

BAIL SLIP

The Petitioner/Accused Viz; Shajahan aged about 35 years is released on bail as per order dated 18/08/2017 by this court made in Crl.MP.No.8283/2017 in Crl.RC.No.885/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2018

Pronounced on : 02.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.885 of 2017

and.M.P.No.8288 of 2017

Shajahan

.. Petitioner

Vs.

The State Rep. by its,  
Inspector of Police,  
Vaitheswaran Koil Police Station

.. Respondent

PRAYER: Criminal Revision under Section 397 r/w 401 of Cr .P.C. to call for the records pertaining to the order of dismissal in Crl.A.No.39 of 2012 dated 04.12.2014 passed by the learned District and Sessions Judge, Nagapattinam, confirming the trial Court sentence made in C.C.No.205 of 2008 dated 07.08.2012, on the file of the learned Judicial Magistrate, Sirkali, set aside the same and allow the Criminal Revision Petition.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : Mr.G.Ramar

Government Advocate (Criminal Side)

O R D E R

The revision petitioner is the sole accused who faced trial in C.C.No.205 of 2008 for the offence under Section 304A IPC. The accused suffered judgment of conviction and sentence in C.C.No.205 of 2008 on the file of Judicial Magistrate, Sirkali and the same was confirmed vide Crl.A.No.39 of 2012 by the lower appellate Court.

2.The prosecution in order to prove the guilt of the accused examined the defacto complainant, eye witnesses, mahazar witness, Post mortem doctor and the police officials who received and registered the complaint and FIR and Inspector of Police who conducted the investigation and the Motor Vehicle

Inspector as P.Ws-1 to 12 and has produced Exs.P1 to P8 documents. The trial Court has on the basis of the materials found that the accident is caused solely by the rash and negligent driving of the accused and has convicted and sentenced him by judgment dated 07.08.2012 to undergo one year simple imprisonment and to pay fine Rs.2000/- In default of the payment of the fine amount the petitioner was required to undergo simple imprisonment for 4 months. Aggrieved against the same, the accused preferred the appeal before the Appellate Court. The Appellate court has, by judgment dated 04.12.2014, confirmed the judgment of the trial Court and hence, this criminal revision by the accused before this Court.

3. The case of the prosecution is that the accused at about 11.45 hrs on 16.12.2007 having drove his Bolero Jeep Reg.No.TN 51 S 9172 in rash and negligent manner from South to North in Keelasannithi, Vaitheeswaran Koil dashed as against the deceased Meenakshi Sundaram who was about to cross the road to reach the temple. Due to the impact of the accident, the said deceased Meenakshi Sundaram sustained injuries and he was taken to Sirkali Government Hospital and later was taken treatment in Zipmer Hospital, Pondichery where he died on 19.12.2007, despite due treatment.

4.The prosecution in order to prove the guilt of the accused examined PW1 to, PW3, eyewitnesses, PW 4 Mahazar witness, PW5 and PW6 witnesses said to be the other direct witnesses. PW7 Motor Vehicle Inspector, PW8 Mahazar witness to Ex P4, PW11 doctor, PW 10 and 12 the Investigation Officer. Both the Courts below, on the basis of the available records having found that the lorry came at high speed in rash and negligent manner and dashed against the deceased and the driver of the Jeep was solely responsible for the accident, convicted and sentenced him for the above said offence. Aggrieved against the same, the accused is before this Court by way of this criminal revision.

5.I heard Mr.B.Gopalakrishnan, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate (Criminal Side) for the respondent and perused the entire records.

6.The learned counsel for the petitioner would vehemently argue that the findings of both the Courts below that the motor vehicle was driven at high speed in a rash and negligently, is not supported by any materials and the same is baseless and unfounded, as such no offence under Section 304-A is attracted and the conviction of sentence for the same is thus unsustainable, both in law and on facts. It is further argued by the learned counsel for the petitioner that the Rule Res Ipsa Locquitur is not applicable to the criminal proceedings where the liability is always on the prosecution to prove the rash and negligent act of the driver and on the failure of the

prosecution to prove the same, the lower Courts ought to have released the petitioner from the charges leveled against him. The learned counsel for the petitioner also cited authorities of the Supreme Court reported in 2001 (2) MWN (Cr.) SC 77 in Mohammed Aynuddina alias Miyam Vs. State of Andhra Pradesh; 2001 (2) MWN (Cr.) 249 Sekar V. State by S.I. of Police, Ethapur, Salem District; AIR 1972 SC 221 Mahadeoharilokrs V. State of Maharashtra and 2007 CrLJ 475 B.C.Ramachandra S/o Chikkashetty V. State of Karnataka by Channarayapatna Town Police rep. by S.P.P. of High Court of Karnataka, in support of his contention in this regard.

