

CRL RC.NO.1305/2011

Bail Slip

The Petitioner G.Manikanden, S/O Mr.Govindasamy was directed to the released on bail vide order dated 23.09.2011 passed in MP.NO.1 of 2011 in CRL.RC NO.1305 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No. 1305 of 2011

G.Manikandan

.. Petitioner

Vs

State rep. By
The Inspector of Police,
Yercaud,
Salem District.

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. praying to set aside the judgment of conviction imposed by the I Additional Sessions Judge, Salem in Crl.Appl. No. 42 of 2009 dated 12.04.2011 confirming the judgment of conviction imposed by the Judicial Magistrate No.V, Salem in C.C. No. 80 of 2004 dated 07.05.2009.

For Petitioner : Mr.C.K.M. Appaji

For Respondent : Ms. T.P.Savitha

Government Advocate (Crl.Side)

O R D E R

This revision has been filed to set aside the judgment of conviction imposed by the I Additional Sessions Judge, Salem in Crl.Appl. No. 42 of 2009 dated 12.04.2011 confirming the judgment of conviction imposed by the Judicial Magistrate No.V, Salem in C.C. No. 80 of 2004 dated 07.05.2009.

2. Initially, the Sub Inspector of Police, Yercaud, who is the respondent herein had registered a case against this revision petitioner in Crime No. 408 of 2003 for the offence under Sections 279 r/w 304 A IPC. Subsequently, on completion of investigation, he had filed a charge sheet before the learned

Judicial Magistrate-V, Salem, in which he made allegations against the revision petitioner as he has committed offences under Sections 229,338, 304 A of IPC.

3. After elaborate enquiry, the learned Judicial Magistrate No.V, Salem in C.C. No. 80 of 2004 by order dated 07.05.2009 came to the conclusion that the revision petitioner is found guilty for the offences under Sections 279 and 304 A IPC, due to which the revision petitioner was convicted and sentenced to under go six months simple imprisonment and fine of Rs.5,000/- in default one month simple imprisonment and no separate punishment was awarded for the offence under Section 279 IPC.

4. Aggrieved over the said judgment, the revision petitioner had filed Crl.Appl. No. 42 of 2009 before the I Additional District Judge, Salem. After hearing either side submissions, the learned I Additional District Judge, Salem came to the conclusion that findings given by the learned Magistrate are correct and thereby confirmed the conviction and sentence awarded to this revision petitioner by the trial Court. In order to check the correctness of the concurrent findings, this revision has been filed before this Court by the revision petitioner.

5. Today, when the matter is taken up for hearing, the learned counsel appearing for the revision petitioner made submission that in the trial Court, only three witnesses supported the case of the prosecution. Further, he mentioned that PW1, who is the defacto complainant and PW3 and PW5 who are alleged to be the eye witnesses, deposed contradictory evidence before the learned Judicial Magistrate. The evidence given by the said witnesses does not show any ingredient with regard to the offences committed by the revision petitioner, thereby he prays to allow this revision.

6. On the other hand, the learned Government Advocate (Crl.Side) submitted that the evidence put forth by the prosecution and the documents exhibited, clearly established the case of prosecution and therefore prays the judgment rendered by the I Additional District Judge, Salem to be confirmed.

7. Now, on going through the judgment passed by the learned I Additional District Judge, Salem and other records, it is seen that before the trial Court, the Motor Vehicle Inspector's report was marked as Exhibit P7, in which, the Motor Vehicle Inspector had given opinion that the alleged accident had happened not due to the defect of the vehicle, even though the said document was marked through the Investigating Officer, the learned counsel appearing for the accused had not raised any

objection at the time of marking the document. So, it is necessary to check the genuineness of the document entirely. Accordingly, this Court hold that the alleged accident had not happened due to the mechanical defect of the vehicle involved in this accident.

8. Further, in the trial Court, the post-mortem report of the deceased was marked as Exhibit-P5 and the inquest report was marked as Exhibit P6. The contention of the said document was not disputed in the trial Court. So, according to the findings arrived at by the investigating officer in the inquest report and as per the opinion given by the Doctor, it is clear that the death of deceased was happened only due to the alleged accident.

9. With regard to the negligence, the trial Court and the first appellate Court came to the conclusion that the revision petitioner alone drove the vehicle in a rash and negligent manner. Now on going through the entire evidence given by the prosecution witnesses in the trial Court, it is seen that PWs 1 to 5 were examined on the side of the prosecution as eye witnesses. But during the cross examination, PWs 2 to 4 have not supported the case of the prosecution, thereby, they were treated as hostile witnesses. Even after treating them as hostile witnesses, during the time of cross examination by the prosecution, they did not support the prosecution case. Under such circumstances, on going through the evidence given by PW1, it appears that in the chief examination, he clearly narrated about the rash and negligent act of the accused. Further, he properly identified the accused in the trial Court. However, on going through the evidence given in the cross examination, he categorically mentioned that only after the occurrence, he saw the accused/petitioner. The said evidence given by PW1 in the cross examination creates a doubt whether he saw the occurrence as stated in his chief examination. However, on the day of occurrence, PW1, who is the de-facto complainant immediately lodged a complaint before the police after the alleged occurrence. So, we cannot come to the conclusion that the entire evidence given by PW1 is a false evidence.

