

Bail Slip

The Appellant/Accused, namely Kanagaraj S/o.Velusamy Male 28 Years in CC .NO.543/10 dated 13.06.2011 on the file of the Chief Judicial Magistrate, Coimbatore was released on bail as per the order of this Court dated 07.09.2012 made in MP.NO.1/12 IN CrI.R.C.No.1152 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated:31.07.2019
CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.1152 of 2012
and
M.P.No.1 of 2012

Kanagaraj ...Petitioner/ Accused

-Vs-

The Inspector of Police,
Traffic Investigation Wing (Central),
Coimbatore.
Crime No.441 of 2006

....Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the judgment in CrI.A.No.143 of 2011 dated 05.07.2012 on the file of the learned Principal District and Sessions Judge, Coimbatore in confirming the judgment made in C.C.No.543 of 2010 dated 13.06.2011 on the file of the learned Chief Judicial Magistrate, Coimbatore.

For Petitioner: Mr.I.Abrar MD Abdullah
For Respondent: Mr.T.Shanmuga Rajeswaran
Govt. Advocate (CrI.side)

O R D E R

The Criminal Revision Case has been filed to set aside the judgment in C.A.No.143 of 2011, dated 05.07.2012, on the file of the learned Principal District and Sessions Judge, Coimbatore by confirming the judgment made in C.C.No.543 of 2010, dated 13.06.2011, on the file of the learned Chief Judicial Magistrate, Coimbatore.

2. The respondent police registered a case in Crime No.441 of 2006 against the petitioner for the offence under Section

279, 304(A) IPC and Section 130(1) read with 197 of Motor Vehicle Act (hereinafter referred to as 'MV Act'). After investigation, he filed a charge sheet against the petitioner for the above said offences before the learned Chief Judicial Magistrate, Coimbatore and the same was taken on file in C.C.No.543 of 2010.

3. Before the trial Court, in order to prove the case, the respondent police has examined 10 witnesses and marked 10 documents. On the side of the defence, no oral and documentary evidence was produced. After full-fledged trial, the learned Chief Judicial Magistrate has found the accused guilty for the offences under Sections 279 and 304(A) IPC and not found him guilty for the offence under Section 130(1) read with 197 of M.V.Act and convicted and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment for the offence under Section 279 of IPC; and convicted the accused and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment for the offence under Section 304(A) IPC.

4. Challenging the said order dated 13.06.2011, the convict filed an appeal before the learned Principal District and Sessions Judge, Coimbatore in C.A.No.143 of 2011. The learned Principal District and Sessions Judge, after hearing the arguments on either side, dismissed the appeal and confirmed the conviction and sentence passed by the learned Chief Judicial Magistrate, Coimbatore in C.C.No.143 of 2011, dated 13.06.2011. Challenging the judgment of the learned Principal District and Sessions Judge, Coimbatore in C.A.No.143 of 2011, dated 05.07.2012, the convict has preferred the present revision before this Court.

5. The learned counsel for the petitioner would submit that none of the witnesses have spoken about rash and negligent driving of the revision petitioner. P.W.1, P.W.2 and P.W.6 are stated to have been eyewitnesses, but they have not seen the occurrence and there was a material contradiction between them. P.W.1, P.W.2 and P.W.6 have not stated anything about the presence of the barricade in the road and auto stand. Therefore, they could not have seen the occurrence and also they could not have been present at the place of occurrence at all. P.W.2 has stated that soon after the accident, the victim was unconscious and P.W.1, P.W.2 and P.W.6 have taken him and admitted in the hospital, whereas P.W.6 stated that after the occurrence, he informed the victim's son that, after he came to the scene of occurrence, they all took the victim and admitted him in the hospital. But P.W.1 and P.W.2 have not stated anything about the information to the victim's son. Therefore, there was a material

contradiction between the prosecution witnesses. During the cross examination, the witnesses have admitted that there was a barricade so that the vehicle could not have been passed speedily. Therefore, non mentioning of the presence of the barricade and the auto stand, creates suspicion. The Investigating Officer has not investigated the case properly and a false case has been foisted against the petitioner. The Investigating Officer had drawn the rough sketch, showing that there is a barricade and auto stand near the place of occurrence. At the time of the accident, the age of the victim was more than 65 years. He himself fell down and inflicted with injury. The prosecution has not found out the actual cause of death of the deceased. The petitioner has valid driving license at the time of the accident. Both the Courts have failed to consider all these aspects and especially, the material contradictions between the evidence of P.W.1, P.W.2 and P.W.6, which warrants interference of this Court. He would further submit that at the time of the accident, the revision petitioner was a bachelor. Subsequently, he married and blessed with two children and also his aged parents with ailment and he is the only breadwinner of the family. Therefore, he prays to allow this revision.

