

Bail Slip

The petitioner/Accused namely C. Selvarasu S/o. Chinnaponnu directed to released on bail on 16.3.2011 on made in Crl.R.C.No.343 of 2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.343 of 2011

C.Selvarasu

... Petitioner

..Vs..

State Rep.By

The Inspector of Police,
Velipalayam Police Station,
Nagapattinam.

... Respondent

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to call for the records of the judgment dated 15.11.2010 made in C.A.No.30 of 2009 on the file of the Court of Sessions Judge, Nagapattinam confirming the judgment of conviction and sentence dated 29.05.2009 made in C.C.No.319 of 2005 on the file of Judicial Magistrate No.II, Nagapattinam and to set aside them.

For Petitioner : Mr.D.Selvaraju

For Respondent : Ms.S.Thankira

Government Advocate (Crl Side)

W E B C O P Y
O R D E R

This Criminal Revision Petition has been filed aggrieved by the order passed in C.A.No.30 of 2009 by the Sessions Court, Nagapattinam, dated 15.11.2010, confirming the order of conviction and sentence passed by the Judicial Magistrate No.II, Nagapattinam in C.C.No.319/2005.

The case of the prosecution in brief:

2.On 02.05.2005, the deceased and PW-1 were coming from Nagapattinam in the bicycle and were proceeding from north to south. At that time, the accused drove his lorry from Nagore to Nagapattinam in a rash and negligent manner and dashed the cycle of the deceased, as a result of which the

deceased fell down and the left rear wheel of the lorry ran over the deceased and he succumbed on the spot. Immediately PW-1 who was coming right behind the deceased person, gave a statement [Ex.P-1] in the Police Station and an FIR was registered [Ex.P-6]. The police went to the spot and prepared an Observation Mahazar marked as Ex.P-2 and the Rough Sketch marked as Ex.P-6 and also prepared an Inquest Report, marked as Ex.P-7. Upon investigation, a Final Report was filed before the Trial Court and the Trial Court framed the charge against the petitioner for an offence under Section 304 (A) IPC.

3.The prosecution in order to prove the case have examined 11 witnesses PW-1 to PW-11 and also marked Exs.P-1 to P-7.

4.The Trial Court on appreciation of the evidence placed before the Court, came to the conclusion that the prosecution has established the case beyond reasonable doubts and convicted the petitioner for an offence under Section 304 (A) IPC and passed a sentence of six months Simple Imprisonment and Rs.1,000/- fine and in default six months Simple Imprisonment.

5.The petitioner aggrieved by the said order of conviction and sentence passed by the Trial Court, filed an appeal in C.A.No.30 of 2009. The Appellate Court on appreciation of the evidence, concurred with the finding of the Trial Court and confirmed the order of conviction and sentence passed by the Trial Court.

6.Aggrieved by the said order, the petitioner has filed the present Criminal Revision Petition before this Court.

7.The learned counsel for the petitioner would submit that even though PW-1 to PW-4 have been stated to be the eye witnesses to the incident, a reading of their evidence would show that they could not have seen the incident and therefore based on their evidence criminal negligence cannot be attributed upon the petitioner. The learned counsel for the petitioner further submitted that both the Courts below did not properly appreciate the evidence of PW-1 to PW-4 and did not appreciate the discrepancy that is found in their evidence. The learned counsel further submitted that the incident has taken place in the year 2005 and at this length of time, even if the order of conviction is confirmed, this Court should consider showing some leniency insofar as the sentence is concerned since the petitioner has to take care of his old parents and his own family.

8.Per contra, the learned Government Advocate (Cr1.Side) would submit that the evidence of PW-1 to PW-4 cogently explains the manner in which the accident has taken place and a reading of their evidence will clearly show that the petitioner was responsible for the accident due to his rash and negligent driving of the lorry. The learned Government Advocate further contended that both the Courts below have properly appreciated the evidence available on record and there is no ground to interfere with the findings of the Courts below, more particularly when this Court is exercising his revisional jurisdiction.

9.This Court has considered the submissions made on either side and also has gone through the materials available on record. PW-1 in his evidence has clearly stated that he was driving the bicycle 10 feet behind the bicycle of the deceased and the lorry was driven by the petitioner in a rash and negligent manner as a result of which the accident took place. A reading of his entire evidence shows that he was an eye witness to the incident and there is no ground to disbelieve his evidence. Similarly, the evidence of PW-2, PW-3 and PW-4 supports the evidence of PW-1. A cumulative evidence of PW1 to PW-4 clearly points to the fact that the accident took place only due to rash and negligent driving of the lorry by the petitioner.

10.Both the Courts below have elaborately dealt with the evidence available on record and have rightly come to be conclusion that the accident took place only due to the rash and negligent driving of the lorry by the petitioner. This Court does not find any illegality, perversity or infirmity in the orders passed by both the Courts below. This Court does not find any ground to interfere with the order of the conviction passed by the Courts below.

11.Insofar as the sentence is concerned, the Trial Court has imposed a sentence of six months Simple Imprisonment to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for six months. Taking into consideration the facts of the case and also the grounds raised by the learned counsel for the petitioner to consider reducing the sentence, this Court deems it fit to modify the sentence imposed by the Trial Court. Accordingly, the imprisonment is modified from six months with a period already undergone. However, this is a fit case where this Court in exercise of its jurisdiction under Section 357 (4) of Cr.P.C must make the petitioner pay some compensation. The petitioner is directed to deposit a compensation amount of Rs.15,000/- [Rupees Fifteen Thousand Only] in C.C.No.319 of 2005 on the file of the Judicial Magistrate No.II, Nagapattinam and the learned Magistrate No.II is directed to ensure the deposit of compensation by the petitioner failing which he has to undergo the default sentence.

12.In the result the Criminal Revision is partly allowed by modifying the sentence to the extent indicated above.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Kp

To

- 1.The Sessions Court,
Sessions Judge,
Nagapattinam.
 - 2.The Judicial Magistrate No.II,
Judicial Magistrate Court,
Nagapattinam.
 - 3.The Inspector of Police,
Velipalayam Police Station,
Nagapattinam.
 - 4.The Public Prosecutor,
High Court, Madras.
 5. The Chief Judicial Magistrate, Nagapattinam (for
information)
 6. The Court of Sessions Judge, Nagapattinam.
 7. The Superintendent Central Prison, Trichy.
- + 1 cc to MR.D. Selvaraju, Advocate Sr.42652

Cr1.R.C.No.343 of 2011

BVA(CO)
EU(19/07/2018)

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