

BAIL SLIP

The Petitioner namely Boopathyraj, S/o.M.Arumugham in CRL.R.C.No.1700/2011 accused in C.A.No.150/2011 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore was released on bail vide order of this Court dated 01/12/2011 in CRL.M.P.No.1/2011 in CRL.R.C.No.1700/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2018

PRONOUNCED ON : 30.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1700 of 2011

Boopathyraj ... Petitioner / Appellant /
Accused

-vs-

State Represented by
The Inspector of Police,
TIW (West) Police Station,
Coimbatore City. ... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., praying to call for the records in pursuance of the judgment dated 07.06.2010 made in C.C.No.226 of 2007 on the file of the learned Judicial Magistrate, Court No.8, Coimbatore and as confirmed in respect of offences under Sections 279 and 337 IPC and as reduced to six months from one year in respect of offence under Section 304(A) IPC, by judgment dated 24.08.2011 made in C.A.No.150 of 2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore and to set aside the same by allowing this Criminal Revision Case.

For Petitioner : Mr.B.Dayalan

For Respondent : Ms.V.Saratha Devi,
Government Advocate (Crl.Side).

ORDER

The convicted sole accused is the revision petitioner herein. He has filed this Criminal Revision Case to set aside the judgment dated 07.06.2010 made in C.C.No.226 of 2007 on the file of the learned Judicial Magistrate, Court No.8, Coimbatore, which was confirmed in respect of offences under Sections 279 and 337 IPC and reduced to six months from one year in respect of offence under Section 304(A) IPC, by judgment dated 24.08.2011 made in C.A.No.150 of 2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore.

2.The respondent police has filed charge sheet against the revision petitioner / accused, alleging that on 17.08.2007, at about 08.05 in the evening on Kovai-Pollachi Main Road, near Bothanur Kurichi Divison, the accused, who is the Government bus driver, has driven the Government bus bearing Registration No.TN 38 N 1366 with bus Route No.55 B on north to south direction in a rash and negligent manner and hit from the behind of the scooter, which is proceeding in front of him bearing Registration No.TN 38 5988, in which the driver of the scooter has sustained simple injuries, while the the son of the driver, who is the pillion rider, fell down from the scooter due to dashing of the bus on the rear side of the scooter and the front wheel of the bus ran over of the head of the pillion rider and caused accident and instantaneous death. Hence, the petitioner / accused charged under Sections 279, 337, 304(A) IPC.

3.To prove the charges, the prosecution has examined P.W.1 to P.W.14 and marked Exs.P.1 to P.11.

4.After trial, the trial Court has held that the prosecution has proved all the charges and accordingly, laid conviction and sentenced the accused to undergo simple imprisonment for three months each for the offences under Section 279 and 337 IPC and to undergo simple imprisonment for one year for the offence under Section 304(A) IPC with fine of Rs.2,000/- in default to undergo simple imprisonment for three months. The above sentences shall run concurrently.

5.Aggrieved against such conviction and sentence passed in C.C.No.226 of 2007, the accused has filed Crl.A.No.150 of 2011 before the learned Additional District and Sessions Judge and the same has been dismissed, after contest and hence, this Criminal Revision Case has been filed.

6.The case of the prosecution in brief is that the accused is a driver of the Transport Corporation, who drove the bus in a rash and negligent manner and dashed against the Kinetic Honda, Scooter from behind and thereby, caused accident.

7.The suggestive case of the defense is that there is a barricade on the road and P.W.1, rider of the scooter, hit the barricade, subsequently, he lost his balance and that the deceased fell down on the road. Thereafter, P.W.1 sustained injuries and his son died.

8.According to the learned counsel appearing for the petitioner, it is a false case foisted against the petitioner / accused. During the cross-examination, P.W.2 and P.W.5 deposed that they are friends of the deceased person i.e., son of P.W.1. The other prosecution witnesses are injured witnesses. Both the Courts below have not properly appreciated the evidence. Hence, he sought to set aside the conviction and sentence imposed by the Courts below.

9.The learned Government Advocate (Crl.Side) made submissions in support of the case of the prosecution.

10.Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record carefully.

