

BAIL SLIP

The Petitioner/Accused viz., Velusamy, S/o.Kalaya Gowder, in CC No.298 of 2011, dated 21.12.2012 on the file of the Judicial Magistrate, Mettupalayam is released on bail as per the order of this Hon'ble Court dated 04.10.2013, made in M.P.No.1/2013 in CrI.R.C.No.1220/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.RC.No.1220 of 2013

and

M.P.No.1 of 2013

Velusamy

...Petitioner

Vs.

State rep. By
The Inspector of Police,
Sirumugai Police Station,
Coimbatore District.
Crime No.277/2010

...Respondent

The Criminal Revision has been filed under Section 397 and 401 of Code of Criminal Procedure to set aside the judgment dated 22.04.2013 passed in C.A.No.17 of 2013 on the file of the learned I Additional District and Sessions Judge, Coimbatore confirming the order of conviction sentence passed in C.C.No.298 of 2011 dated 21.12.2012 on the file of the learned Judicial Magistrate, Mettupalayam.

For Petitioner: Mr.V.V.Sairam

For Respondent: Mr.R.Ravichandran
Government Advocate (CrI.Side)

O R D E R

This criminal revision has been filed to set aside the judgment dated 22.04.2013 passed in C.A.No.17 of 2013 on the file of the learned I Additional District and Sessions Judge, Coimbatore, confirming order of conviction and sentence passed in C.C.No.298 of 2011, dated 21.12.2012, on the file of the learned Judicial Magistrate, Mettupalayam.

2. The Case of the prosecution is that on 22.09.2010 at 10.00 a.m., P.W.2 had gone to collect banana waste for using it as cattle feed. At that time, her grand daughter was standing on the roadside. The petitioner/accused, who was driving lorry bearing registration No.TN 40 C 2043 in Annur-Mettupalayam Road, and came in a dashed against the child. The child died on the spot. P.W.1, father of the child, lodged a complaint before the respondent police, based on which, a case was registered against the petitioner/accused in Crime.No.277/2010 and charge sheet for offence under Section 279 and 304(A) IPC was filed before the learned Judicial Magistrate, Mettupalayam and the same was taken on file in C.C.No.298 of 2011. Before the trial Court, in order to prove the case against the petitioner/accused, prosecution had examined P.W.1 to P.W.10 and marked Ex.P1 to Ex.P8. On the side of the petitioner/accused, no witness was examined and no document was filed.

3. The learned Judicial Magistrate, after trial, found the accused guilty of offence under Sections 279 and 304(a) IPC and by judgment dated 21.12.2012, convicted and sentenced the accused/petitioner to undergo rigorous imprisonment for a period of one month and to pay a fine of Rs.100/-, in default, to undergo one week rigorous imprisonment for offence under Section 279 IPC and convicted the petitioner for offence under Section 304(a) IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of one month. Aggrieved against the judgment of conviction and sentence, the petitioner/accused has preferred an appeal in C.A.No.17/2013, before the learned I Additional District and Sessions Judge, Coimbatore. The learned Judge, after giving an opportunities, dismissed the appeal and confirmed the conviction and sentenced passed by the trial Court. Aggrieved against the judgment of conviction dated 22.04.2013, the petitioner/accused has preferred this Criminal Revision before this Court.

4. The learned counsel for the petitioner/accused would submit that during trial, grandmother of the child was examined as P.W.2. She is the only eyewitness. She has clearly stated that when she had gone to collect banana waste, the child was standing there. During the cross examination, she has stated that she and her daughter were collecting the banana waste and the child was standing on the side of the road. At the time of the occurrence, the child has run from the house to the place where she was collecting banana waste. The learned counsel further submitted that the accident has not taken place due to the rash and negligence driving of the driver. P.W.2 has clearly stated that she was holding the hands of the child. According to the learned counsel for the petitioner, the accident occurred

as the child crossed the road suddenly. Both the Courts below have failed to consider all these aspects. Since the prosecution has not proved the case beyond all reasonable doubts, the judgment of conviction by this Court warrants interference. Therefore, he prayed that the petitioner may be acquitted.

5. The learned Government Advocate (Crl. Side) would submit that P.W.2 is grand mother of the victim girl and she has clearly spoken in the chief examination that while she and her daughter/P.W.4 were collecting the banana waste, the child was standing on the side of the road. When the lorry tried to overtake another vehicle, it dashed against the child. P.W.2, in her cross examination, has stated that the child was running to the place where P.W.2 was taking banana waste, at that time, the accident has happened. No doubt there is no dispute to the accident. Hence prosecution has established its case beyond reasonable doubts.

6. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

7. According to the learned counsel for the petitioner there is no rash and negligent driving on the part of the driver. However, on reading of evidence of P.W.2, it is clearly that the accident had occurred when the petitioner tried to overtake another vehicle and in that process, dashed against the child, who was standing on the road. On a perusal of the evidence of P.W.2, rough sketch and observation mahazar, it is seen that the prosecution has proved its case. The Courts below have fully analyzed the evident adduced on the side of the prosecution and have clearly held that the petitioner was the root cause for the accident. The Courts below have not held that the child too contributed for the accident. When driving in residential area, all drivers whether two wheeler or four wheeler, should drive cautiously. They should drive the vehicle slowly and should be cautious. They cannot drive in a rash and negligent manner.

8. In this case, the evidence of P.W.2 is clear, cogent and convincing. There is no reason to doubt the veracity of her evidence. The petitioner was given opportunities to prove his innocence. He could have concerned into the witness box and deposed his evidence. However, he has failed to do. now he cannot claim that the child contributed for the accident.

9. It is well settled law, that quantity of witness does not matter and only quality of witness has to be taken into consideration. Further, there was no motive for the alleged occurrence and the same was admitted. The trial Court has considered all the above facts and convicted the appellant under

Section 304(A) IPC. This Court does not find any reason to acquit the appellant and there is no merit in the appeal.

9. In view of the above, the criminal appeal is dismissed. Since the petitioner had no intention to kill the child and the accident happened due to rash and negligent driving, this Court is inclined to modify the sentence from one year to six months for offence under Section 304(A) IPC.

10. With the above modification in quantum of sentence, this revision is dismissed. Consequently, connected miscellaneous petition is closed.

rli

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District
and Sessions Judge,
Coimbatore.

2. The Judicial Magistrate,
Mettupalayam.

3. The Inspector of Police,
Sirumugai Police Station,
Coimbatore District.

4. The Public Prosecutor,
High Court of Madras.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.V.V.Sairam, Advocate, SR.No.70010/13

CrI.A.No.1220 of 2013
and
M.P.No.1 of 2013

Kak (27/09/2019)