

Bail Slip

The Petitioner Accused namely Pazhani Kumar, S/o.Karuppaiah, was directed to released on bail vide order to this Court dated 08.05.2013 made in Crl.MP.No.1/13 in Crl RC No.657/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.657 of 2013

Pazhani Kumar, S/o.Karuppaiah ...Petitioner/Accused

Vs.

The State Rep. by its,
Inspector of Police
Katpadi Police Station
Vellore District.
Cr.No.1162/2008.

...Respondent/Complainant

Prayer:The Criminal Revision Case filed under Section 397 and 401 of Code of Criminal Procedure to call for the records on the file of the learned 1st Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.No.70/2011 dated 02.03.2013 and confirming the Judgment and sentence passed in C.C.No.140 of 2009 on the file of the learned Judicial Magistrate, Katpadi, Vellore District dated 21.02.2011 and set aside the Judgment dated 02.03.2013.

For Petitioner : Mr.E.Kannadasan

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

ORDER

The Criminal Revision Case has been filed by the revision petitioner to set aside the order passed by the learned 1st Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.No.70/2011 dated 02.03.2013 in confirming the Judgment and sentence passed in C.C.No.140 of 2009 on the file

of the learned Judicial Magistrate, Katpadi, Vellore District dated 21.02.2011.

2. On 31.08.2006, at about 5.00 am, near the village of Kizh Vadugankuttai, the accused/revision petitioner, being the driver of the Auto bearing Registration No.TN 04 Z 0139 driven the vehicle in a rash and negligent manner and dashed on the back side of the Lorry bearing Registration No.MDU 8875, which was standing on the left side of the road. Due to the hit, the passengers who traveled in the above said Auto namely Seethapathi, Punniya Murthy and Poovarasan died. Witness Sundarammal sustained simple injury and the witnesses Saritha and Ratna sustained grievous injury. Hence, the Inspector of Police, Katpadi Police Station filed Final Report against the accused under Sections 279, 337, 338 (2 counts) and 304 (A) of IPC.

3. The learned Judicial Magistrate, Katpadi after furnishing the copies of documents under Section 207 of Cr.P.C, questioned about the involvement of the accused/revision petitioner with the offences under Sections 279, 337, 338 and 304(A) of IPC, and the accused pleaded not guilty and claimed to be tried. To establish the said charges, on the side of the prosecution, as many as 15 witnesses, P.W's.1 to 15, and 13 documents, Ex's.P.1 to 13 were marked.

4. After completion of trial, the learned Judicial Magistrate, Katpadi, came to the conclusion, that the accused/revision petitioner is found guilty under Sections 279, 337, 338(2 counts) and 304(A) (3 counts) of IPC and convicted and sentenced the accused/revision petitioner to undergo (i) to pay a fine of Rs.500/- and in default to undergo Simple Imprisonment for one month for the offence under Section 337 of IPC, (ii) to pay a fine of Rs.500/- for each count and in default to undergo Simple Imprisonment for one month for each count for the offence under Section 338 of IPC, (iii) to undergo Simple Imprisonment for 2 years and to pay a fine of Rs.5,000/- and in default to undergo Simple Imprisonment for further period of six months for the offence under Section 304(A) (3 counts) of IPC. Fine not imposed for the offence under Section 279 of IPC in view of Section 71 of IPC.

5. Aggrieved against the order of the learned Judicial Magistrate, Katpadi in C.C.No.140 of 2009 dated 21.02.2011, the accused/revision petitioner has preferred the Criminal Appeal in CrI.A.No.70 of 2011 before the 1st Additional District and Sessions Judge, Vellore.

6. After giving due opportunity to both sides, the learned 1st Additional District and Sessions Judge, Vellore, confirmed the order of the learned Judicial Magistrate, Katpadi in

C.C.No.140 of 2009 dated 21.02.2011.

7. Against the Judgment of the learned 1st Additional District and Sessions Judge, Vellore, CrI.A.No.70/2011 dated 02.03.2013, the petitioner is before this Court with this Criminal Revision Case.

8. The case of the prosecution is that :

(i) the P.W.1 Saritha is the resident of Lathery Village. P.W.2 Ratna is the sister in law of P.W.1. The deceased Poovarasu was the 6 months baby of P.W.1, which died in the accident. On 31.08.2006, at about 5.00 am the P.W.1 and her child Poovarasu, P.W.2 Ratna and two other male members traveled in a Auto bearing Registration No.TN 04 Z 0139 from Lathery to Katpadi. The accused was the driver for the said auto. When the auto was proceeding after Vaduganthai hospital, the accused drove in a rash and negligent manner and dashed against the lorry which was standing. Due to the accident the child of P.W.1 and other two male persons died. P.W.1 and 2 sustained grievous injury. P.W.5 Sundarammal was also one of the passenger of the above said Auto. She sustained grievous injury in the accident. The injured persons took treatment in the hospital. P.W.5 gave statement of complaint, Ex.P.1, before the police narrating all the facts in the hospital. On the receipt of the Ex.P.1 statement of complaint, the P.W.15 the Inspector of Police, registered a case in Crime No.1162/06 under Sections 279, 337 and 304(A) IPC. He took the case for investigation, proceeded to the place of occurrence, prepared observation mahazar Ex.P.5 in the presence of P.W.7 and 8 and drew rough sketch Ex.P.12. He recorded the statements of the witnesses and conducted inquest on the dead body of the deceased Punniya Murthy, Seethapathy and Poovarasu and sent the bodies to post mortem. He examined the doctors who conducted the Post mortem on the body of the deceased persons and obtained post mortem certificates Ex's.P.1 to 3.

