

Bail Slip.

The Petitioner/Accused namely Elamparuthi, S/o Elumalai was directed to be released on bail as per the order of this court dated 26.03.2013 in CrI.M.P. 1 & 2/2013 in CrI.R.C.No.407 of 2013 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision No.407 of 2013

Elamparuthi ... Petitioner/Accused

Vs

State by
The Inspector of Police,
Katpadi Police Station,
Crime No.280 of 2006. ...
Respondent/Complainant

Prayer:- Criminal Revision filed under Sections 397 r/w 401 Cr.P.C., to call for the records of the learned Judicial Magistrate, Katpadi in C.C.No.415 of 2009 and confirmed in appeal by the learned I Additional District and Sessions Judge, Vellore in C.A.No.217 of 2010, set aside the judgment dated 13.02.2013 and to allow the revision petition.

For Petitioner : Mr.S.Aroon
M/s.T.S.Gopalan and Co.

For Respondent : Mr.R.Ravichandran,
Govt. Advocate

(Criminal side)

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O R D E R

The present criminal revision has been filed against the order dated 13.02.2013 passed in C.A.No.217 of 2010 by the learned Additional District and Sessions Judge, Vellore, set aside the same and to allow the revision petition.

The accused stood charged for the offence under Sections 337, 338 and 304(A) IPC in C.C.No.415 of 2009 . The trial

Court, by judgment dated 01.09.2009, convicted the petitioner for the offence under Section 337 IPC and directed him to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month, for the offence under Section 338 IPC and directed him to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month and for the offence under Section 304(A) IPC directed him to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months

Challenging the above, the present criminal revision has been filed by the petitioner.

2.The facts leading to prefer this revision are as follows :-

(i)On 16.02.2006 at 5.30 p.m on Vallimalai Katpadi Road, the accused being the driver of Share Auto Rickshaw bearing Registration No.TN 23 J 1212 drove the vehicle in a rash and negligent manner and got capsized after hitting against the child viz., Hari @ Hariharan, aged 2 years, who was standing in front of the grocery shop, due to which, the child caught at the bottom of the auto rickshaw and sustained crush injuries and on the way to hospital, the child passed away. The person who travelled in the Auto Rickshaw viz., Ranjitham sustained simple injuries and another person Kumaresan sustained grievous injuries. Hence, the Inspector of Police, Katpadi Police Station filed final report against the accused under Sections 279, 337, 338 and 304(A) IPC before the learned Judicial Magistrate, Katpadi.

(ii)The learned Judicial Magistrate has taken the charge sheet on file in C.C.No.415 of 2009. The learned Magistrate after perusing the materials available on record and after hearing the arguments advanced by the learned counsel for both sides, convicted and sentenced the accused by the judgment dated 26.08.2010 as stated supra. Aggrieved by the same, the accused filed an appeal in Criminal Appeal No.217 of 2010 on the file of the learned I Additional District and Sessions Judge, Vellore. The appellate Court after hearing both sides, dismissed the appeal by judgment dated 13.02.2013.

(iii)Aggrieved by the judgment dated 13.02.2013, the petitioner has filed the present revision petition before this Court.

3.The learned counsel for the petitioner submitted that the accused while driving autorickshaw, a child viz., Hariharan, aged 2 years, who was standing along with his uncle, suddenly ran across the road. The driver, who was riding his auto carefully and slowly, in order to avoid to dash against the child, suddenly put the brake, due to which, the auto got capsized and hit the child. Therefore, the petitioner is not responsible for the accident.

4.The learned counsel for the petitioner further added that accident register has not been marked in this case. Moreover, accident has happened on 16.02.2006 at 5.30 p.m. But, complaint has been given only on 17.02.2006 at 9.00 a.m. with a lapse of 16 hours.

5.The learned counsel for the petitioner further submitted that the accident had happened due to negligence and carelessness in taking care of the relative of the child and there is no negligence on the part of the auto driver. Moreover, no eye witness has been examined to prove the case of the prosecution and it has not proved the case beyond the reasonable doubt against the petitioner by corroborating the witnesses with any other witness. The Courts below, without taking into consideration the fact that the deceased child suddenly ran across the road, erroneously came to the conclusion that the accident took place with the rash and negligent driving of the vehicle and convicted the petitioner. Hence, the petitioner has to be acquitted from this case.

6.The learned Government Advocate (Crl.Side) appearing for the respondent/police submitted that the petitioner drove the auto in a rash and negligent manner and hit against the child, due to which, the child sustained grievous injuries and died. The persons, who travelled in the auto as passengers have also sustained injuries and they were examined as witnesses. Both the Courts below, rightly held that if the petitioner rode the vehicle carefully, he should have avoided the accident. Therefore, there is no need to interfere with the order passed by the trial Court, which was confirmed by the first appellate Court.

7.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) and perused the materials available on record carefully.

