

Bail Slip

The petitioner /accused,namely Mr.Palani s/o. Periya samy was directed to be released on bail as per the order this court dated 16/09/2011 in CRL.M.P.NO.1/2011 in CRL.R.C.NO.1272/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
Crl.R.C.No.1272 of 2011

Palani Petitioner

..Vs..

The State rep.by
The Inspector of Police,
Uthangarai Police Station,
Krishnagiri District.

(Crime No.544 of 2006) ... Respondent

Criminal Revision case filed under Section 397 and 401 of Cr.P.C. to call for the records on the file of the learned Principal Sessions Judge, Krishnagiri, Krishnagiri District in C.A.No.54 of 2009, dated 30.06.2011 against the judgment passed in C.C.No.223 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Uthangarai, Krishnagiri District, dated 02.11.2009 and set aside the judgment dated 30.06.2011.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mrs.S.Thankira
Government Advocate (Crl. Side)

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O R D E R

This Criminal Revision Case has been filed aggrieved by the judgment made in Crl.A.No.54 of 2009 by the Principal Sessions Court, Krishnagiri, confirming the judgment of the learned District Munsif cum Judicial Magistrate, Uthangarai, Krishnagiri District, made in C.C.No.223 of 2006, insofar as, the conviction is concerned and modifying the sentence from one year to nine months Rigorous Imprisonment for offence under Section 304 A of IPC.

2. The case of the prosecution in brief:

The case of the prosecution is that on 06.10.2006 at about 04.45 p.m., the deceased child viz., Kaviya, aged about three years was proceeding on the left side of the road after getting down from the school van bearing Registration No.TN-49E-9798. The petitioner, who was the driver of the van dashed against the said Kaviya by driving the van in a rash and negligent manner. As a result of which, the left front wheel of the van ran over the said Kaviya and the child succumbed to the injuries.

3. A complaint was lodged by PW.1, who is the mother of the deceased Kaviya and based on the complaint, PW.9-Inspector of Police registered the FIR in Crime No.544 of 2006 for offences under Sections 279 and 304 A of IPC. PW.9-Inspector of Police, inspected the place of occurrence and prepared the observation mahazar and also prepared a rough sketch which were marked as Exs.P3 and P7 respectively in the presence of the witness PW.3.

4. On completion of the investigation, a final report was laid for the offences under Section 279 and 304 A of IPC and the Trial Court took cognizance of the final report and framed charges against the petitioner for the said offence.

5. The prosecution examined PWs.1 to 9 and marked exhibits namely Exs.P1 to P8, in order to substantiate the case.

6. The Trial Court on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubt and convicted the petitioner for the offences under Sections 279 and 304 A of IPC and imposed sentence of one year Simple Imprisonment.

7. Aggrieved by the judgment of the trial Court, the petitioner filed an appeal and the Appellate Court, on appreciation of the materials on record, concurred with the findings of the Trial Court, insofar as the conviction is concerned. The Appellate Court taking into consideration the fact that the petitioner is a van driver, thought it fit to modify the sentence from one year to nine months Rigorous Imprisonment. Aggrieved by the same, the present Revision Petition has been filed by the petitioner.

8. The learned counsel for the petitioner Mr.E.Kannadasan, submitted that there are absolutely no eye witnesses to the incident. PW.1, who is the mother of the deceased child, was also not an eye witness and according to her evidence she came out of the house after hearing the noise.

9. It is the further submission of the learned counsel that both the Courts below came to an erroneous conclusion that the accident happened due to the rash and negligent driving of the petitioner. The learned counsel further submitted that this Court, by taking into consideration the fact that the petitioner is a van driver and a long period of time has lapsed since the incident happened and the petitioner is the only breadwinner of the family, may consider reducing the sentence and impose compensation to be paid by the petitioner to the mother of the deceased child.

10. Per contra, Mrs.V.Thankira, learned Government Advocate (Crl. Side) submitted that an innocent child has been killed due to the rash and negligent manner in which the petitioner drove the van. The learned counsel further submitted that both the Courts below have properly appreciated the oral and documentary evidence and have come to a conclusion that the petitioner was responsible for the death of the minor child due to the rash and negligent manner in which he drove the vehicle.

11. The learned counsel further contended that the Appellate Court has already modified the sentence and therefore no further modification should be entertained at the stage of revision. The learned counsel further submitted that there are absolutely no merits in the Criminal Revision and the same has to be dismissed.

12. This Court has carefully considered the submissions made on either side and also has gone through the evidence placed on record. There is no dispute about the fact that it was the petitioner who drove the van on the fateful death. A combined reading of the evidence of Pws.1 and 2 clearly shows that the child after getting down from the van was walking on the left side of the road and the petitioner even without watching this, has proceeded to drive the van and dashed the child resulting in the death of the child.