(ii) The Inspector of Police P.W.16 who took the case for further investigation enquired the M.V.Inspector P.W.9 who inspected the vehicles involved in the accident and obtained M.V. Reports Ex's.P.6 and 7 respectively. He examined the doctors who gave treatment to the injured and obtained would certificates Ex's.P.8 to 10. On completion of investigation, he filed final report against the accused under Section 279, 337, 338 and 304(A) of IPC.

9. The learned counsel for the revision petitioner/accused would submit that the trial Court has erred in convicting the revision petitioner on the basis of the interested, inconsistent, and uncorroborated testimony of the prosecution witnesses. The trial Court has failed to note the rash and negligent driving of the revision petitioner was not proved by

the prosecution and failed to note that the independent witnesses who are residing at the place of accident were not examined by the prosecution. The trial Court failed to note that the lorry which was proceeding in front of the auto was suddenly stopped without any signal and without following the traffic rules and it has resulted in the accident. The sentence imposed by the trial Court is too excessive.

10. Heard the counsel of either side and perused the materials available on record.

11. P.W.1 has stated in her evidence that on 31.08.2006 at 5.00 am, the revision petitioner/accused who driven the auto, hit the lorry which was standing on the road, as a result, her child and one other man died. P.W.2 also corroborates the evidence of P.W.1. P.W.2 confirms the child of P.W.1 and two other persons died in the accident. P.W.5 is one of the person who traveled in the auto driven by the accused. She also corroborates the evidence of P.W.1 and 2 and she was the person who has given Ex.P.4 complaint. On the basis of her complaint, Ex.P.11 FIR was registered by the police on 31.08.2006 at 08.30 am, against the revision petitioner/accused. P.W.6 is the driver of the lorry, stated in his evidence that on 31.08.2006 at about 5.00 am near the hospital of the Vadugankuttai, he parked his lorry. The auto came and hit on the rear side of his lorry. All these witnesses confirms that the vehicle was driven by the revision petitioner/accused in a rash and negligent manner. If the revision petitioner/accused drove the vehicle cautiously, he might not have dashed against the parked vehicle. The occurrence itself speaks that the appellant has driven the auto in a rash and negligent manner, as a result of which one child and 2 adults have died. Ex.P.1 to 3 post mortem certificates of those persons confirms that they have succumbed to death in the accident. Ex.P.12 rough sketch goes to show that the lorry was parked on the left side i.e., on the northern side of east west Gudiyatham to Katpadi road.

12. Ex.P.6 M.V.Report of lorry goes to show that the righten side of the mud guard of the lorry was damaged. Ex.P.7 M.V.Report of the auto bearing Registration No.TN 04 Z 0139 top roof damaged, front body damaged, front wind screen glass and frame damaged, plat form bent. P.W.9 M.V. Inspector has given opinion that the accident had not occurred due to the mechanical failure. P.W.7 and 8 are the attestors of the observation mahazar Ex.P.5. P.W.4 is the doctor who has conducted the post mortem on the dead body of the deceased Poovarasan. He performed the autopsy on the six months child. Ex.P.1 to 3 are the post mortem certificates goes to show that the persons have died due to the accidental injury. P.W.11 is the doctor who has given treatment on 31.08.2006 to P.W.1 and through him Ex.P.10

wound certificate is marked. P.W.10 is the doctor who has given treatment on 31.08.2006 to P.W.2 and P.W.5 and through him Ex.P.8 and 9 wound certificate were marked.

13. The defence taken by the revision petitioner/accused is that due to sudden break applied by the driver of the lorry, the accident has taken place which is unsustainable one. Even then the revision petitioner/accused has to apply break in order to prevent the accident. Therefore, the prosecution has proved the case beyond reasonable doubt against the accused. The learned 1st Additional District and Sessions Judge, Vellore, Vellore District has rightly confirmed the appeal in Crl.A.No.70/2011 dated 02.03.2013.

14. In the result, the Criminal Revision Case is dismissed, by confirming the Judgment of the learned 1st Additional District and Sessions Judge, Vellore, Vellore District, in Crl.A.No.70/2011 dated 02.03.2013 in respect of the sentence imposed for the offence under Sections 279, 337, 338 (2 counts) of IPC. In respect of the sentence imposed for the offence under Section 304(A) (3 counts) of IPC is modified that the revision petitioner/accused is convicted and sentenced to undergo Simple Imprisonment for one year for each count and to pay a fine of Rs.5000/- and in default to undergo Simple Imprisonment for further period of six months. Sentences shall run concurrently.

15. The learned 1st Additional District and Sessions Judge, Vellore, Vellore District, is directed to take steps to incarcerate the revision petitioner/accused so as to serve out the remaining period of sentence. Bail bonds if any executed by the accused shall stand cancelled.

Sd/-

Assistant Registrar(Insp.cell)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

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To

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

2. The Principal Sessions Judge, Vellore

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3. The Judicial Magistrate, Katpadi,
Vellore District
4. -do-'Through The Chief Judicial Magistrate,
Vellore District
5. The Public Prosecutor, High Court of Madras.
6. The Inspector of Police
Katpadi Police Station, Vellore District.
7. The Section Officer,
Crl.Section, High Court, Madras

+lcc to Mr.E.Kannadasan, Advocate SR.No.64900

Crl.R.C.No.657 of 2013

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



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