi in C.C.No.259 of 2006 dated 19.02.2009 as confirmed by the learned Additional District Cum Sessions Judge, Fast Track Court No.I, full in-charge, Coimbatore. in C.A.No.41 of 2009, dated 09.07.2009 is hereby set aside.

32.In the result, this Criminal Revision Case is allowed. The revision petitioner is acquitted. Fine amount, if any, paid by the revision petitioner shall be refunded to him. Bail bond executed by the revision petitioner and the sureties shall stand terminated.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional District cum Sessions Judge,
Fast Track Court No.I, full in-charge, Coimbatore.

2.The Judicial Magistrate No.2,
Pollachi.

3. Do Through The Chief Judicial Magistrate
Coimbatore.

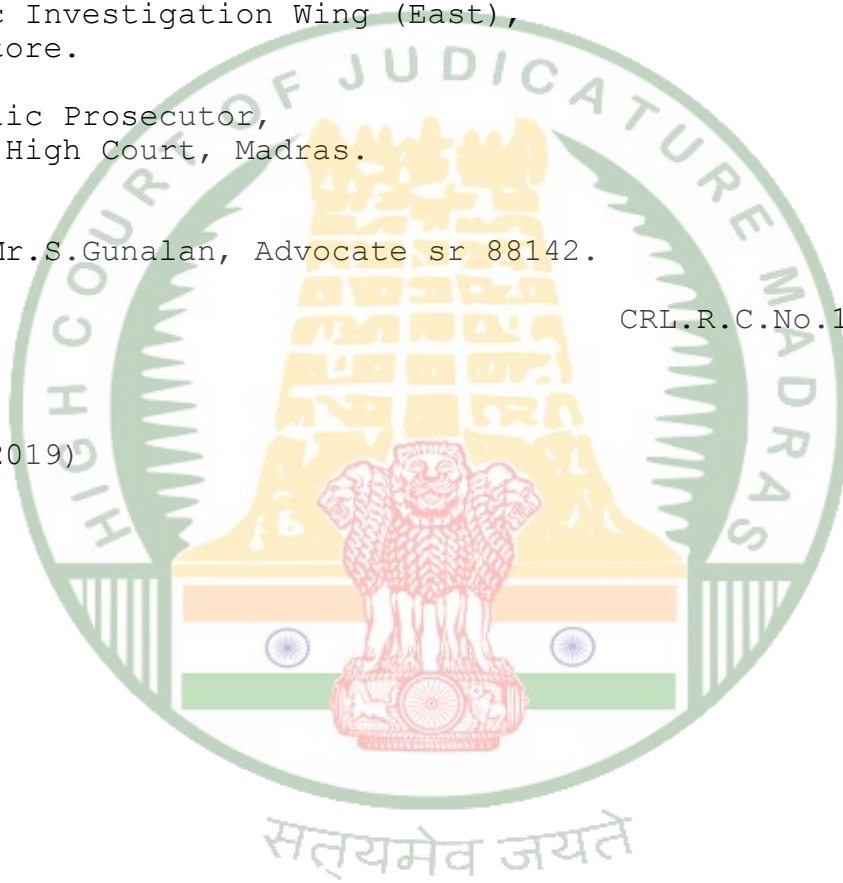
4.The Inspector of Police,
Traffic Investigation Wing (East),
Coimbatore.

5.The Public Prosecutor,
Madras High Court, Madras.

+1 CC to Mr.S.Gunalan, Advocate sr 88142.

CRL.R.C.No.1218 of 2011

EV(CO)
SP(03/01/2019)



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