

Bail Slip

The Petitioner/Accused viz Karthik was directed to be released on bail as per order of this Court dated 21.11.2012 and made in MP.No.1/2012 in Crl.R.C.No.1123/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1123 of 2012

and

Crl.M.P.No.02 of 2012

Karthick

...Petitioner

Vs

State Rep., by,
The Inspector of Police,
K.R.P.Dam Police Station,
K.R.P.Dam,
Krishnagiri District.
Crime No.6 of 2009

...Respondent

PRAYER: Criminal Revision filed under Article 397 r/w 401 of Criminal Procedure Code, to call for the records relating to order dated 09.07.2012 passed in C.A.No.59 of 2010 on the file of the Principal District and Sessions Court, Krishnagiri, and the order dated 07.09.2010 passed in C.C.No.520 of 2009 on the file of the learned Judicial Magistrate Court No.2, Krishnagiri, set aside the same.

For Petitioners : Mr.S.P.Mani

For Respondent : Mr.T.Shanmugarajeswaran

Government Advocate (Criminal Side)

सत्यमेव जयते

O R D E R

The respondent police registered a case against the revision petitioner/accused for the offences under Sections 279 and 304 (A) IPC, in Crime No.6 of 2009, on the file of the K.R.P.Dam Police Station. After, completion of investigation. the respondent police laid charge sheet before the Judicial Magistrate No.II, Krishnagiri. The learned Judicial Magistrate No-II, Krishnagiri, taken cognizance of the charge sheet on file, in C.C.No.520 of 2009. After completing trial, the learned

Judicial Magistrate No-II, Krishnagiri, found guilty of the revision petitioner/accused for the offences under Sections 279 and 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 Simple Imprisonment for a period of 6 months and to pay a fine of Rs.1,000/-in default to undergo one month Simple Imprisonment for each offences. Challenging the said order of the learned Judicial Magistrate No-II, Krishnagiri, the revision petitioner/accused filed an appeal before the Principal District and Sessions Court, Krishnagiri, in CrI.A.No.59 of 2010.

2 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 revision petitioner/accused has filed the present revision before this Court.

3 The learned counsel for the revision petitioner would submit that there is a delay in sending the First Information Report to the Court. Even though, the place of the accident seems to be a residential place, and no eye witness was examined. P.W.2, to P.W.4 are interested witnesses and they have not seen the occurrence. The learned counsel further submitted that the prosecution has not properly explained the delay in sending the First Information Report to the court and in the First Information Report itself, the name of the accused has not been mentioned. They have foisted the false case against the revision petitioner/accused. They have created the documents and sent the First Information Report to the Court with a delay of 6 days. The prosecution has not proved its case beyond all reasonable doubts. Both the Courts below have failed to consider the facts and wrongly convicted the revision petitioner, which warrants interference by this Court.

4 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that there is no denial of the accident, as well as the time of the accident. The revision petitioner only has driven the tractor and soon after the accident, the victim was immediately taken to the hospital. Accident Register Copy reveals that on the same day postmortem was conducted, the complaint was given on the same day by the mother of the deceased. Therefore, the accident has not been disputed and only sending the First Information Report to the Court with a delay of six days, is not sole ground to disbelieve the case of the prosecution. The eye witnesses have clearly

spoken about the accident and the fact that the revision petitioner only has driven the tractor at the time of accident. Both the Courts below have rightly appreciated the evidence and convicted the revision petitioner, which does not warrants any interference by this Court.

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

6 The case of the prosecution is that, the defacto complainant/P.W.1 is residing at Aavathanapatti, Uththerikottai Village and was doing agriculture. On 13.01.2009 around 09.45 a.m., she and her daughter went to the place nearby bore pipe to fetch water, at that time, the accused driven the tractor bearing registration No. TN 24 D 1139 in a rash and negligent manner, without blowing any horn and dashed against the child. In the said accident, the child sustained injuries on the right check, hip, lacerated injury on the ear and bleeding on the ears and mouth, the said accident was witnessed by P.W.2, P.W.3, P.W.4 and others and subsequently, child died. Hence, the accused committed offence punishable under Sections 279 and 304 (A) IPC.

7 P.W.1 is the mother of the deceased, who has clearly spoken about the fact that she and victim went for fetching water, at that time, the revision petitioner has driven the tractor in a rash and negligent manner and dashed against the child. P.W.1 has given the complaint regarding the accident. The learned counsel for the revision petitioner contended that she gave a complaint in her own hand writing, whereas, the police has stated that, the complaint was written by the police officials.

8 On reading of the evidence of P.W.1 and the police officer, who has registered the case, delay with regard to the registration of complaint is not a fatal to the case of the prosecution. At the time of the accident, P.W.2, P.W.4 and P.W.5 have seen the occurrence. On reading of the evidence of P.W.1, it reveals that she has clearly narrated about the accident. On reading of the evidence, the contradictions pointed out by the learned counsel for the revision petitioner is not a material contradiction, which would go to the root of the case and the deceased was only aged about 9 years at the time of accident.

