

Bail Slip

The Accused/Petitioner viz Sathiyamoorthy @ Moorthy, released on bail vide order of this court dated 20.06.2017, in Crl.M.P. Nos. 7492 & 7494/2017 in Crl.R.C. No. 817/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2018

Pronounced on : 12.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.817 of 2017

Sathiyamoorthy @ Moorthy ...Petitioner

Vs.

State. Rep by
Inspector of Police,
Mailam Police Station,
Villupuram District.
(Crime No.253 of 2013)

.. Respondent

PRAYER: Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment dated 17.04.2017 passed in C.A.No.13 of 2017 by the learned II Additional District and Sessions Judge, Tindivanam, confirming the conviction and sentence awarded by the Learned Judicial Magistrate-II, Tindivanam, in C.C.No.204 of 2013, dated 08.02.2017.

For Petitioner : Mr.J.Kumaran

For Respondent : Mrs.T.P.Savitha
Government Advocate (Criminal Side)

O R D E R

The sole accused in CC.No.204 of 2013 on the file of the learned Judicial Magistrate-II, Tindivanam is the revision petitioner herein. The learned Magistrate found the accused guilty of the offences under Sections 279, 338 and 304(A) (3 counts) of IPC. The accused was accordingly convicted under

Sections 279, 338 and 304(A) (3 counts) of IPC and sentenced to pay a fine of Rs.1000 under Section 279 of IPC in default simple imprisonment for two weeks, to undergo simple imprisonment for the period of one year under Section 338 of IPC and to undergo simple imprisonment for a period of two years for each count under Section 304(A) of IPC (3 counts) totaling six years. The sentences imposed on each count under Section 304(A) were ordered to run concurrently setting off the custody period under Section 428 of the Code of Criminal Procedure and the sentence imposed under Section 338 of IPC and under Section 304(A) of IPC were ordered to run consecutively. In appeal, the learned II Additional District and Sessions Judge, Tindivanam on 17.04.2017 confirmed the conviction and sentence recorded by the Magistrate for the offence under Sections 338 and 304(A) (3 counts) of IPC and set aside the conviction and sentence under Section 279 of IPC by the Magistrate. Being aggrieved by the judgment of the appellate Court, the accused has come up with this criminal revision case.

2. Mankind departs their life in an unfortunate incident is harrowing, the case in hand is yet another heart breaking story that three blameless lives were lost when they were sleeping in front of their house by a heavy goods vehicle. The case of the prosecution is that on 20.04.2013 at 02.30 hours when PW1, his wife Govindammal, his son Sridhar, his father Harikrishnan, his sister's son Deena were sleeping in front of their house at Pilliyar koil street, Pudhu colony, Kolliyagunam, Mailam, Villupuram, a tipper lorry bearing Registration No.TN32-T-1179 driven by the petitioner/accused came reversely with speed and without hooting horn in a rash and negligent manner from main road, ran over them leaving PW1. The above mentioned Sridhar and Deena were crushed to death by the rear wheel of the lorry, the said Harikrishnan grievously injured and died at JIPMER hospital on the same day and the said Govindammal suffered degloving injury left lower limb with sepsis, fracture fibular neck. At 6.00 a.m. PW1 went to Mailam Police Station and given Ex.P1-complaint, PW10-Ravidoss, Special Sub-Inspector received the complaint and registered Ex.P5-FIR under Sections 279, 337, 338 and 304(A) of IPC, he then despatched the FIR to the jurisdictional Magistrate, PW11-Murali, Inspector of Police took the matter for investigation proceeded to the place of occurrence at 6.30 a.m. and prepared Ex.P2-observation mahazar and Ex.P6-rough sketch before the witnesses-PW9-Dhandapani and PW4-Selvakumar, he then conducted inquest on the dead body of the deceased Dheena and Sridhar before the Panchayatars and prepared Ex.P7 and P9-inquest reports between 7.45 to 9.45 a.m. and he sent Special Sub-Inspector Prakash to Jipmer Hospital for conducting inquest on the dead body of the deceased Harikrishnan, accordingly he conducted and prepared Ex.P9-inquest report. PW11 then inquired and obtained the statement of

the injured Govindammal, then he arrested the petitioner/accused at 18.00 hours at Chendur bus stand and sent him for remand. Then he arranged autopsy on the three dead bodies, inquired and obtained the statements of the doctors who conducted autopsy and who treated PW2 and obtained the Ex.P10 to P12-autopsy reports, PW12-Vetrichelvan, Inspector of Police continued the investigation, obtained the accident register of PW2 and filed final report. Before the trial Court, in order to prove the case, the prosecution has examined as many as 12 witnesses and exhibited 12 documents, on evaluation of pleadings and evidence, the trial Court held that the accused was found guilty and sentenced the accused as mentioned above.