8.According to the arguments advanced by the learned counsel for the appellant, the accident had happened due to the negligent aspect of the person, who has taken care of the child. In order to avoid dashing against the child, the petitioner, suddenly applied the brake, but the auto got capsized and hit the child.

9.P.W.1 and P.W.2, who were the eye witnesses to the occurrence have spoken about the accident that the auto came with high speed and after hitting the child, the auto got capsized. Therefore, the child and the passengers, who were travelled in the auto sustained simple injuries and the child

succumbed to grievous injuries. So, from the evidence of P.W.1 and P.W.2, it is clear that the accident had happened due to the rash and negligent driving of the auto driver.

10. On a perusal of records and the witnesses, it is seen that the driver of the auto drove the vehicle with high speed and in a rash and negligent manner, due to which, the auto hit the child, in which, the child and the passengers, who travelled in the auto have sustained injuries and the child died.

11. In such circumstances, the trial Court, after considering the entire evidence, has rightly convicted the accused and sentenced him as stated above and the same was rightly confirmed by the first appellate Court and I find no illegality or irregularity or perversity in the judgment of the trial Court and there is no reason to interfere with the order passed by both the Courts below.

12. Since the first appellate Court is a fact finding Court, which recorded the reasons for its finding as to whether the petitioner has committed offence under Sections 337, 338 and 304(A) IPC while exercising its power, this Court cannot sit in the armchair of the appellate Court and re-appreciate the evidence let in by the parties.

In the result, the Criminal revision petition fails and the same is dismissed. The order passed by the Courts below are confirmed. The conviction and sentence imposed on the appellant under the judgment dated 26.08.2010 passed in C.C.No.415 of 2009 on the file of the learned I Additional District and Sessions Judge, Vellore, is confirmed. The trial Court is directed to secure the accused and send him to jail for serving the remaining period of sentence if any. The sentence already undergone, if any, by the accused shall be set off under Section 428 Cr.P.C.

सत्यमेव जयते
s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The I Additional District and
Sessions Judge,
Vellore.

2. The Judicial Magistrate,
Katpadi.

3. The Chief Judicial Magistrate, Vellore.

4 The Inspector of Police
Katpadi Police Station
Katpadi.

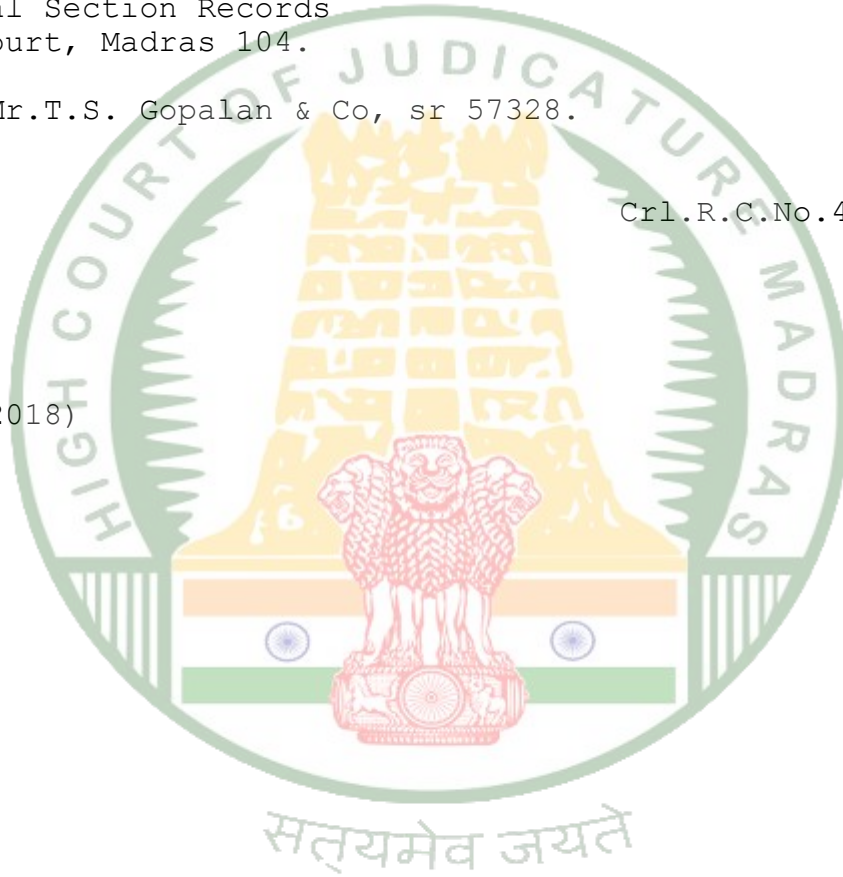
5.The Public Prosecutor,
High Court, Madras.

6. The Section officer
Criminal Section Records
High Court, Madras 104.

+1 CC to Mr.T.S. Gopalan & Co, sr 57328.

Crl.R.C.No.407 of 2013

BR(CO)
SP(15/11/2018)



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