10. Therefore, it is necessary to verify the contradictory statements adduced by the PW1 in the evidence are sufficient to disbelieve the case of prosecution. Further, on going through the evidence of PW3 given in the cross examination, he categorically mentioned that he was working as Food Inspector in Hotel Priyadarshini. Further, he mentioned that in the time between 12.00pm to 1.30. p.m is busy hours and at that time he was having a duty to supply the food to customers in a Hotel, in which he was working as supplier. In the said circumstances, PW3 does not say anything about the reason for coming out from the Hotel at the time of accident, which took place at 12.30pm.

Moreover, on going through the rough sketch, which was marked as Ex.P3, it appears that the Hotel Royal Richers in which PW3 was working as a supplier was not mentioned for proving the fact that PW3 was working near the place of occurrence. These aspects creates a doubt that PW3 saw the occurrence or not. Further, on going through the evidence of PW5, he categorically mentioned in the cross examination as he does not know the direction, in which the deceased was riding the vehicle. The said contradiction in the evidence of PW5 proves that he has not seen the alleged occurrence.

11. Therefore, the contradictions in the evidence of PW1 are not clarified by using the evidence given by the other prosecution witnesses. It is a settled position of law that a testimony of single evidence is sufficient to accept the case of prosecution as genuine one, subject to the condition that testimony is wholly reliable one. In this case, the evidence of PW1 is not wholly reliable one, thereby the contradiction in the evidence of PW1 creates a doubt whether PW1 saw the occurrence as stated in the prosecution case or not. The said benefit of doubt will go to the side of accused.

12. The trial Court and the first appellant Court have not gone through the said aspects and convicted the accused. In view of the above discussions, this Court is of the view that the revision petitioner could not found guilty of the offences under Section 279 and 304 A IPC, therefore he is acquitted of the charges framed against him. Accordingly, this Criminal Revision Petition is allowed by setting aside the judgments of the Courts below. If any fine amount is paid by the petitioner, the same shall be refunded to him.

Sd/-

Assistant Registrar(CS)

//True Copy//

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Sub Assistant Registrar

To

1.The First Additional sessions Judge,salem.

2.The Judicial Magistrate No.5 Salem,

3. The Inspector of Police,
Yercaud,
Salem District.

4. The Public Prosecutor
High Court, Madras.

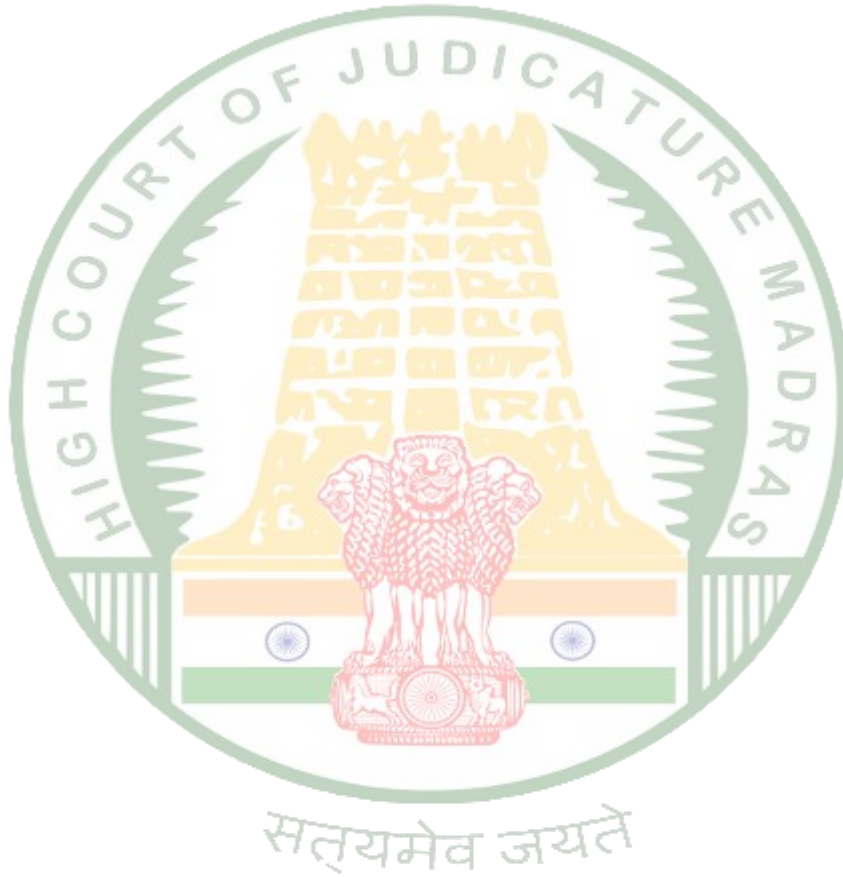
copy to

The section officer,
crl.section,
High court,Madras.

+1cc to Mr.C.K.M. Appaji,advocate , sr.30184

Crl.R.C.No. 1305 of 2011
& M.P.Nos.1,2 and 3 of 2011

GSP (07/06/2018)



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