

**BAIL SLIP**

K.Sivakumar, S/o.R.Kandasamy, male is released on bail vide the order of this Court, dated 12.02.2013 made in MP(MD)No.2/2013 in CrI.R.C (MD)No.93/2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.10.2018

DELIVERED ON : 11.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C. (MD)No.93 of 2013

K.Sivakumar .. Petitioner/ Appellant/ Accused

Vs.

The State Rep., by
The Inspector of Police,
Velayuthampalayam Police Station,
Karur,
(Crime No.348 of 2009)

.. Respondent/Complainant/ Complainant

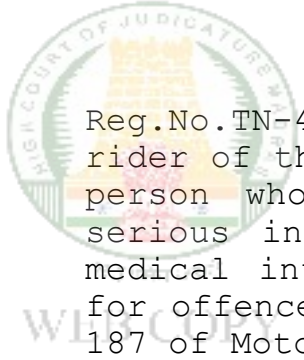
Prayer: Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to call for the records and set aside the conviction and sentence passed in Criminal Appeal No.58 of 2011 dated 05.09.2012 on the file of the District and Sessions Judge, Karur by modifying the sentence in C.C.No.145 of 2010 dated 26.09.2011 passed by the Judicial Magistrate No.2, Karur.

For Petitioner : Mr.D.Vijayababu

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

JUDGEMENT

The present revision petition is preferred challenging the concurrent findings of the Courts below, arising out of motor accident that took place on 21.06.2009. The revision petitioner herein, is the driver of Mahindra Jeep bearing Reg.No.TN-30-M-5053 which colluded with the two wheeler- Hero Honda Shine bearing



Reg.No.TN-47-R-7160 causing death of Raja @ Manivannan & Prabhu, the rider of the two wheeler and pillion rider respectively. Yet another person who travelled in the two wheeler Gopinath has sustained serious injury, got admitted in the hospital and recovered after medical intervention. Therefore, the revision petitioner was tried for offences under Section 279, 337, 304(A) IPC and Section 134 r/w 187 of Motor vehicles Act.

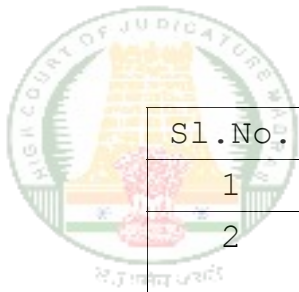
2. Before the trial Court, the prosecution examined 13 witnesses, 13 exhibits were marked and after considering the evidence, the trial Court has held the accused/appellant guilty of offence under Sections 279, 337, 304(A) IPC and also guilty of offence under Sections 134 r/w 187 of the Motor Vehicles Act. Aggrieved by the judgment of the trial Court, the revision petitioner herein, has preferred an appeal before the Sessions Court, Karur in Criminal Appeal No.58 of 2011.

3. After considering the plea made by the accused/appellant, the Appellate Court has partly allowed the Appeal to the effect that the sentence imposed on the appellant by the trial Court under Section 279 I.P.C was set aside and the fine amount imposed on the accused/appellant was ordered to be refunded. Whereas, the sentence imposed on the accused/appellant by the trial Court for offences under Section 337 and 304(A) I.P.C and Section 134 r/w 187 of the Motor Vehicles Act, 1988 were confirmed.

4. The learned counsel appearing for the revision petitioner herein would submit that the Courts below have failed to appreciate the contentions raised by the accused/appellant regarding the six hours delay in registering the First Information Report (FIR). His further contention is that P.W.2 to P.W.4 are all hearsay witnesses and have not seen the accident. The rash and negligence attributed to the accused is not proved.

5. It is also contended by the learned counsel that P.W.1 de facto complainant ought not to have accompanied with the victim to the hospital since the records does not indicate that he was present while admitting the victim. The hostility of the prosecution witness P.W.5., the owner of the offending Jeep has turned hostile, which disprove the case of the prosecution that the accused/appellant was the driver of the vehicle. Therefore, when there is no adequate evidence either to prove that the accused was the driver of the vehicle which caused the road accident causing death of two persons and grievous injury to another; and the failure of the prosecution to prove beyond doubt that the road accident occurred only because of the rash and negligence of the driver of Mahindra Jeep, more particularly, when the three victims were riding the two wheeler vehicle, contrary to the Motor Vehicles Act were not properly appreciated by the Court below.

