

**BAIL SLIP**

The Appellant/Accused namely M.Muthu was released on Bail as per order of this Court dated 23.01.2013 made in MP(MD)No.1 of 2013 in Cr1.R.C(MD)35 of 2013 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2018

DELIVERED ON : 09.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN****Cr1.R.C(MD)No.35 of 2013**

M.Muthu : Petitioner/ Sole Accused
Vs.

State through
The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.
(Crime No.121 of 2007).

: Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 and Section 401 of the Code of Criminal Procedure, against the Judgment and conviction passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhoor in C.A.No.193 of 2008, dated 20.11.2012, confirming the Judgment passed by the learned Judicial Magistrate, Aruppukottai, Virudhunagar District in C.C.No.88 of 2007, dated 29.09.2008.

For Petitioner : Mr.M.Jegadeeshpandian
for Mr.S.Balakarthick

For Respondent : Mr.A.Robinson,
Govt. Advocate (Criminal side).

ORDER

The revision petitioner M.Muthu found guilty of offence under Section 304-A IPC by the Courts below.

2.On 02.07.2007 at about 05.30 p.m., while the minor girl Kanchana, daughter of M.Pandian riding her bicycle along Aruppukottai S.B.K. College Road near P.K. Boys Higher Secondary School, the revision petitioner driving of the lorry from west to east carrying LPG cylinders, rash and haphazardly hit the bicycle and run over the girl causing death. Her parents PW-1 and PW-2 who



were following the deceased girl in another bicycle witnessed the accident. Relying upon the ocular evidence of Pandian(PW-1) and Sundarammal (PW-2) and the post-mortem certificate (Ex.P-12), the Courts below have held the guilty of the accused proved beyond doubt.

3.The learned counsel appearing for the revision petitioner contends that except PW-1 and PW-2 who are father and mother of the deceased girl, no other witnesses alleged to have seen the accident to support the case of the prosecution. They were treated as hostile witnesses. Solely based on the interested witnesses, the Courts below had convicted the revision petitioner.

4.The contradiction regarding the direction from which the offending vehicle was moving, has not been properly appreciated by the Courts below. While the prosecution witnesses say that the lorry bearing Registration No.TN-69-9949 carrying LPG cylinder was proceeding from west to east, the sketch marked as Ex.P-9 indicates that the victim also was proceeding from west to east. While PW-1 and PW-2 had deposed that the accident took place near S.B.K. Boys School, the sketch indicates that the accident happened opposite to S.B.K. School near Sudha Rice Mill. PW-11 the Investigating officer in the cross examination has admitted that the accident spot was opposite to the school towards western direction.

5.The postmortem certificate indicates that the deceased has sustained substantial injury only on her left side of the body. The case of the prosecution is that the offending vehicle came on the opposite direction. Unless the victim was riding on the wrong side of the road, the possibility of sustaining injury on the left side of the body is remote. Further, in a 20 feet road, a lorry carrying load of LPG cylinder proceeding from north turned towards west might have not driven rashly. More particularly, in the road in which the accident took place, it is admitted by the investigation officer (PW-11) that there are education institutes and speed breakers are fixed. No speed breakers are mentioned in the sketch. The Courts below ought to have considered the plea of the accused that the victim negligently fell on her own without noticing the speed breaker and accidentally run over by the lorry proceeding slowly and diligently.

6.'Whether, a family of four in 3 cycles will venture to go to a temple at Usilampatti which is 80 Kms away from Aruppukottai?' is yet another plea raised by the revision petitioner to reject the evidence of PW-1 and PW-2.

7.For the aforesaid reasons, the learned counsel for the revision petitioner submits that since no rash or reckless part of the lorry driver is proved through the prosecution evidence, the finding of the Courts below is perverse. Hence, the revision petitioner is liable to be acquitted.



8. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that, the accident occurred when PW-1 along with his wife PW-2 and two children were proceeding to temple. The victim girl was riding the cycle ahead of her parents riding in one cycle and her elder sister was following them in another cycle. The lorry driven by the revision petitioner came rash and recklessly in haphazard way in the opposite direction, hit the victim and run over her causing instant death. PW1 and PW-2 are witnesses to the accident. Their evidence is natural and reliable. Just because they are parents of the victim, they cannot be branded as interested witnesses or held unreliable. Neither the error in the sketch regarding the direction nor the hostility of other witnesses who have seen the accident can be a reason to disbelieve the natural evidence of PW-1 and PW-2.

