

BAIL SLIP

That the Appellant /Accused namely M.Nandagopal S/o.Muthiah was released on bail as per the order of this Court dated 17.12.2011 in MP No.1/2011 in Crl Rc. No.1522/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2018

Coram

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1522 of 2011
and
Crl.M.P.No.2736 of 2018

M.Nandagopal ... Petitioner

Vs.

State Rep. by Inspector of Police,
Traffic Investigation Wing (West),
Coimbatore.
Cr.No.321 of 2007 ... Respondent

Prayer:- Criminal Revision filed under Section 397 and 401 of Cr.P.C. to set aside the Judgment dated 05.05.2011 made in C.C.No.492 of 2008 on the file of the Judicial Magistrate No.VIII, Coimbatore and confirmed by the lower appellate court in its judgement dated 30.09.2011 made in C.A.No.118 of 2011 on the file of Additional District and Sessions Judge (FTC No.2), Coimbatore and acquit the revision petitioner by allowing this revision.

For Petitioner : M/s.S.Sivakumar

For Respondent : Mr.G.Ramar
Government Advocate (Crl.Side)

ORDER

The revision petitioner is the accused who faced trial in C.C.No.492 of 2008 for the offence under Section 279 r/w 304A IPC. The accused suffered judgment of conviction and sentence in C.C.No.492 of 2008 as confirmed in CA.No.118 of 2011 by the lower appellate Court.

2. Pending the revision, the petitioner and de-facto complainant/PW.1 had compromised the matter. The petitioner also filed an application before this Hon'ble Court seeking permission to compound the offences against him. Further a Joint compromise memo has been filed along with the affidavit of the petitioner and the de-facto complainant in CrI.M.P.No.2736 of 2018. Since the offence under section 304-A cannot be compounded, this court proceed to decide the appeal on merits with consent of either side and therefore the above Criminal Revision Case is taken up for final disposal.

3. The prosecution in order to prove the guilt of the accused examined the defacto complainant, eye witnesses, mahazar witness, Post mortem doctors 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 P.8 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 05.05.2011 to undergo one year simple imprisonment and to pay fine a sum of Rs.2,000/-. In default of the payment of the fine amount the petitioner was required to undergo simple imprisonment for 3 months. Aggrieved against the same, the accused preferred the appeal before the Appellate Court. The Appellate court has, by judgment dated 11.11.2011, confirmed the judgment of the trial Court and hence, this criminal revision petition has been filed by the accused before this Court.

4. The case of the prosecution is that the accused at about 08.45 hrs on 17.09.2007 was driving his Eicher Lorry bearing Reg.No.TN 37 Y 4930 in rash and negligent manner from west to east on Sowdambigal Kovil Street, in front of Dhana Priya Steel shop and dashed against the deceased Subbaiyaa Nadar who was sitting near the shutter of the shop and also dashed against the shop shutter. Due to the impact of the accident, the said deceased Subbaya Nadar died on the spot who later succumbed to the injuries in GH, Coimbatore, despite treatment, on 17.09.2007.

5. The prosecution in order to prove the guilt of the accused examined PW1 to, PW3, eyewitnesses PW4 to PW6 hearsay witnesses, PW7, Observation and rough sketch witness, Pw.8 Motor Vehicle Inspectors, PW9 doctor, PW10 to PW12 Police official, and produced Ex.P1 to Ex.P8 documents. 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 lorry 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.

6. I heard Mr.S.Sivakumar, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate (Criminal Side) for the respondent and perused the records.

7.The learned counsel for the petitioner would vehemently argued 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 Resp 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 Hon'ble 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.

8.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. Kunjujamma Mohan and others and 1992 CrLJ 72 Orissa High Court Indramani Jena Vs. State of Orissa.

9. The learned counsel for the petitioner has also taken this Court to the evidence of the so called eyewitnesses PW1, PW2 and PW3. As far as evidence of PW1 to PW3 are concerned, PW1 stated that while he was proceeding in Sowdambiga Veedhi the driver of the lorry overtake him speedily and dashed against the deceased. It may be true that PW1 to PW3 would say that the vehicle was driven at speed and they did not say that it was driven in rash and negligent manner and also on the wrong direction. The prosecution theory regarding speed, if viewed in the light of Ex.P7 appears to be improbable. It is to be observed that all the witnesses did only speak about the driving of the vehicle at high speed which alone would not render the

driving to be rash and negligent as observed by the Hon'ble Supreme Court in the judgment reported in 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 and AIR 1972 SC 221 Mahadeoharilokrs V. State of Maharashtra.

10. Further he deposed that the lorry came from North to South. But in Ex.P1 reveal that the lorry came from West to East. Hence evidence of Pw.1 was not test worthy to convict the petitioner. It is not in dispute that the scene of occurrence is corner one and on seeing the Ex.P7 rough sketch it reveals that it is only 15" road, hence it is improbable the prosecution case that the lorry was driven at high speed and other probability can be completely ruled out. Further PW.12 the investigation officer while cross examination he did not given clear evidence with respect to mechanical defects, he only deposed that he does not know whether the vehicle was taken through the mechanic.

11. Regarding the rash and negligent manner in which the vehicle was driven, the same is also not spoken by PW1 to PW3. Even otherwise, PW1 and PW2 would say that the vehicle was driven with speed. When the scene of occurrence is 15 feet road cannot be say driver drove the lorry in a speed. As a matter of fact, the Hon'ble Supreme Court in para 24 of the judgment above cited on the side of the petitioner, has observed that the rough sketch regarding the scene of occurrence cannot give substantial proof as to the rash and negligent driving. 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.

12. 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.

13. 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.

14. In the result, this Criminal Revision stands allowed by setting aside the judgment dated 30.09.2011 made in C.A.No.118 of 2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore and order dated 05.05.2011 in C.C.No.492 of 2008 on the file of the learned Judicial Magistrate No.VIII, Coimbatore and 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-VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate No.VIII, Coimbatore.

2.Do Thro: The Chief Judicial Magistrate, Coimbatore.

3.The Additional District and Sessions Judge,
Fast Track Court No.II, Coimbatore.

4.The Inspector of Police ,
Investigation wing west, Coimbatore.

5.The public Prosecutor,
High court, Madras.

+1 CC TO MR.Sivakumar Advocate SR. No.14940

Crl.R.C.No.1522 of 2011
and
Crl.M.P.No.2736 of 2018

MG (CO)
RMP (28/03/2018)

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