6. To buttress his statement, the learned counsel would also rely upon the following judgments:-



Sl.No.	Citations	Case Title
1	1998 8 SCC 493	State of Karnataka Vs., Sathish
2	2018 (2) MVWN (Cr.) 28	Vellayan Vs., State Rep by:- Sub Inspector of Police, Nilakottai Police Station
3	2016 (3) MWN (Cr.) 542	M.Subramani Vs., State Rep. By:- Inspector of Police, Edapadi police Station, Salem District
4	2007 Cri Law Journal 1089	Abdul Subhan Vs., State (NCT of Delhi)
5	Before the Madurai Bench of Madras High Court	Madasamy Vs., State Rep by:- Central Police Station, Tuticorin District.
6	1993 Supp (3) SCC 745	Varkey Joseph Vs., State of Kerala
7	2009 (17) SCC 497	Chikkarangaiah and others Vs., State of Karnataka
8	2010 (10) SCC 439	Paramjeet Singh Alias Pamma Vs., State of Uttarakhand

7. Heard the learned counsels representing the revision petitioner and the State. Perused the judgments relied upon by him and material records.

Finding:

8. Perusal of the testimony of the prosecution witnesses and the exhibits, it is clearly established by the prosecution that Mahindra Jeep bearing Reg No. TN-30-M-5053 is owned by Smt.Dhanalaksmi, P.W.5 and she is not aware who the driver of the vehicle and had deposed that only her husband knows about that. P.W.2, Niveditha and P.W.3, Sabapathy are the wife and father of the deceased Raja @ Manivannan, P.W.4, Vivekanandhan is the father of the deceased Prabhu.

9. No doubt, P.W.2 to P.W.4 have not seen the occurrence. They are not the eye witnesses to the accident It is a case of hit and run. The injured witness P.W.9 Gopinath has deposed about the accident, and how he had been severely injured in the accident. While he along with two of his friends, traveling in the two wheeler, the jeep hit them and his friends died on spot. His evidence had inspired the confidence of the Court below and there is



no reason to disbelieve him. He in his deposition had stated that the accused had come on the wrong side without horn and hit their two wheeler. Contractions in the directions has been strictly relied by the defence to disbelieve this case. But the factum of the accident and the evidence of P.W.9/ injured victim that all three of them were travelling from Velayuthampalayam foot hill to Karur along the Salem- Karur Highway stands undisputed.

10. The offending vehicle/ Mahindra Jeep had come on the wrong side and hit them. The evidences adduced by the prosecution prove beyond doubt. The offending vehicle hit the two wheeler causing death of two persons and injury to one. The injured victim had stated that the offending vehicle was coming on the wrong side. Though P.W.9 admits that he did not see the driver of the offending vehicle, the accused himself has surrendered before the respondent police on 22.06.2009 at about 11:00 a.m. in connection with this accident, which is spoken by the Investigating Officer.

11. The conduct of the accused, after the accident also to be taken note of. While the Motor Vehicle Act cast upon certain duty on the driver, in case of any accident or injury. As per the act, the driver has to provide medical assistance to the victim. In this case, the accused/appellant has fled from the scene of occurrence. He has surrendered before the police thereafter. So the judgements cited by the learned counsel does not apply to the facts of the case in hand.

12. While being so, none of the judgements cited have relevancy to the facts of this case. Here the victim's witness has attributed rash and negligence on the part of the offending driver, beside he has categorically spoken about the fact that the offending vehicle coming on the wrong side. The accused/appellant driver fled from the site of the accident after abandoning the offending vehicle.

13. The evidence indicates that the accused was driving his vehicle from the West direction to East direction in a rash and negligent manner. Subsequently, turned to his right side and dashed the two wheeler resulting in the death of the two persons and grievous injury to the another. While so, the mere delay of six hours in registering the FIR can be taken as a reason to disbelieve the prosecution case in entirety.

14. For the above reasons, this Court finds no merits in this revision case and hence, the Criminal Revision Case is dismissed and the order of the learned Sessions Judge, Karur stands confirmed.

Sd/-

Assistant Registrar(P&A)

/True Copy/



To

- 1) The District and Sessions Judge,
Karur.
- 2) The Judicial Magistrate No.II,
Karur.
- 3) The Chief Judicial Magistrate, Karur.
- 4) The Inspector of Police,
Velayuthampalayam Police Station, Karur.
- 5) 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)**

Judgment in
Cr1.R.C.(MD)No.93 of 2013
11.10.2018

STS

ES/SKN/RSK/SAR 1/01.11.2018/5P/8C