

Bail Slip

The Appellant/Accused namely Thirupathy aged about 50 yrs s/o Sellappa Gounder, was directed to be released on bail by the order of this Court in MP No.1 of 2013 in CrI.R.C.No.228 of 2013 dated 25/02/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.228 of 2013

Thirupathy

...Petitioner/Accused

Vs.

The State represented by the Inspector of Police,
Pudhuchatram Police Station,
Namakkal District.
(Crime No.370 of 2009)

...Respondent/complainant

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the judgment of conviction dated 21.12.2012 made in C.A.No.45 of 2012 by the learned Principal Sessions Judge, Namakkal, confirming the judgment dated 04.09.2012 made in C.C.No.170 of 2009 by the learned Judicial Magistrate II, Namakkal.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.R.Ravichandran
Govt. Advocate (CrI.Side)

ORDER

The criminal revision has been filed against judgment dated 21.12.2012 made in C.A.No.45 of 2012 by the learned Principal Sessions Judge, Namakkal, confirming the judgment dated 04.09.2012 made in C.C.No.170 of 2009 by the learned Judicial Magistrate II, Namakkal.

2 A case was registered against the petitioner/accused in Crime No.370/2009 by the Inspector of Police, Puduchatram Police

Station, under Sections 279 and 304(A) IPC. After investigation, the Inspector of Police/P.W.11 had filed a final report before the learned Judicial Magistrate, Namakkal, which was taken on file in C.C.No.170 of 2009.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.11 were examined and Ex.P1 to Ex.P8 were marked and on the side of the accused, D.W.1 was examined and no document was marked. No material object was produced by prosecution. The learned Magistrate, after trial found the accused guilty under Sections 279 and 304 (A) and convicted him and imposed fine of Rs.500/-, in default, to undergo simple imprisonment for a period of two weeks, for the offence under Section 279 IPC and sentenced him to undergo three months rigorous imprisonment with fine of Rs.4,500/-, in default, to undergo simple imprisonment for a period of four weeks, for the offence under Section 304 (A) IPC, by judgment dated 04.09.2012. Aggrieved against the same, the accused preferred an appeal in C.A.No.45 of 2012 before the learned Principal Sessions Judge, Namakkal. The lower appellate Court, after hearing the arguments advanced by the counsel on either side, by judgment dated 21.12.2012, dismissed the appeal and confirmed the conviction and sentence passed by the learned Magistrate.

4 Assailing the judgment dated 21.12.2012, made by the lower appellate Court, the accused has preferred this present criminal revision before this Court.

5 Case of the prosecution is that on 29.07.2009, when the deceased Ganesan was riding TVS 50 XL Super bearing Reg.No.TN 28 Q 7857, proceeding from south to north, a lorry bearing Reg.No.TN 28 AE 2578, which was coming from wrong side at high speed, had dashed against the two wheeler and caused accident. The deceased Ganesan sustained grievous injuries and died. P.W.2 has lodged a complaint before the Inspector of Police, Puduchatiram Police Station and a case was registered in Crime.No.370/2009.

6 The learned counsel for the petitioner would submit that P.W.2 who gave complaint, and said to have been an eye witness to the occurrence, in evidence, had clearly stated that he did not see the occurrence and only after hearing noise, he turned that side and seen the deceased sustained grievous injuries and was struggling for his survival. None of the witness had seen the occurrence, and all the witnesses are interested witnesses, no independent witness was examined. Further at the time of occurrence, since road works were going on, all the vehicles are diverted at one side, and the deceased only came at high speed and caused accident. There was delay in

registering FIR and submitting the same before the Court and the said delay was not properly explained by the prosecution. Both the Courts below had failed to consider the above facts, and erroneously convicted the accused, which warrants interference.

7 The learned Government Advocate (Crl.Side) would submit that P.W.2 had clearly stated about the occurrence and the evidence of P.W.2 to P.W.11 and Exs.P1 to P8 would clearly show that the accident had occurred only due to the rash and negligent driving of the accused only. The accused only came at high speed in wrong side and caused accident. Hence both the Courts below had rightly come to the conclusion that the accused found guilty of offence punishable under Sections 279 and 304 (A) IPC. None of the witness had corroborated the version of the accused.

