

BAIL SLIP

The Accused/ Appellant Luthfulash alias Surya S/o. Sherief Aleem was enlarged on bail in MP.No.1/2013 in Crl.R.C.No. 250/2013 dated 7.2.2013 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.250 of 2013

and

M.P.No.1 of 2013

Luthfulash alias Surya

Vs.

...Petitioner

The State,
Rep. By Inspector of Police,
Kadambarai Police Station,
Valparai.

... Respondent

Prayer: The Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure to call for the records relating to the Judgment of Conviction and Sentence dated 03.01.2013 in Criminal Appeal No.226 of 2011 on the file of the Learned IV Additional District and Sessions Judge, Coimbatore confirming the Judgment of Conviction and Sentence dated 28.09.2011 in C.C.No.19 of 2008 on the file of the Learned District cum Judicial Magistrate, Valparai and set aside the same.

For Petitioner : Mr.T. Panchatsaram

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl side)

O R D E R

This Criminal Revision has been filed against the order dated 03.01.2013 in Criminal Appeal No.226 of 2011 on the file of the learned IV Additional District and Sessions Judge, Coimbatore.

2. The case of the prosecution is that the petitioner has driven the van bearing Registration No.TN 33 C 3330 in a hill area, on 20.02.2008 at 4.30 p.m. At that time, the petitioner drove the vehicle in a rash and negligent manner near the

Attakatty Hair Pin Bend. He lost his control, as a result of which, by hitting the road side barricade wall, the vehicle fell into a ditch, resulting in death of two persons on the spot and causing grievous injury to others. PW1 has preferred a complaint before the Inspector of Police, Kadambarai Police Station, Valpari in Crime No.4 of 2008, who visited the hospital in which P.W.1 was admitted. The Inspector recorded the statement from P.W.1, P.W.19 and P.W.20 and registered a case for offence under Section 279, 337 and 304(A) of IPC. The respondent police took up the case for further investigation and after completing the investigation, filed a final report for offence under section 279, 337 (16 counts) and 338 (2 counts) and 304(A) of IPC before the learned Judicial Magistrate, Valpari. The learned Magistrate took the case on file in C.C.No.19/2008. After completing trial, the learned Magistrate convicted the accused for offence under Sections 279, 337, 338 and 304(A) of IPC and sentenced him to undergo simple imprisonment for one month for alleged offence under Section 279 IPC and one month simple imprisonment for each count for offence under Section 337 IPC (16 months) and two months simple imprisonment for each count for offence under Section 337 IPC (two counts), and three months simple imprisonment for each count for offence under section 304 (A) IPC (2 counts) and to pay a fine of Rs.1000/- on each count, in default, one month simple imprisonment.

3. Against the judgment of the learned Judicial Magistrate, Valpari, dated 28.09.2011, the appellant preferred an appeal before the learned District and Sessions Judge, Coimbatore in C.A.No.226 of 2011. The learned Sessions Judge has taken the case on file in C.A.No.226 of 2011 and in turn made it over the appeal to learned IV Additional District and Sessions Judge, Coimbatore. After giving opportunity to both sides, the learned Sessions Judge dismissed the appeal and confirmed the judgment of conviction and sentence passed by the trial Court.

4. Against the said judgment of the learned IV Additional District and Sessions Judge, Coimbatore, dated 03.01.2013 in C.A.No.226 of 2011, the appellant has filed the present revision before this Court.

5. The learned counsel for the petitioner would submit that accident was not due to the negligent driving of the appellant. It was due to mechanical defect while passing a hair pin bend, the vehicle hit on the road side barricade wall. After 1 hour 45 minutes of the accident, the motor vehicle inspector used a printed form and he has not yet specifically stated that the accident was due to mechanical defect. The witnesses have not also specifically stated that accident was due to rash and negligent driving of the appellant. Both the Courts below have failed to consider the evidence of the Motor Vehicle Inspector

and also oral and documentary evidence and mechanically convicted the appellant.

6. The learned Government Advocate (Crl.Side) would submit that due to rash and negligent driving of the driver of the van namely Luthfulash alias Surya, the accident has happened. Due to the accident, two persons, who were passengers in the said vehicle, had died. 16 persons were injured and passengers who traveled in the vehicle are the eyewitness and they clearly spoken about the manner of the accident. The topo-sketch itself shows that it was a hilly area. The appellant has not driven the vehicle in a rash and negligent manner and caused accident. The prosecution has proved the case beyond any reasonable doubt and there is no perversity in the judgment of the Courts below. There is no reason to interfere with the order of the Courts below.

7. Heard the learned counsel appearing for petitioner and the learned Government Advocate (Crl.Side) appearing for respondent police and perused the records placed before this Court.

8. On a perusal of the records, it is seen that P.W.1, who was also one of the passenger of the van, at that time of the accident, has given a complaint. In the complaint, he has spoken about the accident and all the witnesses have spoken about the incident. P.W.8, P.W.15, P.W.17 and P.W.22 are the injured persons in the accident. The date of the accident and the driver who drove the vehicle at the time of accident are not disputed. The witnesses have clearly spoken that the accident was due to rash and negligent driving of the appellant and the other material evidence also shows that the accident was caused by the appellant due to reckless driving. Both the courts have categorically discussed these aspects and found the appellant guilty of offence under sections 279, 337, 338 and 304(A) and convicted and sentenced him to undergo simple imprisonment for one month for alleged offence under Section 279 IPC and one month simple imprisonment for each count for offence under Section 337 IPC (16 months) and two months simple imprisonment for each count for offence under Section 338 IPC (two counts), and three months simple imprisonment for each count for offence under section 304(A) IPC (2 counts) and to pay a fine of Rs.1000/- on each count, in default, one month simple imprisonment.

9. In view of the above, this Court cannot interfere with the well considered judgment of the Court below. There is no perversity or illegality in the order passed by the Courts below. The evidence clearly shows that the accused/appellant has committed the offence under Sections 279, 337, 338 and 304(A).

Therefore, the Criminal Revision Case fails and is dismissed. Consequently, connected miscellaneous petition is closed.

10. As regards the sentence, this court is of the view that ends of justice would be made by reducing the sentence imposed for offense under Section 304 A of IPC from three months rigorous imprisonment to two months rigorous imprisonment. The sentence is confirmed in respect of other offences. With these modification in sentence, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District and Sessions Judge, Coimbatore.
2. The Chief Judicial Magistrate, Coimbatore (For information)
3. The District cum Judicial Magistrate , Valparai.
4. The Inspector of Police, Kadambarai Police Station, Valparai.
5. The Public Prosecutor, High Court of Madras.

+1cc to Mr.Panchatsaram, Advocate, SR. No. 59641.

Copy To:

The Section Officer,
Criminal Records Section,
Highcourt, Madras.

CrI.R.C.No.250 of 2013 and
M.P.No.1 of 2013

SVN (CO)

rrs (15/10/2018)