9 There is no reason to discard the evidence of P.W.1 The appellate Court, being a final Court of fact finding has rightly

appreciated the evidence and modified the sentence passed by the trial Court. Further, it revealed from the records that on the date of accident only, the deceased was admitted in the hospital and more particularly the complaint was given on the same day. Though, in the First Information Report, the name of the accused was written as Aarumugam, subsequently, the investigation reveals that the revision petitioner is the person one who has driven the tractor at the time of the accident and he only drove the tractor at the time of the accident in a rash and negligent manner and due to which, the accident had happened.

10 It is a well settled proposition of law, the scope of the revision is very limited. On reading of the entire evidence, this Court also comes to the conclusion that the revision petitioner, one who drove the tractor at the time of the accident and due to the rash and negligent driving of the revision petitioner only the accident had happened. Therefore, there is no sound reason to interfere with the judgment of both the Courts below.

11 Even though the appellate Court has acquitted the petitioner for the offence under Section 279 IPC, there is no appeal against the same either by the defacto complainant or by the state. This Court does not find any merit in the revision and the same is liable to be dismissed.

12 However, the accident may not be an intentional one and it is only due to the rash and negligent driving. Therefore, this Court while deciding the revision by confirming the conviction recorded by both the Courts below, inclined to modify the sentence alone from 6 months Simple Imprisonment to three months Simple Imprisonment, which would meet the ends of justice and the other part of sentences imposed by the Courts below remains unaltered.

13 With the above said modification, this Criminal Revision Case is partly allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

sbn

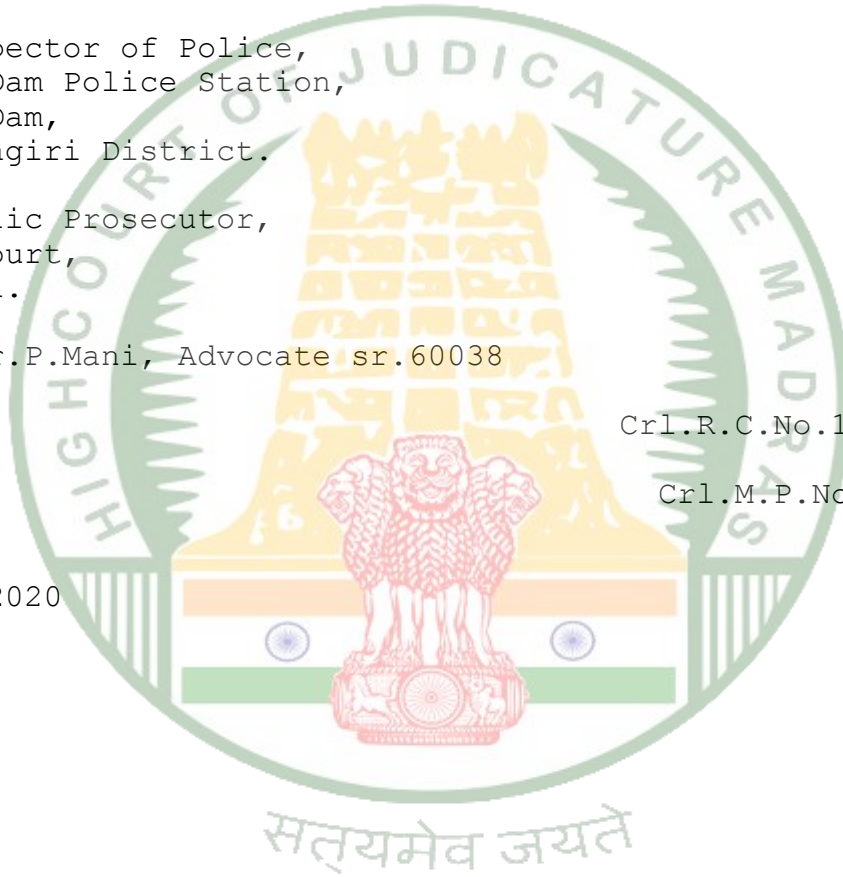
To

- 1.The Judicial Magistrate No-2,
Krishnagiri.
- 2.The Chief Judicial Magistrate,
Krishnagiri(For Information).
- 3.The Principal District and Sessions Court,
Krishnagiri.
- 4.The Inspector of Police,
K.R.P.Dam Police Station,
K.R.P.Dam,
Krishnagiri District.
- 5.The Public Prosecutor,
High Court,
chennai.

+1cc to Mr.P.Mani, Advocate sr.60038

Crl.R.C.No.1123 of 2012
and
Crl.M.P.No.02 of 2012

mp(co)
nr 30/01/2020



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