

Bail Slip

Om Shakthi S/o.Pazhani accused in C.c.253/2010 on the file of the Judicial Magistrate No.II, Kanchipuram and in C.A.7 of 2012 on the file of the Sessions Judge, District Sessions Court No.II, Kanchipuram was enlarged on Bail vide this court order dt.11/01/13 in M.P.1 of 2013 in CrI.R.C.No.63/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.63 of 2013

Om Shakthi

...Petitioner

Vs

State Rep.by
Sub-Inspector of Police,
Walajabad Police Station,
Kanchipuram District.

...Respondent

PRAYER: Criminal Revision filed under Section 397 of Criminal Procedure Code, against the judgment dated 30.11.2012 made in CA.No.7 of 12 on the file of the Sessions Judge, District Sessions Court No.II, Kanchipuram, confirming the judgment dated 13.02.2012 made in CC.No.253 of 2010, on the file of the learned Judicial Magistrate No.II, Kanchipuram.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Ravichandran
Government Advocate(crl side)

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O R D E R

The case of the prosecution is that the deceased was riding the vehicle T.V.S.Max and the accused was riding motor cycle which came in the opposite direction in a rash and negligent manner and hit against the T.V.S which was riding by the deceased and caused the accident. At the time, P.W.2 rider of the vehicle in which the accused was riding, P.W.4 was the

pillion rider in which the vehicle was ridden by the deceased. Then after the accident, the deceased died. Despite, the accused and P.W.2 sustained injuries and they admitted in the hospital.

2.After the investigation, the respondent filed charge sheet against the accused and the same was taken on file in C.C.No.253 of 2010. In order to prove the case before the Magistrate, during the trial, as many as 14 witnesses were examined as P.W.1 to P.W.14 and 14 documents were marked as Ex.P1 to Ex.P14. After considering the materials, the Magistrate convicted the accused under Section 304A.

3.Against the judgment of conviction, the criminal appeal was filed in C.A.No.7/2012 on the file of the learned Sessions Judge, District Sessions Court No.II, Kanchipuram. After hearing both sides the learned Sessions Judge, found the appellant is guilty and confirmed the judgment of the learned Judicial Magistrate No.II, Kanchipuram. Against which, the convict is before this Court with the present revision case.

4.The main contention of the learned counsel for the petitioner is that the accident had happened due to rash and negligent riding of the deceased himself. P.W.2 was the pillion rider of the vehicle in which the accused was riding and he has clearly stated in his evidence that the accused riding the motor bike at the time of accident and then the deceased only has dashed against him. Further, P.W.1 is not the eye witness, he one who has given information to the police and brother of the deceased. P.W.4 is not the eye witness but assuming that as per prosecution, he has not stated that the accused was riding the vehicle in a rash and negligent manner and dashed against the vehicle which was riding by the deceased. Therefore, in the absence of the same, the Court cannot presume that the accused rode the vehicle in a rash and negligent manner and also placed reliance on the judgments of the Hon'ble Supreme Court and this Court which are as follows:-

i) (1998) 8 Supreme Court Cases 493 (State of Karnataka Vs. Satish)

ii) (2000) 7 Supreme Court Cases 72 (Mohammed Aynuddin Alias Miyam Vs State of A.P.) and

iii) (2012) 4 MLJ (Cr1) 485 (Mohan Doss Vs. State)

iv) 2011(1) MWN (Cr.) 74 (Nachimuthu Vs. State)

Therefore, both the Courts below failed to consider the factual as well as legal aspects, convicted the accused on the sympathy grounds of the deceased. Therefore, it warrants interference.

5.The learned Government Advocate (Crl.side) would submit that P.W.4 is the eye witness who was the pillion rider of the vehicle in which the deceased was riding, he has clearly spoken about the involvement of the accused. In this case P.W.2

and accused went to the hospital and they admitted for treatment. In 313 proceedings, the appellant has clearly denied the accident and also denied the riding of the vehicle and he also further stated that he did not know about the accident. Whereas, P.W.2 has stated that the accused was riding the vehicle in which he was pillion rider. Therefore, considering the evidence of P.W.2, the written statement given by the accused in 313 proceedings and the evidence of P.W.1 and P.W.4. The Courts below have held that prosecution has proved the case beyond reasonable doubt. Therefore, no reason to interfere with the judgment of Lower Appellate Court.

6.Heard both sides and perused the records.

7.It is the case of the prosecution, admittedly P.W.4 was the pillion rider of the vehicle in which the deceased was riding. Evidence of P.W.1 also stated that he is the brother of the deceased and P.W.4 informed about the accident and therefore, he preferred a complaint before the respondent police. P.W.4 is the pillion rider of the said vehicle, he has clearly stated that the deceased was riding the vehicle, he was travelling in the vehicle as pillion rider and the petitioner was riding the bike with speed and dashed against the vehicle of the deceased in which P.W.2 also pillion rider. Further, P.W.2 has stated in his evidence that immediately soon after the accident, he has become unconscious. Therefore, he was taken to the hospital. The copy of the Accident Register was marked as Ex.P7. Under these circumstances, the Court below has considered the evidence of P.W.1 and P.W.4 and petitioner was found guilty. This Court cannot exercise the power of appellate Court and re-appreciate the entire evidence. This Court as revision Court, in the revision only to find out the perversity in the judgment passed by both the Courts below in appreciation of evidence.

8.Therefore, on reading of the judgments of both the Courts below, and also reading of the oral and documentary evidence, there is no perversity in the judgments passed by both the Courts below. Therefore, there is no need to interfere with the judgments of both the Courts below. The revision is liable to be dismissed and there is no merit in the revision.

9.The citation referred to by the learned counsel for the petitioner is not applicable to the present case on hand. Therefore, as already stated, this Court does not find any perversity in the judgment passed by the Lower Appellate Court. Therefore, revision is dismissed.

10.Modifying the quantum of sentence alone, instead of 6 months 3 months which will meet ends of justice.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Judicial Magistrate No.II,
Kanchipuram.

2. The Sub-Inspector of Police,
Walajabad Police Station,
Kanchipuram District.

3.The Sessions Judge,
District Sessions Court No.II,
Kanchipuram.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate sr.59046

सत्यमेव जयते

Cr1.R.C.No.63 of 2013

ss(co)
nr 23/09/2019

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