

Bail Slip

The Substantive sentence of imprisonment imposed on the Appellant/Accused viz Ponkalan, S/o.Pitchaimani alone was suspended as per the order of this Court dated 15.02.2013 made in MP(MD).No. 3 of 2013 in CRL.RC(MD).No.111 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C. (MD) No.111 of 2013

Ponkalan

...Petitioner/Sole Accused

Vs.

State by the Sub-Inspector of Police,
Kayathaur Police Station.
In Crime No.59 of 2008

...Respondent/Complainant

Prayer: Criminal Revision Case - filed under Section 397 r/w 401 of the Code of Criminal Procedure, 1973, to call for the records from the lower Courts and set aside the Judgment of the Appellate Court passed by the learned I Additional District and Sessions Judge, Thoothukudi in C.A.No.37 of 2012 dated 01.10.2012 confirming the judgment of the learned Judicial Magistrate No.2, Kovilpatti, in C.C.No.130 of 2008 on 11.06.2012 by allowing this revision.

For Petitioner: Mr.K.K.Sami

For Respondent: Mr.A.Robinson

Government Advocate (Crl. Side)

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent.

2. The facts of the case are as below:

<https://hcservices.ecourts.gov.in/hcservices/> On 09.03.2008, at about 11.00 p.m., a Van bearing Registration No.TN-72-Q-5832 was returning from Trichy, hit road



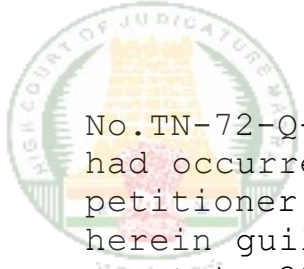
side tree, due to the rash and negligent driving of its driver, causing death of one Kumar and injury to 13 others, who have been examined as P.W.1 to P.W.12 and P.W.16. The medical certificate indicates that P.Ws.1,4,6,7,10,11,12 and 16 sustained simple injury and other five persons, P.Ws.2,3,5,8,9 sustained grievous hurt. To prove the case of the prosecution, 24 witnesses were examined and 23 exhibits were marked along with one Material Object (Broken Glass Pieces of the offended Van).

(ii) The trial Court, after considering the nature of the injury sustained by the victim passengers as well as their evidence coupled with wound certificates marked as Ex.P.2 to Ex.P.16 and the Post Mortem report of Kumar marked as Ex.P21, had convicted the accused / the driver of the Van for offences under Sections 279, 337 (8 counts), 338 (5 counts) and 304(A) IPC and sentenced him to undergo one month SI and to pay a fine of Rs.1,000/-, in default, to undergo 2 weeks SI for offence under Section 279 IPC, sentenced him to undergo two weeks SI and to pay a fine of Rs.500/-, in default, to undergo 1 week SI for offence under Section 337 IPC (8 counts), sentenced him to undergo one month SI and to pay a fine of Rs.1,000/-, in default to undergo 2 weeks for offence under Section 338 IPC (5 counts), and sentenced him to undergo two years SI and to pay a fine of Rs.5,000/-, in default, to undergo 3 months SI for offence under Section 304(A) IPC.

(iii) On appeal, the appellate Court set aside the conviction and sentence imposed on the appellant with regard to the offence under Section 338 IPC (5 counts) holding that the grievous injury caused to the five persons is not proved and converted the punishment into conviction under Section 337 IPC (5 counts) and reduced the sentence for a period of two weeks SI for each count and to pay a fine of Rs.500/- for each count, in default one week SI. Against which, the revision petitioner has preferred this criminal revision case on the ground that the Courts below have not taken note of the Motor Vehicle Inspectors' evidence, which probabalize that the accident might have been caused due to the cut in the steering joint and on the ground that P.W.3 and P.W.5 have not spoken about the rash and negligent driving of the accused / petitioner. He further submits that since the prosecution has failed to prove culpability of the accused, the judgment of conviction and sentence has to be set aside.

3. Perused the records and submissions made by the learned counsel appearing for the revision petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

4. The trial Court, while considering the death of Kumar, <https://hcservices.courts.gov.in/hcservices/> injuries to five persons and simple injuries to eight other persons, who travelled in the Van bearing Registration



No.TN-72-Q-5832 and also considering the fact whether the accident had occurred due to the rash and negligent driving of the revision petitioner herein, has found the accused / revision petitioner herein guilty and convicted for offence under Sections 279, 337 (8 counts), 338 (5 counts) and 304(A) IPC.

5. The appellate Court had considered the appeal in a very cavalier manner and without discussing anything about the finding regarding 304(A) IPC, had simply modified the sentence in respect of 338 IPC (5 counts) by altering it into 337 IPC (5 counts) and reduced the period of sentence and fine amount. There is no discussion about the conviction imposed under Section 304(A) at all, though the appellate Court confirmed the finding of the trial Court with a modification. Strangely, the conviction and sentence for offence under Section 304(A) IPC is conspicuously silent. Therefore, this Court is constrained to set aside the judgment passed in C.A.No.37 of 2012 and remand the matter back to the appellate Court for fresh consideration.

6. In the result, the revision case is allowed. The judgment in C.A.No.37 of 2012 dated 01.10.2012 is hereby set aside. Registry is directed to send the records to the I Additional District and Sessions Judge, Thoothukudi, forthwith. On receipt of the records, C.A.No.37 of 2012 shall be restored on file and hear afresh and dispose the appeal preferable within two months from the date of receipt of the records.

Sd/-

Assistant Registrar (SC-I)

// True Copy //

Sub Assistant Registrar(CS-III)

To

- 1.The I Additional District and Sessions Judge,
Thoothukudi.
- 2.The Principal District and Sessions Judge,
Thoothukudi.
- 3.The Judicial Magistrate No.II,
Kovilpatti.



4.The Sub-Inspector of Police,
Kayathaur Police Station.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

6.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO MR.K.K.SAMI, ADVOCATE IN SR NO.84585

SM

BU/RP/SAR-III : 10.10.2018 : 4P/9C

Order made in
Cr1.R.C. (MD) No.111 of 2013
14.09.2018