

Bail Slip

The Appellant/Accused, namely Kadar Basha S/o. John Basha was released on bail dated 22.11.2011 as per order of theis Court in MP.NO.1/11 IN CRL RC.NO.1494/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2018

PRONOUNCED ON : 01.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1494 of 2011

Kadar Basha ... Petitioner/accused

-vs-

State Represented by,
The Sub-Inspector of Police,
Royakottai Police Station,
Krishnagiri District.
(Crime No.23 of 2008) ... Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., against the conviction and judgment in C.C.No.49 of 2008 on the file of the learned Judicial Magistrate, Denkanikottai, dated 26.08.2009 convicted and sentenced the accused for the offence under Sections 279, 337 and 304(A) IPC. The accused was sentenced to pay a fine of Rs.500/-, in default, to undergo one month simple imprisonment for the offence under Section 279 IPC; to pay fine of Rs.500/-, in default, to undergo one month simple imprisonment for the offence under Section 337 IPC; and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo three months simple imprisonment for the offence under Section 304(A) IPC, which was confirmed in C.A.No.33 of 2009 on the file of the learned Principal Sessions Judge, Krishnagiri by his judgment dated 23.09.2011.

For Petitioner : Mr.K.Thiruvengadam

For Respondent : Mr.G.Ramar

Government Advocate (Criminal side)

ORDER

Convicted sole accused is the revision petitioner herein. This criminal revision has been filed against the conviction and judgment in C.C.No.49 of 2008 on the file of the learned Judicial Magistrate, Denkanikottai, dated 26.08.2009 convicted and sentenced the accused for the offence under Sections 279, 337 and 304(A) IPC. The accused was sentenced to pay a fine of Rs.500/-, in default, to undergo one month simple imprisonment for the offence under Section 279 IPC; to pay fine of Rs.500/-, in default, to undergo one month simple imprisonment for the offence under Section 337 IPC; and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo three months simple imprisonment for the offence under Section 304(A)IPC, which was confirmed in C.A.No.33 of 2009 on the file of the learned Principal Sessions Judge, Krishnagiri by his judgment dated 23.09.2011.

2. The respondent police filed the charge sheet against the revision petitioner/accused alleging that on 26.01.2008 at 09.45 a.m. in Rayakottai-Kelamangalam Road at Periya Ullu Kurikki Village in front of Ration shop, the petitioner/accused drove the Omini Car bearing Registration No.TN-24-4824 in a rash and negligent manner and dashed against one Selvaraj and one Sakkamma, who were walking on the extreme left side of the road. Due to the impact, the said Selvaraj sustained fatal injuries and succumbed to the injuries on the spot itself and Sakkamma also sustained grievous injuries and thus the driver of the Car has committed the offence under Sections 279, 337, and 304(A) of IPC.

3. The prosecution has examined 11 witnesses as PW.1 to PW.11 and marked 8 documents as Ex.P1 to Ex.P8. No material object has been produced and marked on the side of the prosecution.

4. The learned Judicial Magistrate, Denkanikottai, after hearing the arguments of both sides and considering the evidence of prosecution and the documents, has convicted the accused under Sections 279, 337 and 304(A) IPC.

5. The learned counsel for the petitioner/accused submitted that the deceased Selvaraj suddenly crossed the road without observing the vehicle came towards Kelamangalam. The accident was not happened due to the rash and negligent driving of the petitioner/accused. He further submitted that the prosecution has failed to examine any witness in and around the shop owners in the place of occurrence and admittedly lot of shops are situated in the place of occurrence.

6. The prosecution case is that on 26.01.2008, the deceased and PW.2 while walking towards Kelamangalam road, at about 09.45 a.m. the petitioner/accused started the Omini Car

bearing Registration No.TN-24-4824 in a rash and negligent manner from northern side towards southern side and suddenly crossed the road, he dashed against the deceased Selvaraj. Due to the impact, he was sustained fatal injuries and succumbed to the injuries. PW.2 also sustained injuries on her body. Due to the rash and negligent driving of the petitioner/accused only the accident was happened. Hence, the petitioner/accused has been committed the offence punishable under Sections 279, 337 and 304(A) IPC.

7. At the time of occurrence, the petitioner/accused had drove the vehicle. Ex.P1 is the complaint, which was given by PW.1, who is also supporting the evidence of PW.2. In his evidence, he has stated that, when he was sitting in the workshop at Ullu Kurukki, at that time, High School Boys were returned from the School. The School children were walking from western side to eastern side. At the same time, the petitioner/accused herein started the Maruthi Omini Car bearing Registration No.TN-24-4824 in a rash and negligent manner and dashed against the school children and one lady. The lady was immediately taken to the Government Hospital.

