

BAIL SLIP

The Petitioner/Accused viz., Suresh, S/o.Selvaraj, Sole Accused in CC.No. 42/2010 dated 18/05/2011 on the file of the chief Judicial Magistrate, Cuddalore was directed to be released on bail as per order of this court dated 28/03/2013 made in CrI.M.P.No.1 of 2013 in CrI.R.C.No. 428 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.08.2018

Coram:

The Honourable Mr.Justice P.Velmurugan

CrI.R.C.No.428 of 2013

Suresh

... Petitioner

/versus/

State rep.by
Station House Officer,
Reddichavadi Police Station,
Cuddalore District.
(Crime No.189/2007)

... Respondent

Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code praying to set aside the judgment dated 18.01.2013 passed in C.A.No.42 of 2011 by the Principal Sessions Judge, Cuddalore Division, Cuddalore confirming the conviction and sentence rendered by the Chief Judicial Magistrate, Cuddalore for an offence punishable under Section 304(A) of IPC by its judgment in C.C.No.42 of 2010 dated 18.05.2011.

For Petitioner :Mr.R.Bharath Kumar

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

O R D E R

Criminal Revision Case is filed praying to set aside the judgment dated 18.01.2013 passed in C.A.No.42 of 2011 by the Principal Sessions Judge, Cuddalore Division, Cuddalore confirming the conviction and sentence rendered by the Chief

Judicial Magistrate, Cuddalore in C.C.No.42 of 2010 dated 18.05.2011.

2. The brief facts of the case is that on 19.09.2007 at about 16.45 hours the deceased Venkatnarayanan went in his motor cycle bearing Reg.No.PY-01-AK 4431 from Pondicheery to Cuddalore. While he was going near Periyakattupalayam, the petitioner herein drove the Arivazhagan bus bearing Reg.No.PY-01-N-5999 in a rash and negligent manner and dashed against the motorcyclist Venkatnarayanan and caused the accident, due to which he sustained grievous injuries and died on the way to the hospital. Hence, one Selvakumar, who is working in the Reserve Battalion of Pondicherry police has lodged a complaint.

3. After the investigation, the prosecution has filed the charge-sheet against the revision petitioner for the offences under Sections 279 and 304 (A) IPC before the learned Magistrate and the same was taken on file by the learned Judicial Magistrate in C.C.No. 42 of 2010.

4.To prove the case of the prosecution, 8 witnesses were examined as PW-1 to PW-8 and 8 documents were marked as Exs.P1 to P8. After considering the oral and documentary evidence, the learned Magistrate has found the accused guilty and convicted and sentenced the accused to undergo RI for 7 months and to pay a fine of Rs.2000/- in default to undergo one month SI. Feeling aggrieved against the conviction and sentence, the petitioner herein had filed the Criminal Appeal in C.A.No.42 of 2011 before the Principal Sessions Judge, Cuddalor Division, Cuddalore and the same was dismissed confirming the judgment of the trial Court. Aggrieved against the judgment of the first appellant Court, the revision petitioner has come before this Court by way of filing this criminal revision.

5. The learned counsel appearing for the petitioner would submit that the occurrence took place on 19.09.2007 at about 04.45 p.m. But, the First Information Report was registered only at 08.00 p.m, and there was a delay in registering the case. PW-1 and PW-2, who were actually shown as eye witnesses to this case, had not seen the occurrence. Whereas PW-1 & PW-2 have clearly stated that the occurrence took place on the curve road and the driver of the Arivazhagan bus came in the opposite direction in a rash and negligent manner and dashed against the motorcycle of the deceased, due to which, he died. But, in Ex.P7-Rough Sketch, there is no curve road. But, the trial Court has failed to consider all these aspects. The Trial Court found the accused guilty and convicted him and sentenced as stated above.

6.The learned Government Advocate(crl.side) would submit

that PW-1 and PW-2 have clearly spoken about the occurrence and the prosecution has proved the case beyond reasonable doubt and the appellate Court has rightly dismissed the appeal confirming the judgment of the trial Court, which does not warrant any interference from this Court.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(crl.side) appearing for the respondent and perused the materials available on record.

8. It is the case of the prosecution that on 19.09.2007 at about 04.45 p.m., the deceased Venkatnarayanan went in his motor cycle bearing Reg.No.PY-01-AK 4431 from Pondicheery to Cuddalore. While he was going near Periyakattupalayam, the petitioner herein drove the Arivazhagan bus bearing Reg.No.PY-01-N-5999 in a rash and negligent manner and dashed against the said motorcycle and caused the accident, due to which the said Venkatnarayanan sustained grievous injuries and died on the way to the hospital. Hence, one of the passer-bys viz., one Selvakumar, who is working in the Reserve Battalion of Pondicherry Police, has lodged the complaint.

9. From perusal of the records, it is seen that though the occurrence took place on 19.09.2007 at about 04.45 p.m. but the First Information Report was registered at 08.00 p.m. on 19.09.2007. There was a delay in registering the First Information Report and the prosecution did not explain as to the delay in registering the First Information Report. Further, though PW-1 has stated that there was a curve in the occurrence place and the petitioner had driven the bus in a rash and negligent manner and dashed against the motor cycle ridden by the victim, on perusal of Ex.P7-Rough Sketch of the place of occurrence, it is seen that there was no curve. Except PW-1 and PW-2, who are working as constables in the Police Department at Pondicherry, in which the deceased was also working as superior officer to PW-1 & PW-2, the other witnesses viz., PW-3 and PW-4 clearly stated that they have seen neither the accused nor bus number. Further, the prosecution has not examined any independent witness to establish the case of the prosecution.

10. Admittedly, the alleged vehicle involved in the accident was the bus and the prosecution has not examined any of the passenger travelled in the bus to establish the case of the prosecution. In order to get compensation the prosecution has set up the case. Therefore, the prosecution has not proved the case beyond reasonable doubt that the accused had committed the offence under Sections 279 and 304(A) of IPC. Under such circumstance, this Court is inclined to allow the Criminal Revision Case.

11. In the result, the Criminal Revision Case is allowed and the conviction and sentence imposed by the trial Court in C.C.No.42 of 2010 dated 18.05.2011, which was confirmed by the

first appellant court, is hereby set aside. The petitioner is directed to be released forthwith if his presence is not required in connection with any other case. Bail bond if any executed by the petitioner shall be cancelled. Fine amount, if any paid by the petitioner, shall be refunded to him.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge, Cuddalore
 - 2.The Chief Judicial Magistrate, Cuddalore.
 - 3.The Station House Officer,
Reddichavadi Police Station,
Cuddalore District.
 - 4.The Public Prosecutor,
High Court, Madras.
 5. The Officer in Charge,
Sub Jail, Cuddalore.
- +1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 57164

Cr1.R.C.No.428 of 2013

GP(CO)
GN(14/11/2018)

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