

Bail Slip

Cr1.RC.No.431/2011.

The accused namely Sengottaiyan, aged 41 years, S/o.Karuppanan Gounder, was ordered to be released on bail wide order dated 29.03.2011 made in MP 1 of 2011 in CRL.RC No.431 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Cr1.R.C.No.431 of 2011

Sengottaiyan ... Petitioner /Appellant/Accused

Vs

State by the Inspector of Police,
Tiruchengode Town Police Station,
Crime No.733 of 2005
Namakkal District.

... Respondent/Respondent/Complainant

Criminal Revision Case filed under Section 401 Cr.P.C. against the conviction imposed in the judgement dated 18.02.2011 made in C.A.no.73 of 2009 on the file of the Principal Sessions Court, Namakkal confirming the conviction imposed in the judgement dated 25.08.2009 made in C.C.No.685 of 2005 on the file of the Judicial Magistrate, Tiruchengode sentencing him to undergo six months simple imprisonment along with fine of Rs.1000/- in default to undergo one month simple imprisonment each count for the offence under section 304-A IPC (2 counts).

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Ravichandran,
Government Advocate

O R D E R

Aggrieved over the conviction imposed in the judgement dated 18.02.2011 made in C.A.No.73 of 2009 on the file of the Principal Sessions Court, Namakkal confirming the conviction imposed in the judgement dated 25.08.2009 made in C.C.No.685 of 2005 on the file of the Judicial Magistrate, Tiruchengode sentencing him to undergo six months simple imprisonment along with fine of Rs.1000/- in default to undergo one month simple imprisonment, for each count, for the offence under section 304-A IPC (2 counts), the present revision has been filed.

2. Brief facts of the prosecution case is as follows :

On 01.11.2005, at about 8.00 p.m., the deceased, namely, Rajkumar and Hemanth came to P.W.1's house in eve of Deepavali. Thereafter, they left P.W.1's house at about 8.00 p.m towards Erode in a motor cycle bearing registration No.TN 33 AA 7900 P.W.1 also followed them in another motor cycle. At that time, the accused had driven TN 28 S 2170 Mahendra Van in a rash and negligent manner from Erode towards Tiruchengode and dashed against the two wheeler driven by the deceased Rajkumar. As a result, both Rajkumar and Hemanth were thrown out and sustained serious injuries and both of them succumbed to the injuries later. Therefore, P.W.1 lodged Ex.P.1 report with P.W.8.

3. P.W.8, on receipt of the report from P.W.1, registered a crime in the First Information Report under Ex.P.4. P.W.2 to 4 also heard about the occurrence. In fact, P.W.3 came to the spot and found the injured lying in the place of occurrence. P.W.7 and 9 Doctors conducted autopsy over the dead body of the deceased Rajkumar and Hemanth and had opined that their death was due to the injuries sustained by them in the accident and in respect of which the postmortem certificates Ex.P.3 and Ex.P.5 have been given. P.W.10, the Motor Vehicle Inspector has also examined the vehicle and issued Ex.P.6 report to the effect that there was no technical fault in the vehicle driven by the accused. P.W.11, the Investigation Officer examined the witnesses and recorded the statement of witnesses and filed charge sheet against the accused for the offences under sections 279 and 304(A) (2 counts) IPC.

4. The learned trial Court has, based on the materials adduced by the prosecution, found the accused guilty under section 279 and 304(A) (2 counts) IPC. However, imposed conviction for the offence under section 304(A) (2 counts) IPC six months and fine of Rs.1000/- with default sentence as against each count and no separate sentence or fine has been imposed for the offence under section 279 IPC. The appeal filed

before the District Judge was dismissed and the sentence imposed by the trial Court was confirmed. As against which, the present revision has been filed.

5. The learned counsel for the petitioner submitted that except P.W.1, there is no other witness with regard to the occurrence. P.W.1's evidence is also highly doubtful about his presence at the relevant time. The nature of the vehicle is also not established by the prosecution. The FIR is also given belatedly, on the next day morning and the delay is also not explained properly. Further, the evidence of P.W.1 and P.W.2 and the Medical officer, who treated the injured at the first instance shows that the an unknown vehicle has hit the two wheeler in which both the deceased traveled. Hence, submitted that the prosecution has not at all proved the guilt of the accused beyond all reasonable doubts.

6. The learned Government Advocate submitted that P.W.1, who is a relative of the deceased has clearly spoken about the accident. In fact, he has stated that the van was driven in a rash and negligent manner as a result of which the accident took place and P.W.2 also reached the place of occurrence immediately and the prosecution has proved guilt of the accused beyond all reasonable doubts and there is no infirmity or irregularity in the judgments of the Court below.

7. The prosecution though produced 11 witnesses, only P.W.1 has been treated as an eye witness. P.W.1 is a relative of both the deceased, namely Rajkumar and Hemanth. In his evidence, he has stated that on 01.11.2005, on deepavali day, both the deceased came in a motor cycle bearing registration No.TN 33 AA 7900 to his house and thereafter, they left the house and P.W.1 also followed them in another motor cycle. When the deceased were going towards Erode in their motorcycle at about 8.00 p.m., the accused had driven the mini van, bearing registration No.TN 28 S 2170, in a rash and negligent manner and caused the accident.

8. P.W.1 claims to be an eye witness. This Court is unable to rely upon his evidence for the simple reason that there is no material whatsoever available on record to indicate that he was present in the place of occurrence immediately after the occurrence. P.W.1 is a close relative of the deceased. His conduct would have been otherwise. If really he was present in the place of occurrence, his immediate action will be to rush to the hospital along with the injured. The evidence of D.W.1 and D.W.2 shows that P.W.1 was not present at the time of occurrence. Apart from that, the evidence of P.W.3 also clearly reveals that only after the accident, when the injured were lying on the road, P.W.1 came to the spot. This fact makes P.W.1 evidence unreliable.

9. Further, the place of occurrence has also not been properly spoken by P.W.1. When the vehicles are flying in a straightway, and a person coming behind giving minute details about the accident is highly artificial in nature. Hence, I am of the view that the evidence of P.W.1 alone is not sufficient to bring home the guilt of the accused beyond all reasonable doubt.

10. The evidence of D.W.1 and D.W.2 and statement given before them, when the injured were admitted in the hospital, they have only stated that an unknown vehicle hit the vehicle of the deceased. Hence, the conviction cannot be passed merely on the basis of such evidence.

11. It is also to be noted that the presence of P.W.1 is highly doubtful in view of the delay in lodging the FIR. The FIR has been lodged only on the next day morning. When there is no legal evidence, the prosecution cannot succeed on such evidence. In view of all these facts, the conviction and sentence of the trial Court and the appellate Court are liable to be set aside.

11. Accordingly, the conviction and sentence imposed on the petitioner by the courts below are set aside. The Criminal Revision Case is allowed. The bail bond, if any, executed by the petitioner shall stand cancelled. Fine amount, if any paid by the petitioner, is ordered to be refunded.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate,
Tiruchengode.
3. The Chief Judicial Magistrate,
Namakkal(For information)
4. The Superintendent,
Central Prison, Salem.

5 The Inspector of Police,
Tiruchengode Town Police Station,
Namakkal District.

6. The Public Prosecutor,
Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.5166

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SDR 05.02.2018



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