

Bail Slip

That the Appellant/Accused viz Bhagavathi, S/o.Chinnathambi was directed to be released on bail as per order dated 20/04/2011 made in M.P 1/11 in CrI.Rc.No.612/11 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

CrI.R.C.No. 612 of 2011

Bagavathi ... Petitioner

Vs.

State by
The Inspector of Police,
T-15, S.R.M.C. Police Station,
Porur, Chennai.
(Crime No. 1528 of 2007)

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. Praying to set aside the conviction and sentence confirmed by the learned Principal District and Sessions Judge in C.A.No. 9 of 2011 order dated 18.04.2011 confirming the judgment and sentence passed by the learned Judicial Magistrate No.I, Poonamallee in C.C.No.247 of 2009 order dated 07.02.2011.

For Petitioner : Mr.Kalaiselvan
for Mr. A.P. Sathyamurthy

For Respondent : Mrs.T.P.Savitha,
Government Advocate (CrI.Side)

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O R D E R

Aggrieved over the judgment passed by the learned Principal District and Sessions Judge in C.A.No. 9 of 2011 dated 18.04.2011, the petitioner who is the accused in the said case has filed this Revision to call for the records pertaining to the said Criminal Appeal and to set aside the punishment awarded to this petitioner.

The case of the prosecution is as follows;

2. On 30.10.2007 at about 7.00 am at Poonamallee Mount Road near Venkateshwara Hemeopathy Hospital, the petiitoner/accused namely Bagavathi, drove a Mini Van Swaraj Mastha bearing registration No.TN22-D-4914 in a rash and negligent manner and hit against the deceased Radhakrishnan who was waiting for crossing the road with his two wheeler bearing registration No. TN10-M-4736. Due to the alleged accident the said Radhakrishnan sustained multiple fractures and died on the spot itslef.

3. Further one Aswini, who was accompanying with the deceased at the time of the accident got hip fracture and also sustained injuries. After hearing about the accident one Nagarajan, who is relative of the deceased had lodged a complaint before the respondent police and a case has been registered in Crime No. 1528 of 2007 for the offences punishable under Sections 279, 338 & 304(A) of IPC on 30.10.2007. After completing the investigation, a charge sheet has been filed before the Judicial Magistrate No.I, Poonamallee for the offences mentioned in the FIR. The learned Judicial Magistrate No.I, Poonamallee after taking cognizance, had examined 11 witnesses on the side of the prosecution and marked 10 documents as Exhibits P1 to P10 and on conclusion of the trial, it was decided that the petitioner found guilty for the offences punishable under Sections 338, 304(A) and 279 of IPC and awarded punishment as follows;

U/s. 338 IPC	Imposed a fine amount of Rs.1000/- in default to under to one month simple imprisonment
U/s. 304(A) IPC	Sentenced him to under to one year rigorous imprisonment and fine of Rs.1000/- in default, one month simple imprisonment
U/s. 279 IPC	No separate imprisonment for this Section

4. Aggrieved over the said judgment, the present petitioner has filed a criminal appeal before the Principal District and Sessions Court, Thiruvallur, which was taken on file as C.A. 9 of 2011 and on completion of enquiry, the learned Principal District and Sessions Judge, Thiruvallur had dismissed the said appeal by confirming the order of the learned Judicial Magistrate No.I, Poonamallee made in C.C.No.247 of 2008, dated 07.02.2011, against which the petitioner has preferred this Revision Petition.

5. Heard Mr.Kalaiselvan, learned counsel appearing for the petitioner and Mrs.T.P.Savitha, learned Government Advocate (Crl.Side) appearing on behalf of the respondent.

6. The arguments made by the counsel appearing for the petitioner is that both the courts below have not considered the aspect that no witnesses have been identified the present petitioner at the time of trial. More over, he submitted that the present petitioner is falsely implicated in this case and he has not committed any offence as alleged in the prosecution case.

7. On the other hand, the learned Government Advocate would submit that as per the evidence of PW2, the present petitioner was identified by the prosecution witness, thereby the submissions made by the petitioner's counsel is not substantiable one.

8. Now on going through the judgment of the lower court, it appears that before awarding conviction, 11 witnesses were examined on the side of the prosecution, in which PW 5 to 11 are the official witnesses, who have not seen the alleged accident. PWs 5 and 6 are the doctors attached to the S.R.M.C Hospital who gave evidence with regard to the injuries sustained by Aswini (PW2) as well as with regard to the death of the deceased. The other witnesses PW.8 and 10 are the Motor Vehicle Inspectors, who speaks about the suitability of the vehicles involved in the alleged accident bearing registration nos. TN22-D-4914 (Mini Van Swaraj Mastha) and TN10-M-4736(two wheeler of the deceased). According to the report given by the Motor Vehicle Inspector, the accident was not occurred due to the mechanical defect of both the vehicles. The remaining witnesses PWs 7,9 and 11 are the police officials, who registered the case and laid the charge sheet against this petitioner.

