

**Bail Slip**

Palanivel, S/o. Durairaj male aged about 35 years is released on Bail vide the order of this Court dated 27.02.2013 made in MP (MD)No.1 of 2013 in Cr1.R.C (MD)No.171/2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.10.2018

DELIVERED ON : 22.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN****Cr1.R.C (MD)No.171 of 2013**

Palanivel : Petitioner/ Accused
Vs.
The State rep. by
The Inspector of Police,
Puthanatham,
Trichy District. : Respondent/ Complainant

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, against the conviction and sentence passed by the learned First Additional District Judge, Trichy in C.A.No.79 of 2012, dated 21.01.2013, confirming the Judgment passed by the learned Judicial Magistrate, Manapparai, Trichy District in C.C.No.84 of 2012, dated 30.08.2012.

For Petitioner : Mr.B.Prahalad Ravi
for M/s.Hallmark Associates.

For Respondent : Mr.A.Robinson,
Government Advocate (Cr1. side).

ORDER

The conviction and sentence passed in C.C.No.84 of 2012 by the learned Judicial Magistrate, Manapparai, Trichy District, as confirmed in C.A.No.79 of 2012 by the learned First Additional District Judge, Trichy, are being challenged in the present Criminal Revision Case.

2.The revision petitioner herein is a driver in the Tamil Nadu State Transport Corporation. On 01.02.2011, at about 04.30 p.m., while he was driving the bus bearing Registration No.TN-45-N-2410



from Manapparai to Thuvarankurichi, hit a cyclist by name Raman and thereby caused his death. Hence, he has been charged for offence under Section 304-A IPC and tried by the learned Judicial Magistrate, Manapparai in C.C.No.84 of 2012.

3. Before the Trial Court, 8 witnesses were examined and 7 exhibits were marked.

4. Before the Trial Court, Thangam (P.W.1) has deposed that while she was walking along with others on the extreme left of Maniyankurichi Vilakku Road, Raman (deceased) was riding his bicycle and going 40 feet ahead them. The Government bus which came rash and negligently, hit Raman and he went dragged along with the bus to some distance. 108 Ambulance was called and he was taken to the hospital. On the way to hospital, he died. She has identified the accused as the driver of the offending bus. Meena (P.W.2) and Chellam (P.W.3) have corroborated the evidence of P.W.1. P.W.1 to P.W.3 are the persons known to the deceased and they were all returning to home after their work.

5. Vijayakumar (P.W.4), the conductor of the passenger bus bearing Registration No.TN-45-N-2410, had deposed that he did not notice the accident and he was busy in issuing tickets. Insofar as his evidence is concerned, he has not attributed any rash or negligent driving on the part of the driver.

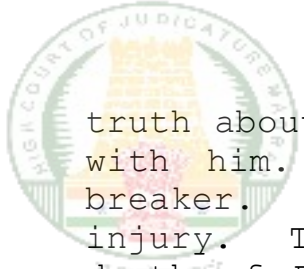
6. The other witnesses are the witnesses for Observation Mahazar, Postmortem Doctor, Motor Vehicle Inspector and the Sub-Inspector of Police, who registered the First Information Report. The case of the prosecution has been consolidated and spoken through the Investigation Officer, Athiveeraramapandian (P.W.10).

7. The Trial Court referring the injury found on the body of the deceased and the evidence of P.W.1 to P.W.3, who have seen the accident, has held the prosecution has proved the case that the accused has caused the death of Raman due to rash and negligent driving.

8. The lower appellate Court has also confirmed the sentence and conviction of the Trial Court, which has imposed 1 year rigorous imprisonment and fine of Rs.1,000/- in default to undergo 3 months simple imprisonment for the offence under Section 304-A IPC.