3. The learned counsel for petitioner contended that both Courts below failed to consider the admission made by the PW1 in his cross examination that he never seen the accused at the time of occurrence as well as the admission by PW3 in his cross examination that he came to the place of occurrence after 30 minutes of the occurrence. Various contradictions appears from the depositions of PWs as to the involvement of the accused. The counsel for petitioner disputed the involvement of the accused and argued that it is the for the prosecution to bring on record material to establish the identification of the accused, in a criminal trial the burden of proving everything is essential to the establishment of the charge against an accused always rest on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. The trial Court as well as appellate Court have not assessed the oral and documentary evidence in right perspective, both the Courts brushed aside the glaring inconsistencies in the evidence terming as minor variations and the judgments of the both Court below suffer from perversity and illegality. When the accused was not familiar to the eye-witnesses, the investigation officer should have arranged for test identification parade especially when the accused was arrested and remanded into judicial custody, when there was no identification parade to identify the accused, identifying the accused first time in Court by the witness has no substantial value. In support of his arguments, the learned counsel for petitioner has submitted decisions of Madurai bench of this Court namely Ravichandran Vs. State dated 20.10.2017 passed in CrI.RC.No.159 of 2009 and M.Jayabalan Vs. State dated 08.02.2018 passed in CrI.RC (MD).No.190 of 2007 and decision of this Court namely M.Swaminathan Vs. State dated 13.12.2017 passed in CrI.RC.No.32 of 2012.

4. Per contra, the learned Government Advocate (Criminal Side) appearing for the State would contend that minor variations are bound to occur in the statement of witnesses when their statements are recorded after a considerable lapse from

the date of occurrence, the variations in the statement of witnesses which are neither material nor serious enough to affect the case of prosecution adversely are to be ignored by the Courts. The involvement of accused in the occurrence was proved by the evidence of PW6 and PW7, evidence of PW1 to PW6 are cogent and supporting the prosecution case, the Courts below have given a categorical findings that the accused found guilty of an offence under Sections 338 and 304(A) of IPC and convicted the accused accordingly. The conviction and sentence imposed by the Courts below is in accordance with law and in facts and therefore, there is absolutely nothing to interfere with the same.

5. I have heard Mr.J.Kumaran, learned counsel for the petitioner and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and also perused the available materials.

6. Even today sleeping in outer space more particularly in front of the house is common in Villages, it is also common course of natural event for the villagers to have sleeping jointly by forming row. The case records chiefly observation mahazar and rough sketch would go to show that the PW1 and his family members consisting three deceased and one injured were sleeping at the entrance place of house of PW1 located between the house of PW1 and east-west cement road called Pillyar koil street which joins the north-south main road known as Mailam road. So the place of occurrence where the deceased were slept was not road or pavement; At the high sleepy time called 2.30 a.m. the offending heavy good vehicle was actually come on the Mailam road, as per prosecution the vehicle owing to its size cannot do u-turn at Mailam Road and for the turning purpose the driver of the vehicle took the vehicle reverse on the said Cement Road, but while on reverse the vehicle which supposed to play on cement road, deviated from cement road by moving into the adjacent place where the deceased persons were sleeping and crushed them. If at all the vehicle was slow, it could have stopped on hitting or running on one person. But three persons were crushed to death and one grievously injured which mean to say the vehicle came with speed and managed to stop after running over them all. Rash and negligent of the driver of the vehicle is proved by res ipsa loquitur. But the question of identification of the driver of the vehicle at the time of occurrence is the prime ground for this criminal revision case.

7. The survivor as well as ocular witness to the occurrence who is PW1, his presence at the place of occurrence while occurrence is natural despite the fact that his testimony says

that he was lying at the last in row at the time of occurrence and his previous statement to police says he just walked out for urination just before the occurrence, since the place of occurrence is his house entrance. But the presence of PW3-Vinayagam, PW6-Rajesh and PW9-Suresh at the place of occurrence during 2.30 a.m. is not natural. They have no relation with PW1 and they have nothing to do at the scene of occurrence at that time. All three were in their previous statement to Police said that on 20.04.2013 they returned from job, they got down from bus at Kooteripattu and when they were proceeding to their home at about 2.30 a.m. witnessed the occurrence, they managed to nab the driver of the vehicle and came to know his name as Sathiyamurthy S/o.Velayutham of Othavadi, Mailam on enquiry with him, then the said driver ran away by escaping from them. Among them PW3 in his cross-examination admitted that he visited the place of occurrence after half an hour of the occurrence. The evidence of PW3 does not assume much significance since his evidence were not considered by the trial Court, the trial Court simply discarded his evidence and placed reliance on the evidence of PW6 and PW7.

