



Bail Slip.

K. Gunasekaran

Petitioner

The above said Petitioner was directed to be released on bail as per order of this court dated 29.07.2011 made in Crl.M.P. 1/2011 in Crl.R.C.No.994 of 2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2018

PRONOUNCED ON : 11.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.994 of 2011

K.Gnanasekaran ... Petitioner / Appellant / Accused

-Vs-

State Represented by
The Inspector of Police,
Traffic Investigation Wing (East),
Coimbatore.
Crime No.225 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.113 of 2009 dated 22.01.2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore, confirming the judgment and order of conviction of the trial Court passed in C.C.No.143 of 2006 dated 11.08.2009 on the file of the learned Judicial Magistrate No.VIII, Coimbatore.

For Petitioner : Mr.V.Perarasu,
Legal Aid Counsel.

For Respondent : Mrs.V.Saratha Devi,
Government Advocate (Crl.Side).

ORDER

The convicted accused is the revision petitioner herein. He has filed this Criminal Revision case to set aside the judgment passed in C.A.No.113 of 2009, dated 22.01.2010 on the file of the learned Additional District and Sessions Judge, Fast



Track Court No.I, Coimbatore, confirming the judgment and order of conviction passed in C.C.No.143 of 2006, dated 11.08.2009 on the file of the learned Judicial Magistrate No.VIII, Coimbatore.

2.The case of the prosecution is that on 29.06.2006 at about 12.45 P.M., at Kovai Saravanam Patti, Vilankkurichi Road, Vinayagapuram near Ellaimariamman Temple, the appellant drove the vehicle of Trax Jeep bearing Registration No.TN 04 B 1689 in East towards West direction in a rash and negligent manner and dashed against the deceased, who is a cycling person, named as Sudhakaran and caused his death. Hence, the accused was charged for the offences punishable under Sections 279, 304(A) IPC.

3.After trial, the learned Judicial Magistrate No.VIII, Coimbatore has convicted the petitioner for the said alleged offences and sentenced him to undergo simple imprisonment for six months for the offence under Section 279 IPC and to undergo simple imprisonment for one year for the offence under Section 304(A) IPC and imposed to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for six months, by judgment passed in C.C.No.143 of 2006 dated 11.08.2009.

4.On appeal, in C.A.No.113 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore, the learned Judge has confirmed the conviction and sentence passed by the learned Judicial Magistrate No.VIII, Coimbatore. Hence, this Criminal Revision Case has been filed by the accused herein.

5.The learned counsel appearing for the revision petitioner would contend that both the Courts below have concurrently found the accused guilty for the offence under Section 279 IPC on the basis of oral evidence of P.Ws.2, 3 and 6. According to the learned counsel for the petitioner, P.Ws.2, 3 and 6 are chance witnesses and they have given contradictory statement with respect of the place of occurrence. It is the case of the accused that P.W.2 deposed that he had taken the injured to the hospital, but in his cross-examination, he deposed that the police arrived at the spot and had taken the injured to the hospital. Further, P.W.2 deposed that the police arrived at the occurrence spot at about 1.15 P.M., whereas P.W.10, the Investigating Officer has deposed that he reached the occurrence spot at about 03.00 P.M. Further, P.Ws.2 and 3 have deposed that the injured was taken to the hospital in a Jeep, whereas, P.W.6 has deposed that the injured was taken to the hospital in an Autorickshaw. The aforeasaid contradictions in the deposition of P.Ws.2, 3 and 6 would raise serious doubt as regards the case projected by the prosecution. Further, P.W.3 deposed that the injured was crushed between the Jeep and the wall of the temple, but the sketch produced by the



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prosecution did not reveal the same. Thus, the suggestive case put forwarded by the accused before the trial Court is that the the cyclist suddenly darted across the vehicle driven by the accused, hence, he prayed for setting aside the conviction and sentence passed by the Courts below.

6.The learned Government Advocate (Crl.Side) appearing for the respondent made submission in support of the judgment of the Courts below.

7.Points for determination are whether the conviction passed by the Courts below is sustainable in law? and whether the sentence passed by the Courts below is excessive?.

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

9.As stated supra, the case of the prosecution in brief is that on 29.06.2006 at about 12.45 P.M., the appellant drove a vehicle of Trex Jeep bearing Registration No.TN 04 B 1689 in a speedy and careless manner from East towards West at Kovai Saravanam Patti, Vilankkurichi Road, Vinayagapuram near Ellaimariamman Temple and dashed against a cycling person viz., Sudhakaran, who was going in the same direction before the vehicle of the accused. Due to the said accident, the said cyclist said to have sustained serious blood injuries on the back side of the head along with abrasion at right side of the chest and was taken to the Government Hospital at Coimbatore.

