

Bail Slip

The Petitioner/Accused, namely Kaanthan was directed to be released on bail as per order dated 25.09.2012 made in CRL MP.NO.1/12 IN Crl.RC.No.1114 of 2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1114 of 2012
and M.P.No.1 of 2012

Kaanthan

... Petitioner

Vs.

The State by
Inspector of Police
Sangagiri Circle
Thevoor Police Station
Salem District.
(Cr.No.81 of 2010)

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 and 401 Cr.P.C., to call for the records relating to the conviction confirmed in the judgment dated 12.07.2012 made in C.A.No.20 of 2012 on the file of the learned Second Additional District/Sessions Court, Salem confirming the conviction imposed in the judgment dated 01.02.2012 made in C.C.No.171 of 2010 on the file of the learned Judicial Magistrate-I, Sankari and to set aside the same.

For Petitioner : Mr.N.Manokaran

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

O R D E R

This revision case has been filed by the petitioner to call for the records in the judgment dated 12.07.2012 in C.A.No.20 of 2012 on the file of the learned Second Additional District/Sessions Court, Salem, confirming the judgment dated 01.02.2012 in C.C.No.171 of 2010 on the file of the learned Judicial Magistrate-I, Sankari.

2. It is the case of the prosecution that on 01.04.2010 at about 9.00 p.m., the revision petitioner has driven the bus bearing Registration No.TN 59 W 8080 nearby Eri Thottam in

Kumarapalayam to Edappadi Road in a rash and negligent manner and dashed against the two wheeler bearing Registration No.TN 38 C 4332, which was going in front of the said bus. Due to the above accident, the victim sustained injury and died and therefore, the revision petitioner committed the offence punishable under Sections 279 and 304(A) IPC. Hence, P.W.1 gave a complaint before the respondent police.

3. Based on the complaint, the respondent police registered a case against the revision petitioner. After completion of investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No.I, Sankari for offences under Sections 279 and 304(A) IPC against the accused and the same was taken on file in C.C.No.171 of 2010.

4. The learned Judicial Magistrate on the basis of the available materials and records, found the accused guilty for the offence under Section 279 IPC and ordered payment of fine of Rs.1000/- in default, to undergo Simple Imprisonment for six weeks and also convicted the accused under Section 304 (A) IPC and sentenced to undergo Simple Imprisonment for six months.

5. Aggrieved over the same, the petitioner has preferred a Criminal Appeal in C.A.No.20 of 2012, on the file of learned Principal District and Sessions Judge, Salem and the same was made over to the learned II Additional District and Sessions Judge, Salem. After hearing the arguments advanced by both the counsel, the learned District and Sessions Judge, confirmed the judgment passed by the learned Judicial Magistrate No.I, Sankari in C.C.No.171 of 2010 dated 12.07.2012.

6. The present Criminal Revision Case has been preferred by the petitioner, against the judgment of the learned II Additional District and Sessions Judge, Salem in C.A.No.20 of 2012 dated 12.07.2012.

7. The learned counsel for the petitioner would submit that there is no eyewitness in this case. P.W.1, P.W.2 and P.W.3 are stated to be an eyewitnesses. On reading of the entire evidence, it is seen that none of the witnesses have spoken that they have seen the occurrence. P.W.1 has stated in the cross examination that after hearing sound, he went to the place of occurrence and saw the accident and he only called the ambulance and took the victim to the hospital at Kumarapalayam. They asked him to take the victim to Government hospital at Erode and where he was declared as dead. P.W.2 has stated that the victim has died on the spot. Even P.W.3 has stated that he has not seen the occurrence. After hearing the noise only, he went to the place of occurrence. There is a material contradiction between them regarding the time of the occurrence and the reason stated by the witnesses. Further, at

the time of the accident, the passengers were in the bus. But the prosecution has not examined any of the passengers, which also creates doubt. The prosecution has not proved its case beyond reasonable doubt. Both the Courts below have failed to appreciate all these evidences and convicted the petitioner which warrants interference.

