

Bail Slip

The Petitioner/Accused namely Raju, S/O. Kaliyan, aged 35 years is directed to be released on bail as per order of this Honourable Court dated 23.11.2011 made in Crl.MP.No.1 of 2011 in Crl.R.C.No.1670/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2018

PRONOUNCED ON : 23.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1670 of 2011

Raju

.. Petitioner/Accused

-vs-

The State of Tamil Nadu,
represented by,
The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.

(Crime No.105 of 2005) .. Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 Cr.P.C., against the order dated 09.09.2011 passed in C.A.No.84 of 2010 on the file of the learned Additional District cum Sessions Judge, Fast Track Court No.III, Vridhachalam, confirming the judgment and order dated 28.06.2010 passed in C.C.No.99 of 2006 by the learned Judicial Magistrate No.II, Vridhachalam, Cuddalore District.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mrs.V.Sarathadevi,
Government Advocate (Criminal side)

ORDER

Convicted sole accused is the revision petitioner herein. This revision has been filed by the petitioner against the order dated 09.09.2011 passed in C.A.No.84 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Court No.III, Virudhachalam, confirming the judgment and order dated 28.06.2010 passed in C.C.No.99 of 2006 by the learned

Judicial Magistrate No.II, Virudhachalam, Cuddalore District.

2. The case of the prosecution in brief is as follows:

On 23.04.2005, at about 03.00 p.m., when the deceased, namely, Anjammal was tried to catch the Government Bus Route No.17, at that time, one Private bus, named as "Karthikeyan bus" bearing Regn.No.TN-45-Q-9949, which was driven by the petitioner/accused, namely, Raju in a rash and negligent manner, crashed on the left side of the above said Government bus, due to that, the deceased sustained injuries. Immediately, she was taken to JIPMER Hospital, Pondicherry, then she was referred to Government Hospital, Pondicherry for further treatment. Based on the intimation from the hospital authorities, the statement of the defacto complainant was recorded by the respondent police.

3. Based on the above complaint, a case was registered in Srimushnam Police Station in Crime No.105 of 2005, under Section 279 & 338 IPC against the accused on 24.04.2005.

4. On the next day, i.e., on 25.04.2005, at about 1.30 p.m., the deceased Anjammal died at the Government Hospital, Pondicherry. Based on the death intimation, the then investigation officer altered the section of this case into Section 304(A) IPC against the accused. On 28.04.2005, at about 11.30 hours, the accused was arrested by the respondent police and he was produced before the Judicial Magistrate Court No.II, Virudhachalam and remanded to judicial custody.

5. After completion of elaborate and detailed investigation, the investigation officer filed charge sheet against the accused before the Judicial Magistrate Court No.II, Virudhachalam and the same was taken on file vide C.C.No.99 of 2006.

6. During trial, the prosecution has examined 18 witnesses and marked 8 exhibits and no material objects.

7. After conducting due trial, the trial Court, i.e., Judicial Magistrate Court No.II, Virudhachalam by its judgment dated 28.06.2010 in C.C.No.99 of 2006 convicted the accused under Section 304(A) IPC and sentenced him to undergo 6 months rigorous imprisonment with fine of Rs.2000/-, in default, to undergo three months rigorous imprisonment.

8. Against the above said conviction and sentence, the petitioner/accused filed Criminal Appeal in C.A.No.84 of 2010 before the Additional District and Sessions Court (Fast Track Court No.III, Virudhachalam) and the same was dismissed on 09.09.2011 and the conviction and sentence dated 28.06.2010 in

C.C.No.99 of 2005 on the file of the Judicial Magistrate Court No.II, Virudhachalam was confirmed.

9. Heard the learned counsel appearing for the revision petitioner and the learned Government Advocate (Criminal side) appearing for the respondent and perused the records.

10. Points for determination:

1. Whether the order of conviction passed by the Courts below is sustainable in law? And

2. Whether the sentence awarded therefor is excessive?

11. From the records, it is seen that on 23.04.005 at about 3 p.m. Near Sun Video Shop, the deceased Anjammal was about to board the Government Bus. At that time, the petitioner/accused had driven the bus bearing Registration No.TN-45-Q-9949 in a rash and negligent manner and dashed against the deceased and the deceased taken to hospital and died on 25.04.2005. Before the trial Court, to prove the charges, prosecution examined PW.1 to PW.3 as occurrence witnesses. However, except PW.1 and PW.3, others have turned hostile and some of them are hearsay witnesses and hence with regard to the manner of accident, the evidence of PW.1 to PW.3 assumes significance.