6. The learned Government Advocate (Crl. side) would submit that P.W.1, P.W.2 and P.W.6 are eyewitnesses, they are auto drivers and they were standing nearby the auto stand. At that time, the victim was walking on the mud road from North to South near SRP Mills bus stop. The revision petitioner was proceeding on his motor cycle bearing Registration No.TN 37 AR 5881, on the same direction of the victim and dashed against him. Due to that, he sustained injuries on his head. The witnesses were rushed to the spot and informed the same to his son, P.W.4. The victim was taken to the hospital after his son came to place of occurrence and two days later, he died. The Doctor, who treated the deceased has stated that due to injury, he died. The accident has not been denied by the petitioner. P.W.1, P.W.2 and P.W.6 are eyewitnesses, P.W.4 is the son of the deceased. The prosecution has proved its case beyond reasonable doubt. Both the Courts have rightly appreciated the evidence and convicted the petitioner. Hence, there is no reason to interfere with the judgment of both the Courts below.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. side) and perused the materials available on record.

8. It is the case of the prosecution that on 08.11.2006 at about 17.00 hours one Kanakaraj, was riding the motor cycle bearing Registration No.TN 37 AR 5881 from North to South. The petitioner dashed against one Chinnasamy, who was walking on the

mud road on the same direction near the SRP Mills Bus stop. Chinnasamy sustained injuries on his head. Subsequently, the injured was taken to Sakthi Hospital and thereafter, admitted in Ramakrishna Hospital and later, he died.

9. P.W.1, P.W.2 and P.W.6 are the auto drivers; they were standing nearby the SRP Mills Bus stop. At that time, one Chinnasamy was walking nearby the place on the mud road. The revision petitioner came by motor cycle on the same direction with high speed and dashed against Chinnasamy. Due to rash and negligent driving of the rider of the motor cycle viz., the revision petitioner, the accident had occurred. P.W.4, son of the deceased, has clearly narrated that after receiving information about the accident, he rushed to the spot and taken his father to Sakthi Hospital and admitted there. The doctor entered in the A.R.Copy, which shows that the injured was brought by his son. Therefore, evidence of P.W.4 was corroborated by the Doctor. The prosecution has proved the manner of the accident.

10. Both the Courts are fact finding Courts, have rightly appreciated the evidences in Mahazar witnesses and found that the accident had occurred nearby SRP Mills Bus stop. The Courts have also come to the conclusion that the accident occurred due to rash and negligent driving by the revision petitioner. Though the learned counsel for the petitioner vehemently contended and objected the rough sketch and mahazar witness filed by the prosecution, P.W.1, P.W.2 and P.W.6 have not stated anything in the cross examination regarding barricade and auto stand. At the time of the accident, P.W.1, P.W.2 and P.W.6 were standing in the auto stand and seen the accident.

11. The Appellate Court is a final Court of fact finding, re-appreciated the entire evidence of P.Ws.1,2,4 and 6 and the evidence of the Doctor and specifically given reason that non mentioning of the barricade and also auto stand in the rough sketch and mahazar witness will not affect the case of the prosecution. It is also found that there is no reason to discard the evidence of the eyewitnesses; and also found that at the time of accident, one Chinnasamy was walking on the mud road and appreciated all the evidence of the eyewitnesses, that revision petitioner came by motor cycle with high speed and dashed against him.

12. Both the Courts below have gone through the evidence in detail and found that the petitioner was at fault and found him guilty. The prosecution has proved its case with reliable evidence. There is no reason to discard the evidence of PW.1, 2 4 and 6. Both the Courts below have given reason for conviction.

13. This Court being a revision Court, while exercising the revisionary jurisdiction, this Court has to see as to whether there is any perversity in appreciating the evidence by the Courts below. On reading of the entire materials, it is seen that the revision petitioner had driven the vehicle in a rash and negligent manner and caused the accident and further, it is seen that the deceased and the revision petitioner have gone in the same direction. The deceased would not have seen the motor cycle which was coming behind on the same direction. The road users, while riding the vehicle, should drive the vehicle with minimum speed and raise an alarm. Because, the pedestrians can easily avoid the vehicle and accident.

14. Considering the facts and circumstances of the case, this Court does not find any perversity to take a different view in the present case on hand. Accordingly, the revision is dismissed. As far as conviction is concerned, the same is confirmed, in order to meet ends of justice, the sentences alone are modified from six months to three months for the offence under Section 279 IPC and one year to three months for the offence under Section 304(A) IPC; and the fine amount is confirmed for the above said offences.

15. With the above modification, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge, Coimbatore.
2. The Chief Judicial Magistrate, Coimbatore
3. The Judicial Magistrate, Coimbatore.
4. The The Inspector of Police,
Traffic Investigation Wing (Central),
Coimbatore.
5. The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.I.Abrar MD Abdullah , Advocate SR.No. 65649

Cr1.R.C.No.1152 of 2012
and

M.P.No.1 of 2012

A.SK(11/03/2020)