

BAIL SLIP

The Petitioner / Accused namely Krishnamoorthy, S/o.Palaniappan, was directed to release on bail vide order dated 30.04.2013 made in CrI.M.P.No.1 & 3 of 2013 in CrI.R.C.No.640 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.640 of 2013
& M.P.No.2 and 3 of 2013

Krishnamoorthy
S/o.Palaniappan ...Petitioner / Accused

Vs.

State by the Inspector of Police
Kavundapadi Police Station,
Crime No.2 of 2011
Erode District. ...Respondent / Complainant

This Criminal Revision Case filed under Section 397 and 401 of Code of Criminal Procedure to call for the records relating to the conviction imposed in the Judgment dated 25.02.2013 made in C.A.No.188 of 2012 on the file of the Principal Sessions Court, Erode confirming the conviction imposed in the Judgment dated 17.11.2012 made in C.C.No.56 of 2011 on the file of the Judicial Magistrate, No.II, Gobichettipalayam and set aside the same.

For Petitioner : Mr.N.Manokaran

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

O R D E R

The Criminal Revision Case has been filed by the revision petitioner, challenging the conviction and sentence passed by the learned Principal Sessions Judge, Erode in C.A.No.188 of 2012 dated 25.02.2013.

2. The case of the prosecution is that the deceased is the wife of P.W.1. On 01.01.2011, P.W.1 and the deceased were proceeding in a TVS 50 moped at 7.15 am. The deceased was sitting as pillion rider in the moped. At about 7.15 am, at Kannadipudur, the accused was driving the bus belonging to Infra Tex in a rash and negligent manner, came from behind and over took the moped and as a result, the body of the bus touched the TVS 50 and as a result, P.W.1 and the deceased fell down and the pillion rider, the wife of P.W.1 died on the spot.

3. Immediately, P.W.1 was taken to hospital where the police obtained the statement Ex.P.1 from P.W.1. P.W.2 is the sister of P.W.1. She has also rushed to the hospital immediately after hearing the accident. P.W.3 is the father of the deceased, also rushed to the hospital on hearing the accident. P.W.5 is the mother of deceased, who also rushed to the hospital. P.W.6 on seeing the deceased and P.W.1, were injured on the backside of the bus, he telephoned to the ambulance and sent them to hospital. P.W.7 is working in Infra Tex and on the date of occurrence, the bus has not came to the company and at the relevant time, he made enquiry and came to know that the bus met with an accident. P.W.11 is the resident of Kannadipudur and in front of his house, the accident took place. According to him, at about 7.30 am, on 01.01.2011, the accused drove the bus in a rash and negligent manner and dashed against the TVS moped which was coming from east to west and the back tyre of the bus ran over the body of the deceased and immediately he also informed to the ambulance and sent the injured and the deceased body to the hospital.

4. P.W.12 the Medical Officer attached to Government Hospital, Erode conducted autopsy over the dead body of the deceased and found abrasions over both shoulders and abrasion on the right Thigh and knee and also fractures on the pelvis and ribs 1 to 18 and issued Ex.P.4 postmortem certificate stating that the deceased died due to the injuries, shock and hemorrhage. On the same day, he treated P.W.1 who was brought to the hospital in an ambulance, who has stated before him that while he was travelling in the motor cycle, the bus dashed against him and he found abrasion on the right knee and tenderness all over his body. He has admitted him in the hospital. But the patient himself discharged from the hospital and therefore he could not give his opinion as to the nature of injuries. Ex.P.10 is the accident register.

5. P.W.14, the Sub Inspector of Police on 01.01.2011 after obtaining the intimation from the Government Hospital, she went

to the hospital and examined P.W.1 and recorded his statement. Thereafter, she came to the police station and registered the case in Crime No.2 of 2011, under Sections 279, 337 and 304(A) IPC under Ex.P.7 FIR. She sent the FIR and the complaint to the Court and copies to the Inspector of Police.