11.After hearing both the parties and also after perusing the records, the valuable points that have been arisen for consideration are as follows:-

(i)Whether the order of conviction passed under Sections 279, 337 and 304(A) IPC is sustainable in law or not?

(ii)Whether the sentence awarded therein is excessive or not?.

12.The case of the prosecution is that on that day i.e., 17.08.2007, the petitioner drove the bus bearing Registration No.TN 38 1366, Route No.55 B, which was coming from North to South and in front of the bus, a Scooter bearing Registration No.TN 38 5988, which was driven by P.W.1, met with an accident due to the rash and negligent driving and the bus hit the Scooter, in the result, P.W.1 sustained simple injuries and the pillion rider i.e., son of P.W.1 died on the spot.

13.P.W.1, who is the driver of the scooter and father of the deceased, has clearly deposed the manner of the accident and has categorically stated that while they were proceeding in the

scooter having Registration No.TN 38 5988, a bus driven by the Government Conductor has come from the behind and dashed near the stepney of the scooter. Due to which, he fell on the right side and his son, who was pillion rider, fell on the left side wheel of the bus and the bus ran over the head of his son and he died on the spot. The other occurrence witnesses, namely, P.W.2, 5 and 11, have categorically stated and clearly mentioned about the happening of the accident.

14.After going through the cross-examination of P.W.1, 2, 5, 11, this Court finds that there is nothing in the cross-examination to discredit their evidence. P.W.1 is the injured evidence, while P.W.2 is the occurrence witness, P.W.5 and 11 are the neighbors in the scene of the crime. It also appears that the evidence of P.W.3 and 6, who came to the scene of the crime on hearing about the information also lends support to the case of the prosecution. It remains to be stated that P.W.1, injured witness and he is the father of the deceased, who drove the two wheeler, whereas P.W.2, 5 and 11 are the occurrence witnesses have clearly spoken about the manner of the accident and specifically identified the accused as a driver of the offending vehicle and hence, their version in the absence of anything worthwhile in the cross-examination has been accepted by the Courts below and such finding rendered by both the Courts below does not warrant interference.

15.It is further to be stated that P.W.13, who is the Supervisor of the Tamil Nadu State Transport Corporation has categorically deposed that the accused was allotted to drive the offending vehicle as per Ex.P.8 allotment book. Furthermore, the evidence of Motor Vehicle Inspector, P.W.8, who had issued M.V. Report under Ex.P.2 for the motor vehicle and under Ex.P.4 for the bus and categorically stated that the accident has not taken place due to any mechanical defect, also lends support to the case of the prosecution.

16.It remains to be stated that Ex.P.5 Accident Registrar issued to P.W.1, injured witness also lends credence to the evidence of P.W.1. Furthermore, as per the evidence of Ex.P.7, eye sight of the driver is also found to be normal. In this occasion, taking into consideration of the oral evidence of P.W.1, 2, 5, and 11 coupled with the fact that as per Ex.P.5, P.W.1 has also injured in the very same accident and eye sight of the accused is found to be normal as per Ex.P.7, the prosecution has proved the charges beyond reasonable doubt and the similar finding arrived at by the Courts below cannot be found fault. Accordingly, the conviction passed under Sections 279, 337 and 304(A) IPC is confirmed.

17.Taking into consideration of the entirety of the circumstances, the sentence awarded by the trial Court for the offences under Sections 279 and 337 IPC has been reduced from six months to one month simple imprisonment and the sentence awarded by the trial Court under Section 304(A) IPC as modified by the Lower Appellate Court is reduced to three months from six months simple imprisonment and the fine amount already imposed by the Court below is hereby confirmed. The sentence awarded for the above said three Sections shall run concurrently and the period of sentence already undergone by the petitioner / accused during the investigation and trial shall be given set off.

18.In the result, this Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court No.I, Coimbatore.
2. The Judicial Magistrate, Court No.8,
Coimbatore.
3. The The Inspector of Police,
TIW (West) Police Station,
Coimbatore City.
4. The Additional Public Prosecutor,
Madras High Court, Madras.
5. The Chief Judicial Magistrate,
Coimbatore.

+1 cc to Mr.B.Dayalan, Advocate, S.R.No.7534

Order made in
CRL.R.C.No.1700 of 2011

RSV(CO)
SSM(01/03/2019)