8. On careful perusal of the case records, it appears that PW6 in his cross-examination said that he accompanied with PW3 and PW7 reached the place of occurrence and there was crowd containing 10 to 20 persons were present when they reached there. The police have not obtained any statement from him. PW7 said there was no crowd at there when the reached. These discrepancies are minor contradictions, however with regard to the identification of driver none of PW3, PW6 and PW7 said that they witnessed the occurrence, they managed to nab the driver of the vehicle immediately after the occurrence and came to know his name as Sathiyamoorthy S/o.Velayutham of Othavadi, Mailam on enquiry with him, then the said driver ran away by escaping from them. This is not minor discrepancy, in addition to that the first information report and complaint too does not disclose the name of the driver of the vehicle which caused the accident. Two police officers namely PW11-Murali and PW12-Vetrichelvan were investigated in this case. None of them opened their mouth as to the identification of the driver of the offending vehicle, even their depositions are silent in this regard, when the complaint and FIR does not mention the name of the offending driver, the arrest of the accused by the PW11 on the same day need to be explained accompanying materials against accused to the sanctification of arresting officer. No such explanation found from the evidence of the PW11. Further PW11 admitted in his cross-examination that he never enquired the owner of the vehicle involved in the accident with a view to identify the driver of the vehicle at the time of accident. Though PW11 obtained M.V. report, who arranged the vehicle for motor vehicle inspection is also unknown, such inspection was done 12 days

after the arrest of the accused so the name of accused mentioned in the M.V. report is not wholly reliable when identification of accused is in question. No test identification parade conducted, no collection of evidence about accused. Evidence of identification is relevant piece of evidence under Section 9 of the Indian Evidence act where the evidence consist of identification of accused at trial. The identification of an accused by a witness in Court is substantive evidence whereas the evidence of identification in test identification parade is through primary evidence but not substantive one and same can be used only to corroborate identification of accused by a witness in Court. In this case PW1 first time identified the accused in Court, accused is stranger to the PW1 and therefore his identification in Court requires corroboration which should be in the form of an earlier identification proceeding or any other evidence more significantly his police-complaint does not disclose the name of the accused. The investigation officer ought to have arranged test identification parade in this case. In addition to that failure on the part of the investigation officer to inquire owner of the vehicle involved in the accident with a view to identify the driver of the vehicle at the time of accident is also demonstrated that the investigation is imperfect and flaw.

9. Together with defective investigation carried out in this case, prosecution evidence also found glaring defective. In a case of defective investigation the trial Court has to circumspect in evaluation the evidence. There is a legal obligation on the part of the Court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not. Before the trial Court the oral evidence of PW11 and PW12 is insufficient, deletion of Section 337 of IPC by the PW12 was not said by him in his evidence, the doctors who conducted autopsy on the three dead bodies of the deceased were not examined by the prosecution, though their evidence is considered as corroborative piece of evidence, it is the duty of the prosecution to examine them so as to furnish delineation to the Court about the cause of death and nature of injuries suffered by the deceased. It is substantial defect in proceedings.

10. Considering the above facts and circumstances, there is no other logical explanation can be derived from the case records that except the accused none other was holding the steering of the offending vehicle at the time of accident. This Court finds that the prosecution failed to establish the identity of the accused at the time of occurrence and inclined to set aside the Judgment of both Courts below.

11.In the result:

(a) the criminal revision is allowed by setting aside the Judgment dated 17.04.2017 made in Criminal Appeal No.13 of 2017, on the file of the learned II Additional District and Sessions Judge, Tindivanam, confirming the judgment dated 08.02.2017 made in Calender Case No.204 of 2013 on the file of the learned Judicial Magistrate No.II, Tindivanam;

(b) The petitioner is acquitted from all charges. The Trial Court is directed to refund the fine amount paid by the accused if any.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

vs

To

- 1.The II Additional District and Sessions Judge, Tindivanam.
- 2.The Chief Judicial Magistrate, Villupuram.
- 3.The Judicial Magistrate No.II, Tindivanam.
4. The Public Prosecutor
High Court, Madras.
5. The Inspector of police
Mailam Police Station
Mailam.

+2 Ccs to Mr.J. Kumaran, Advocate sr 27471.

सत्यमेव जयते

Cr1.R.C.No.817 of 2017

RSK (CO)
SP(17/04/2018)

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