12. After going through the evidence of P.W.1 and PW.3, it is seen that all the prosecution witnesses who came along with the deceased are the residents of Nayakkanpettai village and in connection with a condolence, they went to Sreeramanai village and on return, they have come to Sreemushnam bus stand and decided to visit a family friend who is getting treatment in a private hospital at Virudhachalam. In order to reach Virudhachalam, all of them were about to board the government bus, which is parked on the Sreemushnam bus stand. However, at that time, when the deceased was trying to board the bus, a private bus which was driven by the accused came in a rash and negligent manner and crushed the deceased between the two buses and she sustained grievous injuries and admitted in JIPMER hospital and died subsequently. PW.9-driver of the government bus deposed about the rash and negligent driving of the private bus driver and the manner of the accident. PW4-husband of the deceased have clearly spoken about persons (PW1 and PW3), who had accompanied with the deceased and also the place of occurrence. PW.5 appears to have given a clear narration of the incident to made mention of the name of the private bus as "Karthikeyan bus". Be that as it may, the evidence of PW1 and PW3 is clear and cogent about the rash and negligent driving of the accused in driving his bus, whereby

between the two buses the lady, who was boarding the stationed government bus was crushed in between and become sandwich and subjected to grievous injury. Subsequently, she died. Evidence of PW1 and PW3 has been duly corroborated by PWs.4 and 5. Thus based upon the oral evidence and above stated witnesses along with Ex.P.7, it is seen that when the government bus was parked on the road, the private bus which was driven by the accused ought to have overtake on the right hand side. However, it is noted and demonstrated by the prosecution witnesses that it has overtaken the stationed government bus on the wrong side namely, on the left hand side. Secondly, the accused had clearly seen that some passengers were boarding the stationed bus. However, while he was driving, he was sitting on the right hand side of the bus had the very opportunity to avoid the incident as a lady was boarding the stationed bus. But he has sandwiched the victim lady between the two buses while he was crossing the stationed bus on the left hand side and the lady, who also found to have crushed near the place of the driver on the outside of the bus. When the driver has the best opportunity to avoid the accident, he has failed to do so. On the culmination of the above observations, this Court finds that the driver of the private bus-the accused herein had driven the vehicle in a rash and negligent manner. From the evidence of PW.16 Government Doctor, coupled with Ex.P3 and Ex.P4-postmortem certificate, it is clear that the victim died due to the injury sustained in the accident and from the evidence of PW.14 motor vehicle inspector coupled with Ex.P2-Motor Vehicle report, the damage caused to the private bus have clearly corroborates with the evidence of the private prosecution witnesses-PW.1 and PW.3. PW.10-conductor of the offending vehicle have clearly deposed the identity of the accused and deposed the accused only drove the vehicle and caused the accident. To that limited extent his evidence remains intact in the cross-examination and thus this Court finds that the prosecution has proved that the accused was the driver of the private bus, which caused the accident and the accused/driver had driven the vehicle in a rash and negligent manner, thereby the victim was sandwiched between the two buses and the driver/accused had driven the vehicle on the wrong side of the stationed government bus, which is the cause for the accident. Though he had the last opportunity to avoid the accident, he has not taken, and he was rash and negligent and not diligent and had caused the accident. Further the prosecution had proved that during the time of the accident, the government bus was not driven by anybody and simply parked and stationed and the victim has died due to the injuries sustained from the accident and on the above stated position of facts, this Court find that the conviction and sentence passed by the Courts below does not warrant any interference.

13. However, on consideration of the entire evidence and also the facts and circumstances of this case and manner of

the accident, in the interest of justice, sentence alone is hereby reduced to three months rigorous imprisonment instead of six months awarded by the Courts below. The fine amount remains intact.

14. Accordingly, this Criminal Appeal is partly allowed, while the conviction is confirmed under Section 304(A) IPC and sentence awarded therein has been modified to the limited extent as indicated above.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

PJL

To

1.The Additional District and Sessions Judge,
Fast Track Court No.III,
Virudhachalam.

2. The Judicial Magistrate No.II,
Virudhachalam,
Cuddalore District.

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

+1cc to Mr.C.Ramkumar, Advocate SR.No.6011

CRL.R.C.No.1670 of 2011

NMI(CO)
GMY(27/02/2019)