

Bail Slip

The Appellant/Accused, namely Venkatesan was released on bail as per order of this Court dated 07.01.2019 and made in CRL MP.NO.180/19 IN CRL RC.NO.26/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.26 of 2019
and
CRL.MP.No.3100 of 2019

Venkatesan

... Petitioner

Vs.

State by
The Inspector of Police,
Vannarapettai Traffic Police Station,
Vannarapettai, Chennai.
(Crime No.182/2011)

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the records pertaining to the order of conviction and sentence dated 26.09.2018 in C.A.No.54 of 2017 on the file of the Principal Sessions Court, Tiruvallur, confirming the order of conviction and sentence dated 22.03.2017 in C.C.No.69 of 2012 on the file of the Judicial Magistrate Court, Thiruvottiur, Tiruvallur District and set aside the same.

For Petitioner : Mr.P.Pugalenth
For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision has been filed to set aside the order of conviction and sentence dated 26.09.2018 in C.A.No.54 of 2017 on the file of the Principal Sessions Court, Tiruvallur, confirming the order of conviction and sentence dated 22.03.2017 in C.C.No.69 of 2012 on the file of the Judicial Magistrate Court, Thiruvottiur, Tiruvallur District.

2. The case of the prosecution is that on 12.09.2011 at about 9.00 p.m, the revision petitioner/accused, who was a driver, drove the private bus bearing Registration No.TN-22 CY 0195 plying Tiruvottiyur National Highways from South to North direction in a rash and negligent manner and hit behind the motorcycle in front of Andavar Tiles Shop, due to which, the rider of the motorcycle viz., Sriramulu fell down towards the right side of the bus and thereby, the back wheel of the bus ran over his head. He was taken to the Apollo Hospital, where he was declared as dead. Therefore, the case in Crime No.182 of 2011 has been registered against the revision petitioner/accused for the offence under Section 279 and 304A IPC. After completing investigation, the respondent police laid charge sheet against the revision petitioner and the same was taken on file in C.C.No.69 of 2012 before the learned Judicial Magistrate, Thiruvottiyur.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 9 witnesses and 13 documents were marked. After completing evidence incriminating circumstances culled out from the prosecution witnesses was put before the petitioner, he denied as false. No oral and documentary evidence were marked on the side of the defence.

4. The learned Judicial Magistrate, Thiruvottiyur, after considering the oral and documentary evidence, found guilty of the revision petitioner/accused for the offence under Sections 279 and 304A IPC and sentenced to undergo 6 months Simple Imprisonment for the offence under Section 279 IPC and one year Simple Imprisonment for the offence under Section 304A IPC. Trial Court directed the sentences to run concurrently. There against, the accused preferred the appeal in CrI.A.No.54 of 2017 before the learned Principal Sessions Judge, Tiruvallur. After hearing the arguments and discussed elaborately, the Appellate Court, dismissed the Criminal Appeal on 26.09.2018 and confirmed the order of the trial Court. Against the said judgement, the accused preferred the present revision before this Court.

5. The learned counsel for the petitioner would submit that the prosecution has not proved that the accident had occurred only due to rash and negligent driving of the driver of the bus/the petitioner herein bearing registration No.TN22 CY 0195. PWs-1 and 2 have been shown as eye-witnesses, but they have not stated that the accident had occurred only due to rash and negligent driving of the driver of the bus. The bus came behind the two wheeler and hit the motorcycle. The rider of the motorcycle fell down and the back wheel of the bus ran over the head of the deceased and he sustained injuries and died when he was taken to the hospital. Both the Courts below have failed to state the reason how they arrived at conclusion that the accident had occurred only due to rash and negligent driving of the petitioner/accused.

6. The learned Government Advocate (Crl.side) appearing for the respondent would submit that PWs-1 & 2 have clearly stated that when the deceased was riding the two wheeler bearing Registration No.TN32 F 9160, the private bus bearing Registration No.TN22 CY 0195 came behind the two wheeler and hit the motorcycle, due to which, the rider of the motorcycle fell down and the back wheel of the bus ran over his head and he sustained injuries and died. Both the Courts below found that the accident had occurred only due to rash and negligent driving of the driver of the bus. There is no need to interfere with the judgments of the Courts below.

7. Heard the learned counsel for the petitioner, the learned Government Advocate (Criminal Side) for the respondent and perused the materials on record.

8. The case of the prosecution is that on 12.09.2011 at about 9.00 p.m, the revision petitioner/driver of the bus, drove the private bus in a rash and negligent manner and hit behind the motorcycle, due to which, the rider of the motorcycle fell down towards the right side of the bus and thereby, the back wheel of the bus ran over the head. He was taken to the Apollo Hospital, where he was declared as dead. The respondent police registered the case in Crime No.182 of 2011 for the offence under sections 279 and 304A IPC. The prosecution has to prove its case beyond reasonable doubts that the accident had occurred due to rash and negligent driving of the driver of the bus. The witnesses have clearly stated that when the two wheeler was proceeding towards Thangal, the offending bus came behind the vehicle and hit. On reading of the documents and also the rough sketch, it is seen that the two wheeler has not crossed the line and when he was proceeding on the left side of the road, the private bus, which was driven by the revision petitioner/accused, hit behind the vehicle. It is not the case of the defence that the bus hit the two wheeler, while crossing the road. It shows that if the driver taken a minimum care, he would have avoided the accident. Though the witnesses have not worded as the accident had occurred due to rash and negligent driving, but from the evidence deposed by PWs-1 & 2, both the Courts have come to the conclusion that the accident had occurred only due to rash and negligent driving of the driver of the bus. This Court doest not find any perversity in the order passed by both the Courts below, since the First Appellate Court, which is a fact finding Court, appreciated the evidence of prosecution, eye witnesses and medical witnesses came to the conclusion that the victim died due to the accident. However, since the accident is not an intentional one, this Court is inclined to modify the sentence imposed on the revision petitioner/accused.

9. Accordingly, this Criminal Revision case is partly allowed. The sentence imposed on the revision

petitioner/accused is modified as follows:-

Offence	Sentence modified
279 IPC	3 Months Simple Imprisonment
304A IPC	6 Months Simple Imprisonment

Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The Judicial Magistrate,
Tiruvottiyur.

2. The Chief Judicial Magistrate, Tiruvallur

3.The Principal Sessions Judge,
Tiruvallur.

4.The Inspector of Police,
Vannarapettai Traffic Police Station,
Vannarapettai, Chennai.

5.The Public Prosecutor, High Court, Madras - 104.

Copy to :

The Section Officer,
Criminal Section,
High Court, Madras

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Crl.R.C.No.26 of 2019
and
CRL.MP.No.3100 of 2019

A.SK (07/01/2020)