9. The learned learned Government Advocate (Criminal side) appearing for the State further submitted that the road accident is not disputed. The postmortem certificate indicates crush injuries on the head and fractures of lower limbs and left pubic bone. The said injuries would prove that the victim died due to run over by the lorry. The witnesses have said the accident was due to the reckless driving of the revision petitioner. In the light of the these proven facts, the revision petition deserves dismissal.

10. Point for consideration:

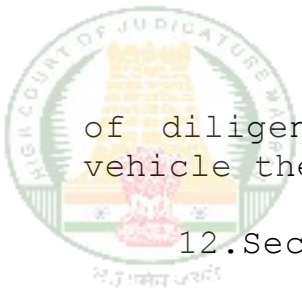
"Whether the concurrent finding of the lower Courts on facts is erroneous, illegal or perverse to interfere?

11. The sketch Ex.P-10, the marking of direction is not properly done. The arrow marks in the sketch Ex.P-10 is wrongly shown as 'E + W' instead of 'W + E'. Further, there is no indication regarding speed breakers. The sketch indicates the accident spot is 15 feet away from the compound of S.B.K. School towards south and 5 feet away from the compound of Sudha rice mill. The accident has taken place on a 20 feet road. The ocular evidence of PW-1 and PW-2 does not precisely match the sketch. Despite these lapses, the evidence of the prosecution is sufficient to sustain the conviction. The reasons are:

(i) The ocular evidence of PW-1 and PW-2 are unimpeached.

(ii) The postmortem certificate (Ex.P-12) issued by Dr.Sakthivel (PW-9) speaks for itself.

<https://hcservices.ecourts.gov.in/hcservices/> the damaged cycle of the victim indicates she was run over by the lorry along with the cycle. This proves the lack



of diligence in driving and failure or inability to stop the vehicle the moment the lorry hit the cycle.

12. Section 304-A IPC reads as follows:

WEB COPY *"Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".*

13. The essential ingredients to bring a case of homicide under Section 304-A IPC, the following conditions must exist, viz.,

(a) There must be death of the person in question;

(b) The accused must have caused such death; and

(c) That such act of accused was rash or negligent and that it did not amount to culpable homicide.

In the present case, the death of minor girl Kanchana has not been disputed. Though the accused had pleaded that the death was not due to the run over of the lorry but the victim died after she fell down without noticing the speed breaker, both the Courts on fact found it is not so. The victim had died of hemorrhage and shock due to the head injuries and injuries on vital organs like brain, liver, spleen, lungs and stomach as opined by the postmortem doctor (PW-9). Therefore, the death was caused by the hit of the lorry driven by the accused is proved.

14. To ascertain whether the revision petitioner was rash and negligent, the evidence of PW-1, PW-2 and the post-mortem report requires scrutiny. The eyewitnesses in unison had deposed the vehicle was driven not only fast, but also recklessly. The injuries found on the body of the victim both external and internal, reveals that her skull, vital organs and lower limbs are severely injured. The cycle the victim riding marked as MO-1, indicates that the lorry has crushed the victim along with the cycle.

15. In the said circumstances, the postmortem report and the damaged cycle MO-1 are sufficient to prove that the accused has not taken due care while driving the lorry. The accused has failed to be vigilant while taking turn from north to east and proceed further towards East. Thus the essential ingredients to attract section 304-A IPC are proved beyond doubt and therefore, this Criminal Revision Case is liable to be dismissed.

16. In the result, this Criminal Revision Case is dismissed. The Judgment of the learned Judicial Magistrate, Aruppukottai, in C.C.No.88 of 2007, dated 29.09.2008, confirmed by the learned Principal Sessions Judge, Viruthunagar in C.A.No.193 of 2008 dated 20.11.2012 is hereby confirmed. The Trial Court is directed to secure the revision petitioner/sole accused 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(crl side)

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Sub Assistant Registrar(CS-III)

To

1. The Principal Sessions Judge,
Virudhunagar District
at Srivilliputhoor.
2. The Judicial Magistrate,
Aruppukottai,
Virudhunagar District.
3. The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar 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.Mr.S.Balakarthick, Advocate Sr.No.89805

SMN

VB/PM/SAR3/20.11.2018/5P/8C

ORDER MADE IN
Cr1.R.C(MD)No.35 of 2013
09.10.2018