

Bail Slip

The Petitioner/Accused namely P.Krishnan be and hereby was directed to be released on bail vide Court Order dated 07/04/2011 in M.P.No.1/11 in CrI.R.C.No.482 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HON'BLE Mr. JUSTICE N.ANAND VENKATESH

CrI.R.C.No.482 of 2011

P.Krishnan

...Petitioner

-vs-

State by Inspector of Police
Mechery Police Station
Salem District.
(Cr.No.283 of 2008)

... Respondent

Prayer: Criminal Revision Petition under Sections 397 r/w 401 Cr.P.C., to call for the records in C.A.No.149 of 2010 on the file of the learned Additional Sessions Judge (Fast Track Court No.I) at Salem, confirming the judgment and order dated 15.09.2010 of the Judicial Magistrate No.II, Mettur Dam in C.C.No.131 of 2008 examine the same set aside the judgment and order dated 10.02.2011 in C.A.No.149 of 2010 confirming the judgment and order dated 15.09.2010 of the Judicial Magistrate No.II, Mettur Dam, in C.C.No.131 of 2008 and acquit the petitioner.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mrs.S.Thankira
Government Advocate (CrI.side)

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O R D E R

This Criminal Revision Petition has been filed aggrieved by the order passed in C.A.No.149 of 2010 by the Additional District and Sessions Judge, Salem, dated 10.02.2011, confirming the order of conviction and sentence passed by the Trial Court.

2. The case of the prosecution in brief is as follows:-

On 29.05.2008 at about 9.30 a.m., the petitioner drove the bus bearing No.TN-30-U-5665 in a rash and negligent manner and near Sengattur Privu Road bus stop, hit the deceased Kandasamy, who was waiting at the bus stop, which caused him fatal injuries.

3. Based on the complaint given by PW1, the First Information Report was registered for the offences under Sections 279 and 304(A) of IPC. After investigation, the respondent/Police filed the final report and the Trial Court took cognizance of the same and framed charges against the petitioner for the offences under Sections 279 and 304(A) IPC. The prosecution has examined P.W.1 to P.W.11 and has marked EXs.P1 to P8 documents and also marked M.O.1 and M.O.2, in order to substantiate the case. On behalf of the accused, neither any document was marked nor any witness was examined.

4. The Trial Court, on examining the oral and documentary evidence and also considering the facts and circumstances of the case, came to a conclusion that the petitioner drove the vehicle in a rash and negligent manner and caused the death of the deceased Kandasamy. The trial Court convicted the petitioner under both the offences. Insofar as, the offence under Section 279 of IPC is concerned, it imposed the sentence of Rs.500/- fine and in default to undergo four weeks Simple Imprisonment and insofar as, the offence under Section 304(A) of IPC is concerned the trial Court, imposed the sentence of one year Simple Imprisonment with a fine of Rs.2,000/- and in default to undergo six months Simple Imprisonment.

5. The petitioner, aggrieved by the said order has filed an appeal before the learned Additional District and Sessions Court, Salem. The Appellate Court, on appreciation of the materials placed before it, came to the conclusion that the prosecution has proved the case beyond any reasonable doubt and by an order dated 10.02.2011, confirmed the order of conviction and sentence passed by the trial Court.

6. The learned counsel for the petitioner submitted that there is absolutely no evidence to connect the petitioner with the alleged accident. The learned counsel brought to the notice of this Court, the evidence of the eye witnesses namely, PW1, PW2 and PW5 and submitted that even these eye witnesses have spoken only about the accident and they did not even whisper about the person who drove the vehicle. The learned counsel for the petitioner further contended that both the Courts below have

relied on Ex.P3, the report of the Motor Vehicle Inspector and Ex.P7 which is the trip-sheet and have come to the conclusion that it is the petitioner, who drove the vehicle, on the fateful day. The learned counsel further contended that the Motor Vehicle Inspector in his report, at the best would have only spoken about the vehicle involved in the accident and there was no way, he can speak about the person who drove the vehicle. Insofar as, the trip-sheet is concerned, the learned counsel for the petitioner submitted that the trip-sheet marked was a loose trip-sheet and under the provisions of the Motor Vehicles Act, it is supposed to be maintained as a book. Therefore, both the Courts below should not have relied upon the trip-sheet. On this ground, the learned counsel for the petitioner would submit that the order of both the Courts below are liable to be set aside.

7. Per contra, the learned Government Advocate (Crl.Side) would submit that, at no point of time, the petitioner had denied about the fact that he was the driver of the vehicle on the fateful day. Ex.P7 which is the trip-sheet clearly shows that it was the petitioner, who drove the vehicle, at the time when the accident took place. The learned counsel further contended that both the Courts below have properly appreciated the oral and documentary evidence and have come to the conclusion that the petitioner has committed the offence and there is no illegality or perversity in the findings of both the Courts below and therefore, there is no ground to interfere with those findings in exercise of revisional jurisdiction by this Court.

8. This Court has carefully considered the materials available on record and also the submissions made on either side. The fact that the accident took place on 29.05.2008 and it took place due to the rash and negligent driving of the bus, by the driver in which an innocent man standing in a bus stand got crushed and died on the spot, are all sufficiently proved by the evidence available on record. The only issue that needs to be considered in this Revision is as to whether both the Courts below have come to correct conclusion with regard to the fact that whether the petitioner was the driver of the bus at the time when the accident occurred.