13. The evidence of Pws.1 and 2 is further corroborated by Ex.P7, rough sketch which also shows that the child was walking on the left side of the road when this accident has happened.

14. On the date of the accident, the petitioner admittedly drove the vehicle and it was only due to his negligence, the accident had taken place and minor child was no way responsible for the accident. Both the Courts below have properly appreciated the oral and documentary evidence and have come to a conclusion that the prosecution has proved the case beyond reasonable doubt. This Court does not find any illegality, infirmity or perversity in the finding of both the Courts below.

15. This Court exercising revisional jurisdiction is not expected to re-appreciate the fact unless the Courts below patently committed an apparent mistake in appreciation of the evidence. This Court does not find any reason to interfere with the judgments of both the Courts below and accordingly, confirms the conviction passed against the petitioner.

16. Insofar as the sentence is concerned, taking into consideration the length of time and also of the fact that the petitioner is the sole breadwinner of the family, this Court deems it fit to modify the sentence from nine months Rigorous Imprisonment to one month Simple Imprisonment and further directs the petitioner to deposit a sum of Rs.30,000/- as compensation in default to undergo six months Simple Imprisonment.

17. The District Munsif-cum-Judicial Magistrate, Udhangarai, is directed to issue warrant to the petitioner, in order to undergo the sentence of imprisonment. On deposit of the compensation by the petitioner, the Trial Court is directed to issue notice to PW.1 viz., Jayalakshmi and permitted her to withdraw the amount, if the petitioner fails to deposit the compensation amount, the Trial Court shall ensure that the petitioner undergo the default sentence.

18. The Criminal Revision Petition is partly allowed to the extent indicated above. It is directed that the period of sentence already undergone by the petitioner shall be set-off, as provided under Section 428 of the Criminal Procedure Code.

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Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1.The learned Principal Sessions Judge,
Krishnagiri, Krishnagiri District.

2.The learned District Munsif cum
Judicial Magistrate, Uthangarai,
Krishnagiri District.

3.Public Prosecutor,
High Court, Madras.

4.The Chief Judicial Magistrate,
krishnagiri.

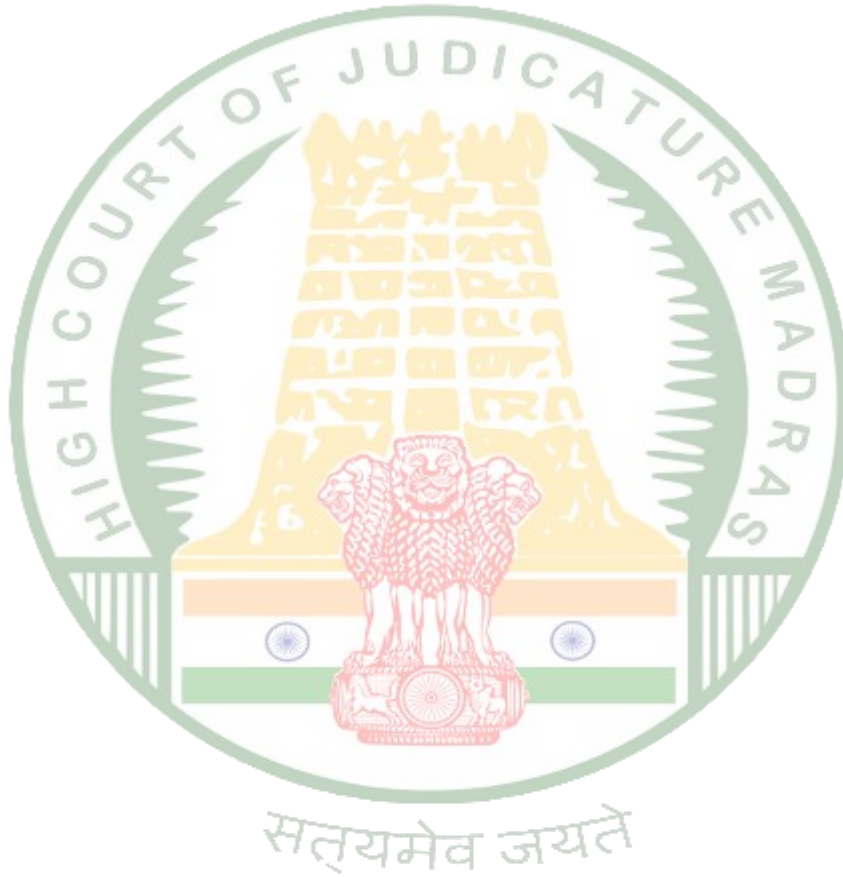
5.The Inspector of Police,
uthangarai police station
Krishnagiri District.

6.The section Officer,
Criminal Section,
High court, madras.

+1 cc to Mr.E.Kannadasan Advocate SR.NO.56659

Cr1.R.C.No.1272 of 2011

BR(CO)
ASK(24/08/2018)



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