

Bail Slip

The Appellant/Accused, namely S. Janagirin, S/o. Samuvel, was directed to be released on bail as per order of this Hon'ble court dated 16.12.2011 in MP.NO.1/11 IN CRL A.NO.1786/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision No.1786 of 2011

S. Janagirin,
S/o. Samuvel,
Idayanvilai Street, Pandarapuram (P.O),
Sathankulam,
Tuticorin. ... Petitioner/ Appellant/Accused

/versus/

State represented by
The Inspector of Police,
Traffic Investigation Wing (Central),
Coimbatore.
(Cr.No.478/2006) ... Respondent/ Respondent/ Complainant

Prayer:- Criminal Revision Case is filed under Section 397 read with 401 Cr.P.C, against to set aside the judgment and conviction dated 27.09.2011 and made in C.A.No.130/2011 on the file of Principal District and Sessions Court, Coimbatore, confirming the Judgment and Conviction dated 25.05.2011 and made in C.C.No.472 of 2010 on the file of Chief Judicial Magistrate, Coimbatore.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

O R D E R

This Revision Petition is directed against the concurrent finding of the Courts below holding the revision petitioner guilty for the offence under Section 304(A) of I.P.C.

2. The brief facts of the case is that on 08.12.2006 at about 6.45 p.m on the 100 feet Road, Kovai Gandhipuram near Asian Mobile Shop, the eicher tempo vehicle driven by the accused, rash and negligently hit the goods auto bearing Registration No.T.N.38.V.3504. Due to the impact, the driver of

the goods auto fell down from the vehicle and succumbed to injuries sustained by him on the head and abdomen. Therefore, the accused was charged for offences under Sections 279 and 304-A of I.P.C.

3. Before the trial Court, the prosecution has examined 12 witnesses. 9 Exhibits were marked. The accused has chosen not to examine any witnesses or mark document.

4. The trial Court, on appreciating the witnesses and evidence against the accused has found him guilty for offences under Sections 279 and 304(A) of I.P.C. Sentenced him to undergo 6 months S.I and pay a fine of Rs.1,000/-, in default 1 month S.I for offence under Section 279 of I.P.C. Sentenced him to undergo one year S.I and a fine of Rs.5,000/- and in default 3 months S.I for offence under Section 304(A) of I.P.C.

5. Aggrieved by the conviction and sentence, the accused has preferred the appeal before the District and Sessions Court, Coimbatore in C.A.No.130 of 2011.

6. On re-appreciation of evidence, the Lower Appellate Court held that there is no error in the judgment of the trial Court. Confirmed the sentence and conviction imposed by the trial Court and dismissed the appeal.

7. The present revision petition is filed on the ground that the Courts below have miserably failed to consider the discrepancies and contradictions in the evidence of prosecution witnesses. The eye witnesses PW.3 to PW.6 ought not to have been relied since, their testimony exposes, they could not have seen the accident.

8. The learned Counsel appearing for the revision petitioner would point out the following infirmities in the case of the prosecution, which ought to have lead to acquittal.

(i). None of the witnesses have deposed that the accused was driving his vehicle rash and negligently, except deposing that the offending vehicle came very fast in high speed. Nothing has been spoken by these witnesses regarding rashness or negligence.

(ii). The Sketch Ex.P.6 does not disclose the location of the vehicles or presence of any blood strain.

(iii). The Motor Inspectors report and their depositions [Ex.P.3 and Ex.P.4 as spoken by PW.8 and PW.9] would clearly show that the vehicle of the deceased has not sustained, any damage on the rear side of the vehicle.

9. If the case of the prosecution that the vehicle driven by the accused hit the deceased vehicle on the rear side rash and negligently, the accused vehicle ought to have

sustained some physical damage on the rear side. Absence of damage on the rear side of the goods auto driven by the deceased clearly belies the case of the prosecution regarding the manner in which the alleged motor accident occurred and the manner the victim of the accident died.

10. The Learned Counsel while attacking the veracity of the eye witnesses would submit that according to the prosecution, the accident took place around 6.30 p.m to 6.45 p.m on 08.12.2006. The police arrived to the scene of crime by 7.00 p.m to 7.30 p.m. Whereas, the First Information Report has been registered only at 10.30 p.m on that day. The defacto complainant PW.3 an Auto driver who alleged to have witness the accident had first informed the accident to the family members of the deceased and thereafter, took victim to the private hospital, which has set criminal law into motion by lodging the complaint, Ex.P.1. In the cross examination, PW.3 has stated that he reported about the accident orally to the police, which was reduced into writing by the police. Whereas, PW.11 the Sub-Inspector of Police who has registered the F.I.R had deposed that when he was on duty, PW.3 (Anand) came to the station and gave a written complaint to him. He received it and registered the F.I.R under Crime No.438 of 2006 for offences under Section 297 and 304(A) of I.P.C.