8. The learned Government Advocate (Criminal Side) would submit that P.W.1/eye witness has clearly narrated the occurrence. P.W.2 and P.W.3 were also eyewitnesses and they have corroborated the evidence of P.W.1. The Motor Vehicle Inspector has given a report that there was damage in back side of the TVS 50 and front side of the bus. The prosecution has established its case beyond reasonable doubt. Both the Courts below have rightly appreciated the evidence and convicted the accused.

9. Heard both sides and perused the materials available on record.

10. It is the case of the prosecution that on 01.04.2010 at about 9.00 p.m., the revision petitioner has driven the bus bearing Registration No.TN 59 W 8080 near Eri Thottam in Kumarapalayam to Edappadi Road and dashed against the two wheeler bearing Registration No.TN 38 C 4332, which was going in front of the said bus. At that time, the revision petitioner drove the bus with rash and negligent manner and dashed the motor vehicle. Due to accident, the victim sustained injury and later he died.

11. On a perusal of the entire records, it is seen that during cross examination, P.W.1 has stated that after hearing the sound, he went the place and called the ambulance. He only took the injured to the Government hospital at Kumarapalayam. From where he took the victim at Erode Government Hospital.

12. Admittedly, Doctor, who attended the victim either at Kumarapalayam Government hospital or Erode Government hospital has not been examined. Accident Register has not been marked in this case which creates suspicion. Actually P.W.1 has taken the victim immediately to the hospital in Ambulance. But the driver of the ambulance has not been examined as to who informed him about the accident and took the victim to the hospital. Therefore, the presence of P.W.1 in the place of the occurrence itself is doubtful.

13. From the evidence of P.W.2, it is seen that after hearing the noise, he went the place of occurrence and found that the victim died on the spot. If the version of P.W.1 is true, the evidence of P.W.2 might be false. The non examination of the driver of the ambulance and passengers who traveled in the said bus, creates suspicion in the case as projected by the prosecution. At that time of admitting the victim in the hospital, the doctor who attended the victim has

also not been examined, which also creates doubt. P.W.3 has also not clearly stated about the accident. The evidence of P.W.1, 2 and P.W.3 clearly shows that they could not have seen the accident. The prosecution has not established the manner of the accident. During the cross examination of P.W.1 to P.W.3, they have stated that they had not seen the accident directly at the time of the occurrence and only after hearing the noise, they have reached the spot.

14. This Court while exercising revisionary jurisdiction would not normally interfere with the order of the Courts below, unless there is manifest error or perversity is found. In this case, on reading of the entire evidence, it is seen that there is perversity in appreciation of the evidence by both the Courts below. Both the Courts below have failed to appreciate the evidence and convicted the accused on sympathy grounds and not on merits. The prosecution has not proved its case beyond the reasonable doubt. When two vies are possible all ways the benefit of doubt could be extended infavour of the accused. During the cross examination, P.W.1 to P.W.3 have admitted that they have not directly seen the accident at the time of occurrence. Under these circumstances, this Court finds that the judgment of the learned II Additional District and Sessions Judge, Salem in C.A.No.20 of 2012, dated 12.07.2012 warrants interference.

15. In the result, this Criminal Revision Case is allowed, by setting aside the judgment dated 12.07.2012 in C.A.No.20 of 2012 on the file of the learned Second Additional District/Sessions Court, Salem, confirming the judgment dated 01.02.2012 in C.C.No.171 of 2010 on the file of the learned Judicial Magistrate-I, Sankari.

16. The petitioner/accused shall stand acquitted of all charges against him. Fine amount, if any, paid by the petitioner shall be refunded to him.

17. In the result, the Criminal Revision is allowed. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rli

To

1. The II Additional District and Sessions Judge,
Salem.

2.The Judicial Magistrate-I, Sankari.

3.Do thro the Chief Judicial Magistrate,Salem
(For informatiion)

4. The Public Prosecutor
Madras High Court.

5. The Inspector of Police
Sankari Circle,
Thevoor Police Station,
Salem District

6.The Superintendent,Central Prison, Coimbatore.

+1cc to Mr.N.Manokaran , Advocate SR.No. 52029

Crl.RC.No.1114 of 2012
and M.P.No.1 of 2012

mp
A.SK(27/01/2020)



WEB COPY