6. P.W.15, the Inspector of Police, at the relevant time, took up the case for investigation, went to the place of occurrence at 12.30 pm and prepared the observation mahazar, Ex.P.9 in the presence of P.W.9 Senthil and Karuppusamy. The signature of P.W.10 in the observation mahazar is Ex.P.3. He has also drawn the rough sketch Ex.P.8. Thereafter, he went to hospital and examined P.W.1 and recorded his statement. Thereafter, he conducted inquest over the dead body of the deceased and prepared Ex.P.9 inquest report. Thereafter, he examined the witnesses and recorded their statements. He gave requisition to the Medical Officer to conduct the postmortem. Thereafter, on 04.01.2011, he arrested the accused and sent him to Judicial custody. He sent the vehicle to the Motor Vehicles' Inspector for inspection. P.W.13 inspected the bus on 03.01.2011 and issued Ex.P.5 stating that there was no mechanical failure in the bus. Similarly, he has also inspected TVS 50 moped and found the bend in cross bars and damage in right side pedal and issued Ex.P.6 stating that there was no mechanical failure in the above vehicle. P.W.15 in continuation of his investigation, examined the Motor Vehicles' Inspector and the Medical Officer and finally, laid the charge sheet against the accused under Sections 279, 338 and 304 (A) IPC.

7. Incriminating evidences were put before the accused and he denied the same. No oral evidence and exhibits were marked on the side of the accused.

8. The learned Judicial Magistrate on the basis of the available evidence and materials, convicted the accused under Section 279 IPC and sentenced to pay a fine of Rs.1,000/- in default to undergo S.I for one week and also convicted under Section 337 IPC and sentenced to pay a fine of Rs.500/- in default to undergo S.I for one week and also convicted him under Section 304(A) IPC and sentenced to undergo R.I for one year.

9. Aggrieved against the same, the accused/revision petitioner preferred the Criminal Appeal before the learned Principal Sessions Judge, Erode in C.A.No.188 of 2012. After hearing both sides, the learned Principal Sessions Judge, Erode dismissed the Criminal Appeal and confirmed the conviction and

sentence imposed by the learned Judicial magistrate No.II, Gobichettipalayam in C.C.No.56 of 2011 dated 17.11.2012.

10. Against the Judgment of the learned Principal Sessions Judge, Erode in C.A.No.188 of 2012 dated 25.02.2013, the revision petitioner is before this Court with this Criminal Revision Case.

11. The learned counsel appearing for the revision petitioner would submit that the prosecution has failed to prove the rash and negligent act of the revision petitioner/accused. The only eye witnesses P.W.1 and 11 never whispered anything about the rash and negligent driving of the bus by the revision petitioner/accused. The evidence of P.W.1 clearly show that there was no damage to the two wheeler. This fact clearly indicate that there was no accident as alleged by P.W.1. The above fact clearly indicate that P.W.1 himself has stumbled due to road condition and fell down. P.W.1 has also admitted that there were stones stacked in the road and the road also narrow one and he fell due to the road condition. Further, the road is full of pit and fall and therefore, driving the vehicle in high speed is highly improbable. P.W.11 also admitted that the crushing stones stacked in the road on the both sides and there was no damage found in the bus. The evidence of P.W.8 and 10 in fact supported the case of the accused. The observation mahazar clearly indicate that the road is narrow one.

12. In support of his contention he placed reliance on the following Judgments (i) State of Karnataka Vs. Satish reported in (1998) 8 SCC 493, (ii) Mohammed Aynuddin Vs. State of Andra Pradesh reported in (2000) 7 SCC 72 and this Court Judgment in the case M.Subramani Vs. State of Tamil Nadu. Hence the order passed by the learned Principal Sessions Judge, Erode in C.A.No.188 of 2012 dated 25.02.2013, is not on proper appreciation of evidence and law.

13. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the evidence of P.W.1 and 11 clearly indicate that the accused was driving the bus and he drove the bus by touching the body of the pillion rider and the TVS 50, as a result and due to such impact, the TVS 50 fell down and the bus ran over the deceased. Driving the bus in such rash and negligent manner and going very close to the body of the pillion rider and hitting the rider of the vehicle clearly expose the rash and negligent act of the accused. If the accused has maintained some distance with the

two wheeler, he could have avoided the accident. Going very close to the two wheeler and over taking the two wheeler in such close manner and caused the accident, the accused had knowledge about the causing of death and bodily injury. Therefore, it is submitted that the prosecution has proved the guilt beyond all reasonable doubt. Hence he prayed for dismissal of the appeal.