11. The learned counsel for the petitioner would submit that for the lacuna in the prosecution as pointed above, the Courts below ought to have acquitted the accused. Having failed to properly appreciate the evidence, grave miscarriage of justice has occurred. Hence, this Court has to interfere in the judgment of the Courts below by exercising its revisional jurisdiction.

12. Per contra, the learned Government Advocate (Crl.Side) would submit that the factum of accident and death of the goods Auto driver Susai Irudharaj is not disputed. The offending vehicle was driven by the revision petitioner herein and he has been identified by witnesses PW.3 to PW.6 who are the persons carrying on avocation near the scene of crime. The damage caused to the accused vehicle as well as the deceased vehicle sufficient to conclude that the accused was driving his vehicle in rash and negligently manner. The Motor Vehicle Inspectors who inspected the vehicles had certified that the accident was not due to any mechanical defect. In such circumstances, when both the Courts below on facts found that the accused is guilty of the offence of rash and negligent driving causing the death of Susai Irudhai Raj, mere omission by the eye witnesses to say that the driver of the offending vehicle was driving his vehicle rash and negligently will not give any benefit of doubt in favour of the revision petitioner.

13. Heard the respective counsels. Perused the records and the Exhibits.

14. The specific case of the prosecution is that the offending vehicle hit the vehicle of the accused on the rear

side. Due to that impact, the driver of the goods-auto fell down from the vehicle and sustained the fatal injury. The Motor Vehicle Inspector Report of both the vehicles are marked as Ex.P.3 and Ex.P.4. The damage of the eicher van bearing Registration No.T.N.38.W.8196 driven by the accused is "front grill and bumper dent inward below right headlight." The damage found on the Light Motor Vehicle Bajaji Auto bearing Registration No.T.N.38.V.3504 are "front wheel mudguard dented, Right side headlight shield (plastic damaged), right side loading compartment angle structure bent"

15. Both the Motor Vehicle Inspectors have uniformly opined that the accident was not due to any mechanical fault of either of the motor vehicles. Now analysing the ocular evidence, PW.3 defacto complainant has deposed that on 08.12.2006 at about 6.45 p.m, when he along with his friends were waiting in the Auto stand near 100 Feet Road, a goods-auto moving from east to west was hit by the eicher van driven by the accused on a high speed. The Auto driver fell down and sustained injury on his head, hand and leg. Almost on the similar line PW.4, PW.5 and PW.6 have narrated the manner in which the accident took place. PW.3 to PW.6 have specifically stated that the impact was on the rear of the deceased vehicle and front of the accused vehicle. When the Motor Vehicle Inspector reports tested with the version of the eye witnesses, this Court finds absence of any damage on the rear portion of the accused vehicle cause doubt about the veracity of the eye witnesses.

16. Furthermore, as pointed out by the learned counsel for revision petitioner that none of the witnesses have spoken about the rash and negligence of the accused while driving his vehicle. In fact, PW.6 has not even whispered about the manner in which the accused was driving his vehicle, except referring about the passenger bus which was parked while the occurrence took place.

17. In the light of the above conspicuous omission by the eye witnesses to say about rash and negligence, Section 304 (A) of I.P.C and 279 of I.P.C will not attract.

18. The Hon'ble Supreme Court in State of Karnataka Vs. Satish reported in Manu SC 1241 1988 equivalent (1988) 8 SCC 493 has held as under:

"Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to

the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case."

19. When the Courts below have patently erred in not considering the evidence before it in a holistic manner, there is no bar for the revisional Court to point out the error and reverse the erroneous finding. This is one such case, where the Courts below have failed to appreciate the evidence in entirety and holistically. In these circumstances, this Court is constrained to interfere the finding of the Courts below.

20. Accordingly, the Criminal Revision Petition is Allowed. The conviction and sentence passed by the Lower Appellate Court is set-aside. Fine amount if any paid, shall be refunded to the petitioner.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Learned Principal District and Sessions Judge, Coimbatore.
2. The Learned Chief Judicial Magistrate, Coimbatore.
3. The Government Advocate (Crl.Side), High Court, Madras.
4. The Inspector of Police, Traffic Investigation Wing (Central), Coimbatore.

+1cc to Mr.A.Thiyagarajan , Advocate SR.No. 14461

Crl.R.C.No.1786 of 2011

A.SK(19/03/2019)