**BAIL SLIP**

The Appellant/Accused namely Rakkumuthu was released on bail as per order of this Court dated 25.02.2013 and made in MP(MD)No.2 of 2013 in CrI.RC(MD)No.142 of 2013 on the file of this Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

CrI.R.C(MD)No.142 of 2013

Rakkumuthu : Petitioner/Sole Accused

Vs.

State represented by  
The Inspector of Police,  
Srivilliputhur Town Police Station,  
Srivilliputhur, Virudhunagar District. : Respondent/complainant

(Crime No.533 of 2005)

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records in CrI.A.No.15 of 2007 on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur and set aside the judgment dated 10.04.2012 modifying the sentence in C.C.No.366 of 2005 on the file of the learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District dated 02.01.2007 and acquit the petitioner/ accused.

For Petitioner : Mr.A.Thiruvadikumar  
For Respondent : Mr.A.Robinson,  
Government Advocate (CrI.Side)

**ORDER**

This criminal revision case is directed against the concurrent findings of the Courts below convicting the revision petitioner for the offence under Section 304(A) IPC.

2.The revision petitioner herein is the auto driver. On 09.09.2005 at about 2.40 p.m., while he was driving the auto bearing Registration No.TN 67 W 2495, he hit one Mariammal, causing fatal injury. Therefore, the case was registered by the respondent and investigated. The final report was filed against him for the offence under Section 304(A) IPC.



3.To prove the charges, the prosecution has examined 15 witnesses and 8 exhibits were marked through them.

4.P.W.1(Muthu Krishnan) grandson of the deceased, P.W.2 (Ponmari) is the daughter of Mariammal and they are eye witnesses to the accident. According to them, on 09.09.2005 they went to Periya Mariamman Kovil and thereafter, at about 02.00 p.m., when they were proceeding towards Murugan Kovil on eastern direction, the auto driven by the accused rash and negligently, hit Mariammal and she was taken to Government Hospital and succumbed to the injury. P.W.11, Dr.Sivakumaran, who has conducted postmortem has deposed that the deceased has sustained two injuries and they were caused due to the road accident.

5.Considering the evidence let in by the prosecution, the trial Court has found the accused guilty and convicted him for the offence under Section 304(A) IPC and sentenced him to undergo two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo 2 months simple imprisonment.

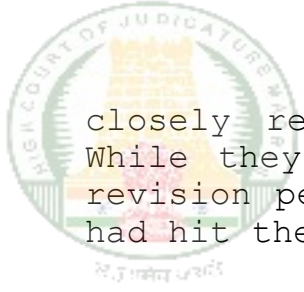
6.On appeal the first appellate Court has confirmed the conviction, but modified the sentence to the effect that the period of sentence was reduced to one year simple imprisonment and to pay a fine of Rs.2,000/- in default to undergo two months simple imprisonment. Aggrieved by the said conviction and sentence, the present criminal revision case has been filed.

7.The learned counsel appearing for the revision petitioner would submit that the presence of P.W.1 and P.W.2 at the time of accident is highly doubtful. Whereas, the trial Court and the lower appellate Court have not properly appreciated the contradictions between P.W.1 and P.W.2. While the accident register indicates that the revision petitioner herein has brought the victim to the hospital, P.W.1 and P.W.2 have given a contradictory statement regarding who took the victim from the accident spot to the hospital for treatment.

8.Further, it is contended by the learned counsel for the revision petitioner that the victim due to her old age got panic while crossing the road and fall on her own. The injury sustained by her was not undue impact of the auto on her, but it is a self-inflicted injury.

9.Further he would submit that the revision petitioner had taken all efforts to take the victim lady to the hospital and got her admitted for her injury, which clearly proves that he had no guilty intention to cause any accident.

10.The learned Government Advocate(Crl.Side) would submit that the evidence let in by the prosecution are cogent and convincing, which would clearly show that P.W.1 and P.W.2 are



closely related to the victim, who were accompanying the lady. While they were proceeding to the temple, the Auto driven by the revision petitioner rash and negligently without raising any alarm, had hit the old lady and causing the death.

11. So far as the intention of the revision petitioner, it is rightly contended by the learned Government Advocate (Crl.Side) that the criminal intention is not required inference, but only the negligence and knowledge that likely to cause the death, is sufficient. So far as the evidence in this case would clearly indicate the negligence as well as the knowledge that negligence will cause the death of the lady. Hence, there is no merit in the criminal revision case.

12. Point for consideration:-

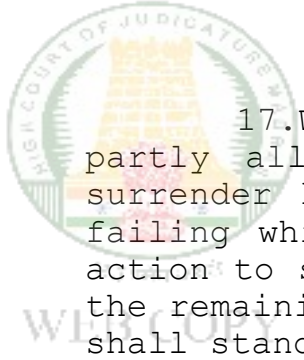
Whether the Courts below have properly applied the law as well as the facts in holding the revision petitioner guilty?

13. From a reading of the deposition of P.W.1 and P.W.2, though this Court finds minor contradiction, the fact that the accused was driving the offending auto so rashly and hit the victim Mariammal, is undisputed. It is also found from the evidence that there was two barricades within the gap of 10 feet and the accident occurred in between the two barricades. The Court could able to see the rashness on the part of the accused that he had negligently driven his vehicle and so he was not able to avoid the accident.

14. The contention of the learned counsel for the revision petitioner that the lady has fallen on her own, is falsified by the postmortem certificate. The two injuries found on the body of the victim would clearly indicate that two injuries in two different parts could not have happened, if it was a natural fall. Further, the motor vehicle inspector, who was examined as P.W.6, has deposed that the left indicator of the auto and partition portion of the auto were found damaged. This could happen only when the said portion of the auto had on strong impact on another body. Therefore, from the evidence, this Court finds that the accident has been caused due to the impact of the auto on the victim. Both the Courts have rightly appreciated the evidence and found the accused guilty.

15. So far as, the sentence is concerned it is contended that one year simple imprisonment imposed on the petitioner will cause great hardship to him and his family. Therefore, taking note of his conduct immediately after the accident, lenient view may be taken.

16. This Court finds merit in the said submission. Therefore, this Court, while confirming the conviction of the Courts below, modifies the sentence to the effect that the revision shall undergo three months simple imprisonment and to pay a fine of Rs.2,000/- which he has paid already.



17. With the said modification, this Criminal Revision Case is partly allowed. The revision petitioner is hereby directed to surrender before the Judicial Magistrate on or before 10.11.2018, failing which the learned Judicial Magistrate shall take necessary action to secure the petitioner and commit him to prison to undergo the remaining period of sentence. Bail bond, if any, executed by him shall stand cancelled.

Sd/-  
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Principal Sessions Judge,  
Srivilliputhur, Virudhunagar District.
2. The Judicial Magistrate No. II,  
Srivilliputhur, Virudhunagar District.
3. The Inspector of Police,  
Srivilliputhur Town Police Station,  
Srivilliputhur, Virudhunagar District.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**Copy To:**

The Section Officer,  
criminal Section,  
Madurai Bench of Madras High Court,  
Madurai. **(2 copies)**

+1 cc to Mr. A. Thiruvadi kumar, Advocate in sr.no.91218.

Cp  
DS RP SAR1 09 11 2018 4P 8C

ORDER MADE IN  
Cr1.R.C (MD) No.142 of 2013  
23.10.2018