10.In support of the charges, the prosecution has examined P.W.1 to P.W.10 and marked Exs.P.1 to P.8.

11.It is seen from the records that P.Ws.2, 3 and 6 are projected as eyewitnesses and after going through the evidence in chief and cross-examination, it is found that they have categorically spoken about the manner of the accident as to how the victim has pedal the cycle on the left side near the mud road portion and the Van driven by the accused was coming from the middle of the road and dashed against the cycle and after the accident, travelled further upto 10 feet and dashed against the wall of the temple.

12.On bare reading of the version of P.Ws.2, 3 and 4, this Court finds that their version is inconsonance with the previous statement recorded by P.W.10 under Section 161 Cr.P.C., and in the cross-examination nothing was elicited to discredit their evidence and further, it is seen that the private prosecution witnesses i.e., P.Ws.2, 3 and 6 have categorically deposed that the Trex Jeep i.e., offending vehicle bearing



Registration No.TN 04 B 1689, was driven by the accused in a rash and negligent manner and also they have clearly spoken that the vehicle came in wrong side and it is driven by the accused and hence, taking into consideration of the testimonial of the evidence of P.Ws.2, 3 and 6, which duly stands corroborated among themselves and also the said factum also stands duly corroborated by the documentary evidence Ex.P.3 Observation Mahazar and Ex.P.7 Rough Sketch. P.W.6 Doctor has deposed that the victim was brought to the hospital and the victim died due to the injuries sustained in the accident. From the evidence of P.W.2 and P.W.3, it is clear and cogent to the point that the accused drove the vehicle and in the absence of anything to suggest their inimical to the accused. Moreover, they are poojaris, working in the temple and standing in front of which the accident has happened and the trial Court has rightly laid conviction under Section 297 and 304(A) IPC.

13.The learned Legal Aid Counsel appearing for the revision petitioner stated that the presence of P.Ws.2 and 3 in front of temple is doubtful.

14.This Court has given its anxious consideration for the said contention and taking into consideration that they are poojaris in the temple and they seems to have worked upto one noon on the date and hence, the contention raised by the Legal Aid Counsel does not merit consideration.

15.The next contention of the revision petitioner is that as per the prosecution theory, the victim was travelling in a cycle. However, the cycle has not been seized and produced before the Court, which causes serious tend in the prosecution theory and it cannot be accepted for more than one reasoning.

16.On close perusal of Ex.P.3 Observation Mahazar and Ex.P.7 Rough Sketch clearly discloses that the cycle was found in the scene of the crime. Furthermore, the victim drove the cycle has been clearly spoken to by P.Ws.2 and 3 and non-recovery of the cycle could not falsify the prosecution case. In view of the above positive evidence available on record, non-production of the cycle said to have been driven by the victim is not fatal to the prosecution case as contended by the learned Legal Aid Counsel appearing for the revision petitioner and hence, the said contention is hereby stand negatived.

17.The other point that has been raised by the revision petitioner is that there is a minor contradiction between the evidence of P.W.3 and P.W.6 and the delay in despatching the police records to the Court does not require any consideration at this revisional stage. As such, the manner of the accident has been duly proved by the prosecution by clear and cogent



evidence of P.Ws.2, 3 and 6, which has been duly corroborated by the documentary evidence of Exs.P.2, 3, 6 and 7. Taking into consideration that the accused has driven jeep on the particular date and the victim has died due to the injuries sustained in the accident and the accident has taken place due to rash and negligent driving of the driver of the jeep, namely, the accused herein, the conviction and sentence passed by the trial Court in C.C.No.143 of 2006, dated 11.08.2009 as confirmed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore, in C.A.No.113 of 2009 dated 22.01.2010, does not warrant any interference and the same is hereby confirmed.

18. Accordingly, this Criminal Revision Case is dismissed and the conviction and sentence of the Courts below are confirmed.

s/d-
Assistant Registrar (CS VIII)

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Sub-Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court No.I, Coimbatore.

Do Through The Chief Judicial Magistrate, Coimbatore.

2. The Judicial Magistrate No.VIII,
Coimbatore.

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

4. The Superintendent
Central Prison, Coimbatore.

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

CRL.R.C.No.994 of 2011

KS (CO)
SP(24/01/2019)