9. In the said circumstances, PW1 to PW4 alone are the available eye witnesses for proving the case of prosecution. In the evidence given by the PW1, he clearly mentioned in the chief examination that only after hearing the news about the accident, he came and lodged the complaint before the respondent police. On the other hand, the daughter of the deceased (PW2), who accompanied with the deceased at the time of the accident, deposed in her evidence that she has not seen the accused. The other witnesses examined on the side of the prosecution namely PW3 and PW4, have not stated anything about the alleged occurrence and they merely gave evidence with regard to the preparation of observation mahazar and rough sketch. Thereby, on going through the evidence recorded by the trial Court, it appears that none of the witnesses have identified the accused

at the time of trial. The trial Court as well as the lower appellate Court, without seeing these aspects, found the petitioner guilty of the offences. Hence, the arguments advanced by the counsel for the petitioner are substantiated.

In the result, the Criminal Revision Petition is allowed. The conviction and sentence awarded by the learned Judicial Magistrate No.I, Poonamallee in C.C. No.247 of 2009 dated 07.02.2011, as confirmed by the learned Principal District and Sessions Judge, Tiruvallur in Crl.Appl. No. 9 of 2011 dated 07.02.2011, are set aside. If any fine amount is paid by the Revision Petitioner, it should be refunded to the revision petitioner.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,
Tiruvallur.

2.The Judicial Magistrate No.1,
Poonamallee.

3.-do- The Chief Judicial Magistrate,
Thiruvallur.

4.The Supeintendent,
Central Prison,
Puzhal.

5. The Inspector of Police,
T-15, S.R.M.C. Police Station,
Porur, Chennai.

6. The Public Prosecutor
High Court, Madras.

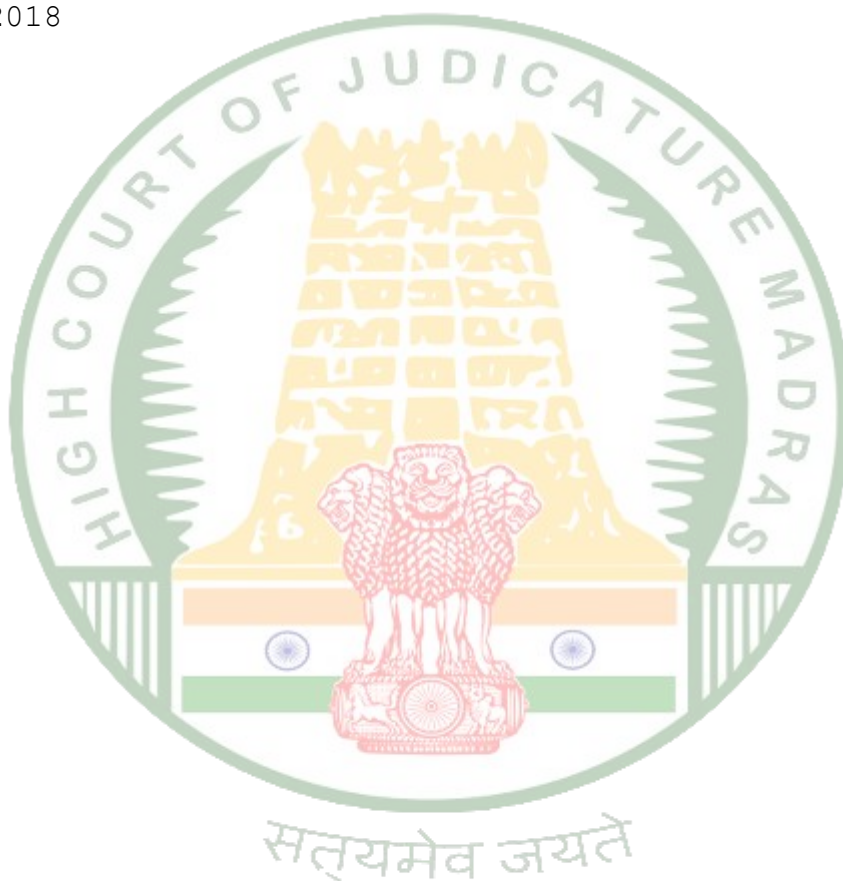
7.The Chief Judicial Magistrate,
Thiruvallur.

Copy to:

The Section Officer,
Current Section,
High Court, Madras.

Cr1.R.C.No. 612 of 2011

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nr 04/06/2018



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