



BAIL SLIP

The Petitioner was directed to be released on bail viz, Marimuthu, accused, as per order of this court dated 06.02.2012 in MP.No. 1 of 2012 in Crl.RC.No. 139 of 2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.139 of 2012
and M.P.No.1 of 2012

Marimuthu

... Petitioner/Accused

Vs.

The State Rep.by
The Inspector of Police,
Aanaikaran Chathiram Police Station,
Sirkali.
Crime No.244/2005

... Respondent/Complainant

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the judgment dated 26.08.2009 passed by the Judicial Magistrate, Sirkali in C.C.No.135 of 2007 and set aside the order passed by the learned Sessions Judge, Nagapattinam, partly allowing the appeal in C.A.No.52 of 2009 dated 22.09.2011 by reducing the punishment from one year to six months.

For Petitioner : No appearance
For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate(crl.side)

O R D E R

There is no representation for the revision petitioner. Records received from the Courts below perused.

2. The revision petitioner herein is the Driver of Toyato Qualis vehicle and he while over taking a bus dashed against one Thangarasu, who was walking on the road towards Erukkur Bazaar from north to south direction along with his son Tamilmani on 10.04.2005 at about 1.00 p.m. As a result, Thangarasu sustained grievous injury all over his body, who was taken to Sirkali hospital for treatment but, he succumbed on 23.4.2005.



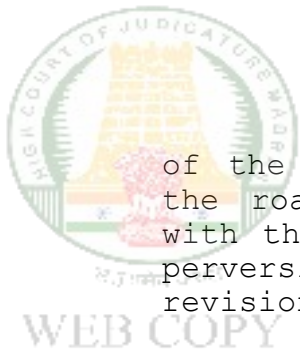
3. The trial Court based on the complaint given by Tamilmani [PW.1] son of the deceased, who was present at the time of accident and the independent witness Ponnambalam [PW.2] corroborated the evidence of PW.1 to prove that the accident has occurred due to rash and negligent driving of the revision petitioner, has held the revision petitioner guilty of offence under Section 304 IPC and sentenced him to undergo one year Rigorous Imprisonment and fine of Rs.4000/-, in default to undergo 3 months Simple Imprisonment. On appeal, the lower appellate Court has modified the sentence from one year Rigorous Imprisonment to 6 months Simple Imprisonment.

4. Aggrieved by the concurrent findings, the present revision petition has been filed on the grounds that the Courts below had not properly appreciated the evidence and exhibits marked. The prosecution has not explained the cause for delay in forwarding the First Information Report to the Court. The contradiction of witnesses regarding the occurrence has not been properly appreciated by the Court below. The scene of accident has spoken by the prosecution witnesses does not indicate that the revision petitioner could have driven the vehicle rash and negligently, even PW.2 and PW-3 who are the occurrence witnesses have not deposed that the revision petitioner was driving the car very fast. So, on comparing the evidence of PW.1, PW.2 and PW.3, the act of negligence driving of the revision petitioner was not proved.

5. Per contra, the learned Government Advocate (crl.side) would submit that it is constant case of the prosecution that while negotiating the bus, the revision petitioner has taken extreme right and dashed against the victim walking along with the road margin. The sketch and observation mahazar are fortified the case of the prosecution. The ocular evidence of PW.2 and PW.3 has sufficiently spoken about the rash and negligent driving of the revision petitioner and therefore, the findings of the Courts below is unassailable.

6. The perusal of the record reveals that the prosecution proved the accident through the evidence of PW.1, PW.2 and PW.3, who had spoken about the accident. The death and injury sustained by the deceased Thangarasu is spoken by [PW.11] Dr.Gununathan. The Motor Vehicle Inspector Sridharan [PW.9] has examined Toyato Qualis car and certified that the efficiency of the break is about 68% and there is no mechanical fault in the vehicle. The Observation Mahazar and the Sketch relied on by the prosecution indicates that the accident has taken place on the road margin.

7. It is the case of the prosecution that Thangarasu and Tamilmani were walking along the margin of the road. Qualis car



of the revision petitioner hit Thangarasu, who was walking on the road margin. The sketch and eye-witness are corroborated with the other witnesses. Therefore, there is no illegality and perversity in the findings of the Courts below. Therefore, the revision petition is liable to be dismissed.

8. Accordingly, this Criminal Revision Case is dismissed. The judgment of the lower appellate Court is confirmed. The period of sentence already undergone by the accused shall be given set off. Bail bond, if any executed by the accused shall stand cancelled. The respondent police is directed to secure the revision petitioner and commit him into the prison for the remaining period of sentence. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate, Sirkali
- 2.The Sessions Judge, Nagapattinam.
- 3.The Inspector of Police,
Aanaikaran Chathiram Police Station,
Sirkali.
- 4.The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.139 of 2012
and M.P.No.1 of 2012

RR(CO)
GN(16/08/2019)