9. Aggrieved by the concurrent finding against him, the present Criminal Revision Case is filed.

10. The learned counsel appearing for the revision would submit that the Courts below have failed to see that P.W.1 and P.W.2 are interested witnesses, who are known to the deceased person. Hence, they have not spoken the



truth about the accident. The deceased person was carrying sickle with him. He fell down on his own, while climbing a speed breaker. The sickle which was carrying, has caused the cut injury. The loss of blood due to the cut injury has caused the death of Raman. The injuries and the cause of death cannot be attributed to a motor accident. When there is no evidence to show that the revision petitioner was driving the bus in a rash and negligent manner, except the interested witnesses of P.W.1 and P.W.2, the Courts below ought not to have convicted the revision petitioner. The doctor (P.W.8), who has conducted postmortem, in his evidence, has specifically deposed that there was a cut injury below the waist of the deceased person. There is no explanation on the side of the prosecution, how a cut injury found in the body of the deceased could occur, if a bus hits the bicycle rider. The doctor admits that there is possibility of sustaining the said injury, if sickle like material impact the body while the bicycle rider fell to ground.

11.The learned Government Advocate (Criminal side) representing the State would submit that the ocular evidence, medical evidence and the sketch prepared during the investigation cumulatively indicates that the revision petitioner had not driven the vehicle with diligence and due care. There is no reason to disbelieve the evidence of P.W.1 and P.W.2, who have witnessed the occurrence within 40 feet distance. Non-seizure of the bicycle is not fatal to the case of the prosecution, since all the eye-witnesses have invariably deposed that the vehicle driven by the accused hit the riding bicycle.

12.Point for consideration:

"Whether the conclusion of the courts below that the accident and the death of Raman was only due to the rash and negligent driving of the accused and not otherwise is correct?"

13.A perusal of the deposition of the prosecution witnesses would go to show that Raman was driving a cycle some 40 feet ahead of P.W.1. At that time, the vehicle which was coming towards east direction came rash and with high speed without applying horn, hit Raman and cycle. Raman was thrown out and sustained severe injury. To prove this fact, the prosecution ought to have seized the cycle to show Raman was driving bicycle at the time of accident and the bus hit the cycle. Even if the cycle has been damaged badly, it cannot be a reason for the investigation officer for not seizing the damaged cycle. Further, as pointed out by the learned counsel appearing for the revision petitioner/accused, one of the injury found on the body of the deceased is a cut injury below his waist. Whether such an injury could be caused by a vehicle or not, whether there was any other intervening material, which hit the body of the deceased, is not properly explained.



14.P.W.1 and P.W.2 have deposed that the bus which was coming behind them, crossed them in a high speed without horn. From their evidence, the Courts below have inferred that the revision petitioner ought to have driven the vehicle rash and negligently. Driving vehicle with high speed cannot be equated with rashness in all cases. In this regard, the evidence of the conductor, P.W.4 (Vijayakumar) should also be given some credence. The conductor, who is also a passenger in the bus could have sensed if the vehicle was driven in a rash or negligent manner. According to him, the accused was not driving the bus rashly at the time of accident. The best evidence that could have been collected by the investigation officer would be a passenger in the bus. Conductor is the best evidence since he had travelled in the offending vehicle. He is a natural witness. Therefore, solely relying upon two interested witnesses, namely P.W.1 and P.W.2, contra to the evidence of P.W.4, it is unwise to hold that the revision petitioner/accused had rash and negligently driven the bus and caused death of the deceased Raman.

15.Therefore, this Court is of the view that the benefit of doubt ought to be given to the revision petitioner/accused, since the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Accordingly, the conviction and sentence passed by the Trial Court as confirmed by the lower appellate Court are liable to be set aside.

16.As the result, this Criminal Revision Case is allowed. The conviction and sentence dated 30.08.2012 passed in C.C.No.84 of 2012 by the learned Judicial Magistrate, Manapparai, Trichy District as confirmed in C.A.No.79 of 2012, dated 21.01.2013 by the learned First Additional District Judge, Trichy are set aside. The revision petitioner/ accused is acquitted. Bail bond if any executed by him, shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The First Additional District Judge,
Trichy.

2. The Judicial Magistrate,
Manapparai,
Trichy District.



3. The Inspector of Police,
Puthanatham,
Trichy District.

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

5. The Record Keeper, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.B.Prahalad Ravi, Advocate Sr.No.91103

SMN

VB/PM/SAR3/12.11.2018/5P/8C

ORDER MADE IN
Cr1.R.C (MD) No.171 of 2013
22.10.2018