14. Heard both sides and perused the materials available on record.

15. It is not in dispute, that driving of the bus by the revision petitioner/accused at the relevant point of time. The only contention of the revision petitioner/accused is that in the road, there were crushing stones heaped on either side. P.W.1 was driving the two wheeler. While he came to the middle portion of the road, he lost his balance and fell down and as a result, the deceased had contact with the back wheel of the bus and died. Hence he was not responsible for the rash and negligent of the driving of the bus.

16. In this regard, the prosecution has examined as many as 14 witnesses P.W's.1 to 11 and out of which P.W.1 and 11 are eye witnesses to the accident. P.W.1 is the husband of the deceased. When driving the TVS 50 in the place of occurrence he met with an accident. In his evidence he has stated that while he was proceeding in his TVS 50 along with his wife, the bus was driven by the accused in high speed and the bus intact while over taking the TVS 50 touched two wheeler and due to such impact, the two wheeler fell down and his wife died on this spot. P.W.11 one Rajendran who is residing in the place of occurrence in his evidence has stated that the bus dashed against the deceased and the back tyre of the bus ran over the deceased. P.W.6 though not fully supported the version of the prosecution, his evidence clearly indicate that the deceased died out of the accident only. P.W.7 turned hostile and not supported the case of the prosecution in any manner. P.W.8 and 10 also turned hostile. But the fact remains that the bus was driven by the accused at the relevant time which is also not in dispute.

17. The very suggestion made by the defence counsel that to P.W.14 the investigation Officer clearly indicate that the back wheel of the bus ran over the deceased. The evidence of Medical Officer clearly indicate that the ribs of the deceased have been completely fractured and pelvis also fractured. Though there was no crush injuries on the body of the deceased, even a tip of

the tyre touching the human body at the spot, it would have cause such heavy impact. The above nature of injuries and the suggestion put by the accused clearly indicate that the back wheel in fact touched the body of the deceased. The evidence of P.W.1 and 11 when carefully perused, they have clearly spoken that the bus came from behind and only while overtaking the two wheeler going ahead of the bus, the body of the bus touched the two wheeler and as a result, the two wheeler fell on the road and the deceased fell down and at the time she succumbed to the injuries.

18. Though the evidence of the P.W.11 and the mahazar witnesses show that the road is also full of pit and fall and narrow road, driving the bus in such a manner and overtaking the two wheeler going ahead of the bus without maintaining any distance is nothing but reckless driving on the part of the accused. Further, if the accused had maintained reasonable distance, from the two wheeler in the road, which is full of pot holes heaped with stones, he could have avoided the accident. On the contrary, he drove the vehicle very close to the two wheeler which was going ahead of bus and the body of the bus touched the pillion rider and as a result, the body of the bus in the middle portion touched the two wheeler and the pillion rider. The above driving is nothing but reckless act of the bus driver. Therefore, this Court is of the opinion that the prosecution has clearly established the rash and negligent driving of the revision petitioner/accused.

19. Further, the conviction and sentence passed by the learned Principal Sessions Judge, Erode in C.A.No.188 of 2012 dated 25.02.2013, are confirmed. However, this Court is inclined to modify the conviction from one year to three months for the offence under Section 304(A) I.P.C., which will meet the ends of justice.

20. Accordingly, under Section 304 (A) IPC, the sentence of one year R.I is modified to three months R.I. With the above modification, the Criminal Revision Case is dismissed. As far as other sentence for offences are unaltered. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

jer

To

1. The Principal Sessions Court,
Erode
 2. The Judicial Magistrate No.II,
Gobichettipalayam.
 3. The Chief Judicial Magistrate,
Erode.
 4. The Public Prosecutor, High Court of Madras.
 5. The Inspector of Police
Kavundapadi Police Station,
Erode District.
 6. The Section Officer,
Criminal Section, High Court, Madras.
- +1 cc to Mr.N.Manoharan, Advocate, S.R.No.65225

CrI.R.C.No.640 of 2013
& M.P.No.2 and 3 of 2013

RSI (CO)
SSM(13/08/2019)



WEB COPY