8 Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

9 On a perusal of the evidence of P.W.2, said to have been eye witness to the occurrence, it reveal that he did not see the occurrence, only after hearing noise, he turned that side, where, the deceased sustained grievous injuries and was struggling for his survival. This Court is of the view that prosecution had failed to prove its case beyond reasonable doubt. Both the Courts below had failed to consider the above fact. It is well settled proposition of law that in criminal case, benefits of doubts will always be extend to the accused only and the prosecution is bound to prove its case beyond reasonable doubt in the manner known to law. It is well settled proposition of law that any amount of suspicion may not take place of proof.

10 In the result, the criminal revision is allowed and conviction and sentence imposed by the lower appellate Court in C.A.No.45 of 2012 by judgment dated 21.12.2012 is hereby set aside. Bail bond, if any, shall stand cancelled and fine amount if any deposited by the accused shall be refunded to him.

sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

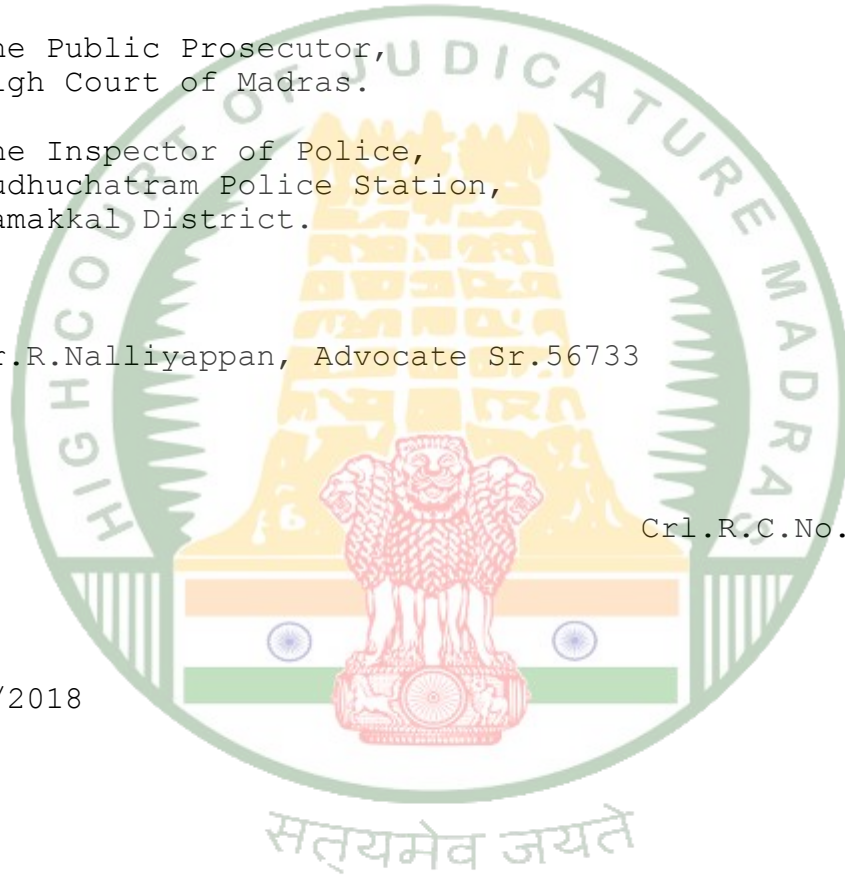
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To

1. The Principal Sessions Judge,
Namakkal.
2. The Chief Judicial Magistrate,
Namakkal.
3. The Judicial Magistrate II,
Namakkal.
4. The Public Prosecutor,
High Court of Madras.
5. The Inspector of Police,
Pudhuchatram Police Station,
Namakkal District.

+1cc to Mr.R.Nalliyappan, Advocate Sr.56733

Cr1.R.C.No.228 of 2013

srg 15/10/2018



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