

BAIL SLIP

The Accused namely R.Thamaraikannan, S/o. Ramasamy was released on bail in M.P.No.1/12 in Crl.R.C No.1254/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2019

PRONOUNCED ON : 17.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1254 of 2012

R.Thamaraikannan ... Petitioner/Accused

Vs

State of Tamil Nadu
Rep. by the Inspector of Police,
Burgur Police Station,
Krishnagiri District. ... Respondent/Complainant

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. to set aside the order passed in Crl.A.No.43 of 2011 dated 05.07.2012 on the file of the Principal District Sessions Court, Krishnagiri by confirming the order passed in C.C.No.280 of 2009 on the file of the Judicial Magistrate No.I, Krishnagiri dated 27.05.2011.

For Petitioner : Mr.G.Ponnambala Thiagarajan

For Respondent : Mrs.P.Kritika Kamal, GA (Crl. Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 05.07.2012 passed by the Principal District and Sessions Judge, Krishnagiri in C.A.No.43 of 2011 confirming the judgment of conviction and sentence dated 27.05.2011 passed by the Judicial Magistrate No.I, Krishnagiri in C.C.No.280 of 2009.

2.It is the case of the prosecution that on 07.07.2009, around 10.45 a.m., while the deceased Perumalraj was crossing the Chennai-Krishnagiri National Highway, pushing his bicycle, the accused, who was on the wheels of the car bearing registration No.TN38 AW 3737, hit Perumalraj, resulting in latter's death.

3.On these allegations, a complaint (Ex.P1) was given by Nandivarman (P.W.1), an eyewitness to the accident, based on which, the respondent police registered a case in Crime No.161 of 2009 and after completing the investigation, filed a final report in C.C.No.280 of 2009 in the Court of the Judicial Magistrate No.I, Krishnagiri for the offences under Sections 279 and 304-A IPC against the accused. Charges for the aforesaid offences were framed against the accused and when questioned, he pleaded 'not guilty'.

4.To prove the case, the prosecution examined 12 witnesses and marked 7 exhibits. When the accused was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same. No witness was examined on behalf of the accused nor any document marked.

5.After considering the evidence on record, the trial Court, by judgment and order dated 27.05.2011 in C.C.No.280 of 2009, convicted and sentenced the accused as follows :

Provision under which convicted	Sentence
Section 304A IPC	3 months simple imprisonment and fine of Rs.5,000/- in default, to undergo 1 month simple imprisonment

The appeal in C.A.No.43 of 2011 that was filed by the accused was dismissed by the Principal District and Sessions Court, Krishnagiri on 05.07.2012. Challenging the concurrent findings of the two Courts below, the accused has filed the present revision petition under Section 397 read with 401 Cr.P.C.

6.Heard Mr.G.Ponnambala Thiyagarajan, learned counsel for the petitioner/accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the State.

7.It is trite that while exercising powers under Section 397 read with 401 Cr.P.C., this Court cannot reappraise the evidence like an appellate Court. However, under Section 401(1) Cr.P.C., this Court is not completely denuded of the power to reappraise the evidence, if it is shown that the Courts below have misappreciated the evidence on record.

8.Admittedly, the incident had taken place in the four-way Chennai-Krishnagiri National Highway. From the rough sketch (Ex.P6), it is seen that the Chennai-Krishnagiri NH-46 road runs from west to east and the house of Perumalraj is located in the northern side, i.e., on the left side of the National Highway. A median runs in the centre of the four-way highway so as to avert head-on collisions. Nandhivarman (P.W.1) and Natchathira

Raj (P.W.3) were two eyewitnesses, have stated in their examination in-chief, that Perumalraj crossed the highway pushing his bicycle, for going to his fields on the southern side.

9.Learned counsel for the petitioner submitted that while going in a National Highway, the petitioner would not have anticipated anyone suddenly crossing the road, especially, when there is a median dividing the two lanes. There appears to be much force in the submission of the learned counsel for the petitioner because, the damage to the vehicle had occurred on the left side, after the vehicle had hit the bicycle. In that impact, Perumalraj fell and died.