7.It is also submitted that no reliance can be placed upon Ex.P7/rough sketch which only indicates mere position of the vehicle, after the accident and the same cannot be treated as substantial proof regarding rash and negligent part of one or other. The learned counsel for the petitioner has in support of his contention also cited the following authorities reported in AIR 2013 SC 2293 Jiju Kuruvila and others V. Kunjamma Mohan and others and 1992 CrLJ 72 Orissa High Court Indramani Jena Vs. State of Orissa.

8.The learned counsel for the petitioner has also taken this Court to the evidence of eyewitnesses PW1, PW2 and PW3, the father, mother and brother of the deceased.

9.As far as evidence of PW1 to PW3 are concerned, it is seen by this Court that PW1 states that PW1 to PW3 have crossed the road at an earlier point of time and the deceased had followed them in miniature interval. It was then the above accident taken place. The learned counsel for the petitioner further taken this Court to the evidence of PW2, mother of the deceased stated that it was an auspicious Sunday and there was crowd in and around the place of occurrence abutting the Temple. It is also seen from the deposition of PW1 that there is a speed breaker available on road nearer to the place of occurrence, however said speed breaker is not being reflected in the Mahazar sketch.

10.Thereupon from the above infirmities and irregularities, at this juncture, this Court is unable to brush away the contention of the Learned Counsel for the petitioner that it was PW1 and PW2 who carelessly and negligently have left the deceased minor boy of 10 years in the roadside and they have crossed the road earlier and that misfortunately the accident occurred while the kid crossed the road.

11.That apart this Court finds that the subject vehicle is subjected to inspection after about 5 days from the date of occurrence, though it is the vehicle is much available and that was also used to take the kid to hospital. It also remains fatal to the prosecution.

12.This Court is able to visualize that if at all the case of the prosecution is taken to be true, then it would have resulted in much more damages to human lives and limbs, at the same time as admittedly the entire place remained deeply crowded according to PW1 to PW3.

13.It is equally important to note that PW5 and PW6 termed to be the Eyewitness to the accident turned hostile deposing that they were unaware of the accident. At the same time in view of the above Material infirmities this Court is of the considered opinion that it would not be safe to rely solely upon version of PW1 to PW3 who are interested witnesses being the members of the family.

14.Therefore, the prosecution has failed to establish that the Vehicle was driven in rash and negligent manner. The prosecution theory regarding negligence appears to be improbable in the light of depositions of PW1 to PW3.

15.The rough sketch regarding the scene of occurrence remains only as a proof of Accident and the same remains doubtful as to the rash and negligent driving of the petitioner/accused. It can only suggest or presume the manner in which the accident caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver.

16. In the present case, one such material is certainly not available, as such the finding rendered by both the Courts below in this regard is baseless and unfounded and the same cannot be allowed to sustain. As rightly argued by the learned counsel for the petitioner, both the Courts below have committed serious error in rendering such findings without any material and the same stands vitiated and warrants interference by this Court.

17.The Hon'ble Apex Court has, in the cases above referred to, not appreciated the approach adopted by the Courts below, resulting in manifestly illegal order leading to failure of justice. That being the guideline issued by the Apex Court in the absence of any evidence to prove rash and negligent driving on the part of the accused, mere driving the vehicle at high speed is not sufficient enough to bring the offence under Section 304 (A) IPC. The Courts below by simply accepting the prosecution case, without analyzing as to what amounts to rash and negligent act committed serious error in finding the accused is guilty and convicted him and such order of conviction cannot be allowed to sustain.

18.In the result:

(a) the Criminal Revision stands allowed by setting aside

the judgment dated 04.12.2014 made in Crl.A.No.39 of 2012 on the file of the learned District and Sessions Judge, Nagapattinam and the order dated 07.08.2012 in C.C.No.205 of 2008 on the file of the learned Judicial Magistrate, Sirkali;

(b) the accused is acquitted and the fine amount, if any paid by the accused, shall be refunded and the bail bonds, if any, executed by him shall stand cancelled. Consequently connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The District and Sessions Judge, Nagapattinam.
- 2.The Judicial Magistrate, Sirkali.
- 3.The Inspector of police Vaitheswaran Koil Police Station

4.The Public Prosecutor  
High court Madras

5.The Section Officer Criminal Section  
High Court Chennai

+1 cc to Mr.B.Gopalakrishnan Advocate sr 24551

Crl.R.C.No.885 of 2017  
and  
Crl.M.P.No.8288 of 2017

gp(co)  
aa13/04/2018

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