

Bail Slip

The Petitioner/Accused viz Subanna was directed to be released on bail as per order of this Court dated 29.11.2012 and made in M.P. Nos. 1 & 3/2012 in CrI.R.C.No.1107 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.RC.No.1107 of 2012

Subanna

...Petitioner/Accused

Vs

State Rep., by,
The Inspector of Police,
Mathigiri Police Station,
Hosur Tk, Krishnagiri District.
Crime No.128 of 2009

...Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, to set aside the order dated 23rd July 2012 made in C.A.No.18 of 2012 on the file of the Principal District & Sessions Judge, Krishnagiri by modified the order of conviction dated 16.02.2012 made in C.C.No.98 of 2009 on the file of the Judicial Magistrate No-II, Hosur and acquit the petitioner.

For Petitioner : Mr.S.Lakshmanasamy

For Respondent : Mr.T.Shanmugarajeswaran

Government Advocate (Criminal Side)

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 23rd July 2012 made in C.A.No.18 of 2012 on the file of the Principal District & Sessions Judge, Krishnagiri by modifying the order of conviction dated 16.02.2012 made in C.C.No.98 of 2009 on the file of the Judicial Magistrate No-II, Hosur and acquit the petitioner.

2 The respondent police registered a case against the petitioner/accused for the offence under Section 279 and 304 (A)

IPC, in crime No. 128 of 2009 on the file of the Mathigiri Police Station. After, completion of the investigation the respondent police laid charge sheet before the Judicial Magistrate No-II, Hosur. The learned Judicial Magistrate No-II, Hosur, taken cognizance of the charge sheet on file, in C.C.No.98 of 2009. After completing trial, the learned Judicial Magistrate No-II, Hosur, found guilty of the petitioner/accused for the offence under Sections 279, 304(A) IPC and imposed a fine of Rs.500/- for the offence under Section 279 IPC and for the offence under Section 304(A) IPC, sentenced him to undergo rigorous imprisonment for a period of 3 months and to pay a fine of Rs.5,000/- in default to undergo 2 months simple imprisonment for each offences. Challenging the said order of the learned Judicial Magistrate No-II, Hosur, the petitioner/accused filed an appeal before the Principal District and Sessions Court, Krishnagiri, in CrI.A.No.18 of 2012.

3 The learned Principal District and Sessions Judge, Krishnagiri, after hearing the arguments, modified and allowed the appeal in part and acquitted the revision petitioner for the offence under Section 279 IPC and conviction for the offence under Section 304(A) IPC was confirmed. Challenging the said judgment the petitioner/accused has filed the present revision before this Court.

4 The learned counsel for the petitioner would submit that there is no eye witnesses in this case. P.W.1 is only the complainant, he is not an eye witness. P.W.2 and P.W.7 have been stated as eye witness. During cross examination, they have not supported that the revision petitioner drove the vehicle in a rash and negligent manner and dashed against the deceased. They have not seen the occurrence. After hearing the sound they have gone to the occurrence place, therefore, they are not the eye witness. The person one who have signed in the rough sketch has not supported the case of the prosecution. The prosecution has failed to prove its case beyond reasonable doubt. The trial Court as well as the appellate Court, without any proper evidence stated that the revision petitioner came in the wrong side and dashed against the deceased. In support of his contentions, the learned counsel for the petitioner relied on the decision of this Court in the case of (i) S.Thirumoorthy Vs. The State of Tamil Nadu, Tirrupur, reported in 2015(2) MLJ (Criminal) 696 : 2015 (13) R.C.R (Criminal)372 and (ii) Sekar Vs.The State of Tamil Nadu, Ethapur, Salem District, reported in 2001(2) MadWN (Cri) 249. If the accident had happened due to the rash and negligent driving of the driver of the vehicle, then only the petitioner can be prosecuted, in this case there is no evidence the rash and negligent driving. Therefore, the revision case can be allowed and the accused has to be acquitted, which warrants interference by this Court.

5 The learned Government Advocate (Criminal Side) would submit that P.W.2 and P.W.7 are the co-workers, they are the eye witness they have seen the occurrence. The deceased was going just two feet before P.W.7, the revision petitioner came by Maruthi Van in wrong side and dashed against him. P.W.6 is the mahazar witness, also supported the case of the prosecution and the Motor Vehicle Inspector also stated that the accident is not due to the mechanical defect, the Doctor also stated that the death was due to head injury. Therefore, the prosecution has proved its case beyond reasonable doubt. Both the Courts have rightly appreciated the evidence and convicted him, which does not warrant any interference by this Court.

6 Heard the learned counsel for the revision petitioner and the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

7 The case of the prosecution is that on 13.05.2009 at about 7.10 pm, within the limits of Mathigiri Police Station limit on Hosur to Thalli road at Belakondapalli Haritha Company, while the deceased Siva @ Sarathkumar was walking on the eastern side of the road, the accused, who was driving a Maruthi Omni Van bearing Registration No.KA-51-P-1292 in a rash and negligent manner from Belakondapalli to Hosur, hit on the person walking on the eastern side and caused him death. Thereby, the accused committed the offences punishable under Section 279, 304(A) IPC.

8 In this Case P.W.2 and P.W.7 are stated to have been an eye witnesses, and they were present in the occurrence place. At the time of the accident, the accused drove Maruthi Omni Van bearing Registration No.KA-51-P-1292 and dashed against the deceased. Due to the accident, the deceased sustained injury and died on the spot. The Mahazar and the rough sketch shows that the accused came in a wrong direction and dashed against the deceased. The report of the Motor Vehicle Inspector shows that the vehicle involved in the accident and confirmed the damages to the vehicle.

9 Both the Courts below have stated that the revision petitioner denied the accident. Even the learned counsel for the revision petitioner would submit that the accident was not happened, due to the rash and negligent driving of the petitioner/accused and no eye witnesses have spoken about the rashness and negligent.

10 The lower appellate Court is the final Court of fact finding rightly appreciated the evidence and given finding that the revision petitioner drove the vehicle in wrong direction and dashed against the deceased, which itself shows that his rashness

and negligence. Therefore, there is no perversity in appreciation of evidence and finding given by the Courts below. It is an well settled proposition of law, the citation referred to by the learned counsel for the revision petitioner is not applicable to the facts of the present case on hand. This Court finds that there is no perversity in judgments of the Courts below and there is no merit in the revision case.

11 In the result, the Criminal Revision Case is dismissed. The trial Court is directed to secure the petitioner to undergo remaining period of sentence if any.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

sbn

To

- 1.The learned Judicial Magistrate No-II,
Hosur.
- 2.The learned Principal District and Sessions Judge,
Krishnagiri.
- 3.The Inspector of Police,
Mathigiri Police Station,
Hosur Tk, Krishnagiri District.
- 4.The Public Prosecutor,
High Court,
Chennai.

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Cr1.R.C.No.1107 of 2012

RR(CO)
SP(21/02/2020)