9. It is true that the evidence of the eye witnesses namely, PW1, PW2 and PW5 does not state anything about the person, who drove the vehicle at the time when the accident took place. Their evidence can be taken into account only for the purpose of substantiating the manner in which the vehicle was driven and the manner in which it dashed and dragged the deceased Kandasamy and caused his death.

10. This Court is of the considered opinion that even Ex.P3 which is the report of the Motor Vehicle Inspector, cannot speak about the person who drove the vehicle at the particular point of time, since a Motor Vehicle Inspector comes into the picture only after the accident and his job is to assess the vehicle and the damages that have happened after the accident.

11. Therefore, the only evidence that is left for this Court is Ex.P7. Ex.P7 is a trip sheet that is maintained by the owner namely, Shanmuga Bus Service. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the State of Kerala Vs. Thomas, reported in (1986) 2 SCC 411 (Criminal Side) wherein, it reads as follows:-

"5. The important corroborative evidence that was sought to be relied upon by the prosecution was the trip-sheets (which we are informed are in the nature of log-books) produced on record showing the movement of the taxi from place to place, distance travelled and the consumption of petrol, etc. But unfortunately, the trip sheets themselves are not free from doubt because they are in loose sheets and not in any bound book which ordinarily an owner of the taxi is supposed to maintain. The High Court was unable to rely upon these trip-sheets as corroborative evidence.

12. In the case before the Hon'ble Supreme Court of India, the case rested upon the circumstantial evidence and extra Judicial confession given by a taxi driver. For the purpose of extra Judicial confession, the loose trip-sheet that were maintained by the taxi driver, was sought to be relied upon. The trip-sheet recorded the movement of the taxi from place to place, distance travelled and the consumption of petrol, etc., and it was maintained by the taxi driver which, under normal circumstances, is supposed to be maintained in a bound book by the owner of the taxi. The Hon'ble Supreme Court applied the regular test of being circumspect about the evidence of an accomplice and refused to believe the extra Judicial confession of the taxi driver and in the course of doing so, the loose trip-sheet was not believed. In the instant case, the trip-sheet that was marked before the Court as Ex.P7 shows the name of the driver, name of the Conductor, the licence number of both the driver and conductor, the batch number of both the driver and conductor, the route in which the bus was taken and the time at which the bus was started from the destination. The mode or manner in which the trip sheet has been maintained as per the

Rules 258 of the Motor Vehicles Act is for the purpose of compliance with the said Act and the non-compliance of the said Rules by itself will not make this trip sheet inadmissible in evidence. The petitioner has not at any point of time denied about driving the vehicle. He does not even deny that he is the driver, who is working for the bus Company. Even when he was questioned under Section 313 of Criminal Procedure Code, no plausible explanation was given by the petitioner.

13. If really the petitioner was not the driver of the vehicle, he could have summoned the owner of the bus Company or the conductor whose name is shown in the trip-sheet and could have established the fact that he was not the driver of the vehicle at the time when the accident took place. On the basis of the trip-sheet that is available on record, without proper explanation, on the part of the petitioner, necessarily, this Court has to come to the conclusion that, it is the petitioner who drove the vehicle at the time when the accident took place.

14. Both the Courts below have properly appreciated the evidence that was available insofar as the identity of the petitioner is concerned. Therefore, this Court does not find any Illegality or infirmity in the findings of both the Courts below with regard to the fact that the petitioner was the one who drove the vehicle in a rash and negligent manner and dashed against the deceased. Therefore, this Court does not have any hesitation in confirming the order of conviction passed by both the Courts below.

15. Insofar as the sentence is concerned, the incident has taken place in the year 2008 and already the petitioner is more than 50 years. Taking into consideration the passage of time, the Simple Imprisonment of one year shall stand modified to one of period already undergone, insofar as offence under Section 304 A is concerned. In exercise of the power conferred under Section 357(4) of Criminal Procedure Code, this Court deems it fit to direct the petitioner to pay compensation. A compensation of Rs.20,000/- should be deposited by the petitioner before the Trial Court, within a period of four weeks from the date of receipt of a copy of this order, in default, the petitioner shall undergo six months simple Imprisonment. On such deposit, being made the Trial Court is directed to issue notice to the family members of the victim and permit them to withdraw the compensation deposited by the petitioner. This Court does not interfere with the sentence insofar as the offence under Section 279 IPC is concerned.

16. This Criminal Revision Petition is partly allowed by modifying, the sentence to the extent indicated above.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Sessions Judge,
Fast Track Court-I, Salem.

2.The Judicial Magistrate-II,
Metturdam.

3.The Chief Judicial Magistrate,
Salem.

4.The Inspector of Police
Mechery Police Station
Salem District.
(Cr.No.283 of 2008)

5.The Superintendent,
Central Prison, Coimbatore.

6.The Public Prosecutor,
High Court, Madras.

7.The Section Officer,
Criminal Section,
High Court, Madras.

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srg 20/07/2018