10.It is not the case of the prosecution that the petitioner had hit Perumalraj from behind. On the contrary, the evidence on record clearly shows that Perumalraj was pushing his bicycle and was crossing the National Highway, since he was going from his house on the northern side to his lands on the southern side by going across the highway. Both the Courts below have failed to appreciate this crucial aspect in the right perspective. Thus, in the facts and circumstances of the case at hand, this Court is of the view that materials on record are insufficient to sustain the conviction and sentence imposed on the petitioner under Section 304-A IPC.

In the result, this revision petition is allowed and the judgment of conviction and sentence dated 05.07.2012 passed by the Principal District and Sessions Court, Krishnagiri in C.A.No.43 of 2011 and also the judgment of conviction and sentence dated 27.05.2011 passed by the Judicial Magistrate No.I, Krishnagiri in C.C.No.280 of 2009, are set aside and the accused is acquitted of the charge under Section 304-A IPC. The bail bond shall stand discharged and the fine amount paid if any, shall be refunded. Registry is directed to transmit the original records to the Sessions Court and the trial Court forthwith.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District & Sessions Judge,
Krishnagiri.

2.The Judicial Magistrate No.I,
Krishnagiri.

3. The Chief Judicial Magistrate,
Krishnagiri (For information)

4. The Public Prosecutor,
High Court, Madras.

5. The Inspector of Police,
Burugur Police Station,
Krishnagiri Dist.

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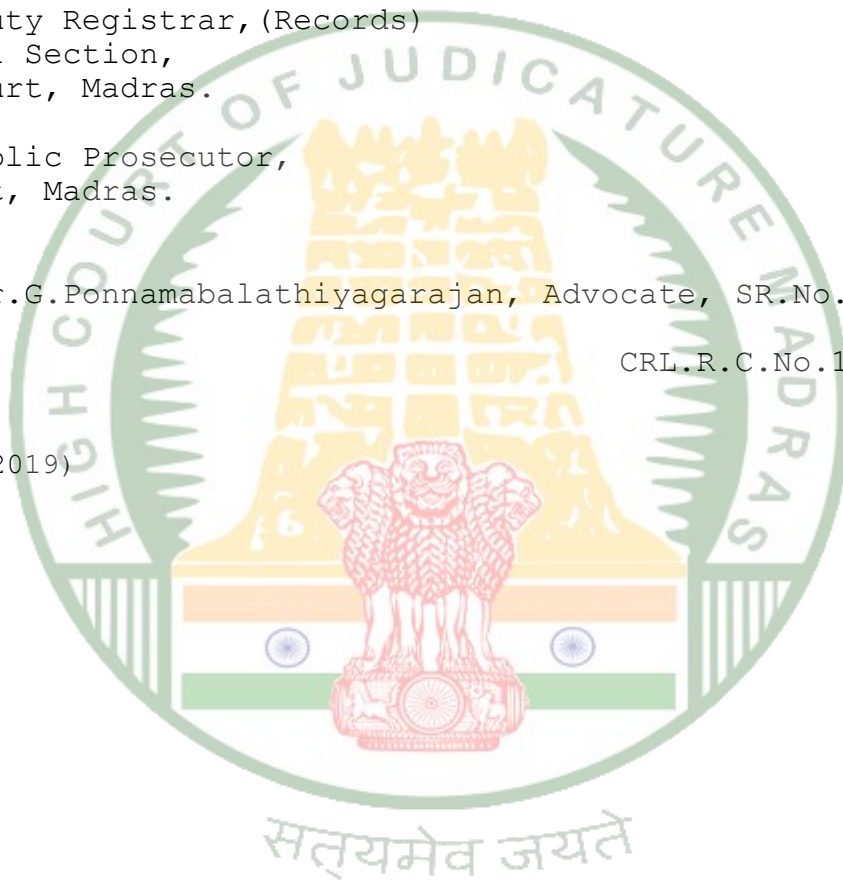
The Deputy Registrar, (Records)
Criminal Section,
High Court, Madras.

6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Ponnamabalathiyagarajan, Advocate, SR.No.86953

CRL.R.C.No.1254 of 2012

Kak(07/11/2019)



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