8. PW.2 is the eye witnesses. In her evidence, she categorically stated that on 26.01.2008, at about 09.45 a.m., when she returned back from the shop, while she was walking to her house at Rayakottai main road, at that time, the accused herein had started his TATA Sumo Car in his workshop and he drove the vehicle in a rash and negligent manner and dashed against her and also the deceased Selvaraj. When the said Selvaraj returned from the school after attending the Republic Day function, the accused herein dashed against the him also. Due to the impact, PW.2 sustained injuries on her chest, head, stomach and immediately she was taken to Hosur Government Hospital and minor boy Selvaraj was sustained fatal injuries and he succumbed to the injuries.

9. PW.9 also examined PW2 and issued Accident Register copy, which was marked as Ex.P4. As per the evidence of PW.9 and the evidence of PW.2, she had sustained only simple injuries.

10. PW.3 is also an eye-witness, who was studied along with the deceased Selvaraj at Ullu Kurukki Higher Secondary School. He supported the prosecution case. His evidence is also corroborated the evidence of PW.2.

11. PW.9 is the Doctor, who conducted the Post-mortem on the body of the deceased Selvaraj. In her evidence, he deposed that the death is caused due to the shock and hemorrhage and also the injuries on vital organs. The post-mortem certificate was marked as Ex.P.8.

12. Thus from the private prosecution witnesses PW1 and PW2, it is seen that the revision petitioner/accused has taken the vehicle from his workshop and came from western

side to the eastern side in a rash and negligent manner in high speed dashed against PW.2 (injured witness) and the deceased Selvaraj (School student). Due to the collision and the impact of the accident PW.2 sustained grievous injury, while Selvaraj sustained fatal injury and died on the spot. It is seen from the prosecution witness PW.3-the independent witness has duly corroborated the evidence of the injured witness PW.2 lend support to the prosecution theory. It is to be stated that due to the accident, the public had conducted a Dharna and a road rocko on the republic day, i.e., on 26th January 2008 and thereafter the police have arrested the accused. This part of the evidence of the private prosecution witness remains unchallenged.

13. Thus, based upon the version of the injured witness-PW2 and the independent witness PW.3, this Court finds that the prosecution has let in vital evidence to show and demonstrate the act of the accused falls under the category of rash and negligence and has resulted in the fatal injury on the deceased Selvaraj and the grievous injury on PW.2. It remains to be stated that as per the medical evidence of the PW.9-Doctor coupled with that of Ex.P.8-post mortem certificate, the school student, Selvaraj died due to the injury sustained due to the impact of the accident. The medical evidence is PW.9, who examined PW.2. Ex.P4-Accident Register also supported the case that PW.2 has sustained injury due to the accident and the accused has been identified by the injured witness PW.2 and hence, this Court finds that the prosecution has proved that the accused is the driver of the offending vehicle on the date of the accident and he drove the vehicle in a rash and negligent manner and caused the accident and the student, Selvaraj died due to the injury sustained therein.

14. The suggestive case of the defence during the cross-examination of PW1 and PW2 appears to be that the student have suddenly crossed the occurrence spot. However, he has not let in any vital evidence in order to elicit any answer from the cross-examination of PWs.1 to 3 to probablise the suggestive case.

15. The learned counsel for the revision petitioner could contend that no person in the ration shop, which is adjacent to the scene of crime was examined and neither any examination of the public nor the staff of the ration shop is fatal to the prosecution.

16. Thus, this Court is unable to upheld the said contention of the simple reason that the date of accident is 26th January 2008, i.e., on Republic Day, on which day, the ration shop was closed. Further more, so is the answer of the Investigating officer in the cross-examination and thus this Court finds that in the absence of any positive evidence to probablise the suggestive case of the defence and in view of the existence of the positive evidence in support of the prosecution theory, the concurrent finding of the trial Court

with regard to the conviction and the fine awarded under Sections 279, 337 and 304(A) IPC is hereby confirmed. However, sentence awarded for the offence under Section 304 (A) IPC alone has been modified and reduced to three months rigorous imprisonment. The period of sentence already undergone during the investigation and during the pendency of the trial is ordered to be set off. The fine amount awarded by the Court below is kept intact.

17. In the result, the Criminal Revision Case is partly allowed to the extent as indicated above.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

PJL

To

1.The Judicial Magistrate,
Denkanikottai.

2.Do thro the Chief Judicial Magistrate, Krishnagiri.

3. The Principal Sessions Judge,
Krishnagiri.

4. The District Munsif cum Judicial Magistrate,
Denkanikottai.

5.The Superintendent Criminal Prison,Salem

6.The Sub-Inspector of Police,
Royakottai Police Station,
Krishnagiri District.

7.The Public Prosecutor, High Court ,Madras.

8. The section officer,
Criminal Section,
High court, Madras

+1cc to Mr.K.Thiruvengadam , Advocate SR.No. 9175

CRL.R.C.No.1494 of 2011

A.SK(21/03/2019)