

Bail Slip

The Petitioner/Accused viz., Periyasamy S/o.Solaimuthu was released on bail as per order of this Court dated 20/12/2012 in CrI.M.P.No.1 and 3 of 2012 in CrI RC No.1534 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CrI.R.C.No.1534 of 2012

Periyasamy

... Petitioner

Vs.

The State represented by the
Namakkal Police Station
Namakkal District
Crime No.405 of 2006

... Respondent

Criminal Revision filed under Sections 307 and 401 of the Code of Criminal Procedure against the judgment dated 30.01.2012 in C.A.No.7 of 2008 on the file of Additional District Judge (FTC), Namakkal confirming the judgment dated 08.01.2008 in C.C.No.264/2006 on the file of Judicial Magistrate No.1, Namakkal.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Ms.Karthika Asok
(G.A. CrI.Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 30.01.2012 passed by the Additional District Judge (FTC), Namakkal in C.A.No.7 of 2008 confirming the conviction and sentence dated 08.01.2008 passed by the Judicial Magistrate No.I, Namakkal in C.C.No.264 of 2006.

2. It is the case of the prosecution that on 28.04.2006, around 07.45 am, Arun Prasad (PW1) was driving his Pulsar motorcycle bearing Registration No.TN30 K 5914 and the deceased

Boopathy was on the pillion and they were proceeding from south to north in Moganoor - Namakkal main road towards Moganoor and at that time, a tractor with trailer bearing Registration No.TN31 V 3209, driven by the accused, came in the opposite direction and there was a head-on collision between the two vehicles, due to which, both Arun Prasad (PW1) and Boopathy (deceased) were thrown on the ground resulting in serious injuries to them. Both of them were rushed to the nearby Balaji Hospital by Ambulance and from there, they were sent to the Government Hospital, Salem. En route, Boopathy succumbed to the injuries. Arun Prasad (PW1) was admitted in the hospital and on his complaint (Ex.P1), the police registered a case in Crime No.408 of 2006 and after completing the investigation, filed a final report in C.C.No.264 of 2006 in the Court of Judicial Magistrate, Namakkal for the offences under Sections 279, 337 and 304-A IPC against the accused. Charges for said offences were framed and when questioned, the accused pleaded not guilty.

3. To prove the case, the prosecution examined 11 witnesses and marked Exs.P1 to P9. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined on behalf of the accused nor any document marked. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 08.01.2008 in C.C.No.264 of 2006 convicted and sentenced the accused as under:

Provision under which convicted	Sentence
Sections 337 IPC	3 months simple imprisonment and fine of Rs.500/-, in default to undergo one month simple imprisonment
Section 304A IPC	One year simple imprisonment and fine of Rs.2,000/-, in default to undergo 2 months simple imprisonment

4. Challenging the conviction and sentence, the accused preferred Criminal Appeal in Cr1.A.No.7 of 2008 which was heard by the Additional District Judge (FDC), Namakkal and dismissed on 30.01.2012. Challenging the concurrent findings of the two Courts below, the accused has preferred the present revision petition under Section 397 r/w.401 Cr.P.C.

5. Heard the learned counsel for the accused and the learned Government Advocate (Cr1. Side).

6. It is trite that while exercising powers under Section 397 r/w.401 Cr.P.C, this Court cannot re-appreciate the evidence as a second Appellate Court. However, where it is shown that there has been a manifest mis-appreciation of evidence by the Courts below, the power of this Court to interfere stands preserved by Sub-Section (1) of Section 401 Cr.P.C. The prosecution hinges on the evidence of Arun Prasad (PW1), who was driving the motorcycle when the accident took place. It is not in dispute that the accused was the driver of the tractor and a trailer was also attached to the tractor. It is the specific defence of the accused that the accident was not on account of a head-on collision as projected by the prosecution, but the accident had occurred when the two wheeler hit the trailer.

7. Learned counsel took this Court through the evidence of Arun Prasad (PW1), who in his examination in-chief has stated that the tractor and his motorcycle collided. However in the cross-examination, he has stated that the tractor came to the main road from an adjacent street and was proceeding on the right side. He has further admitted that he wanted to avoid the front wheel of the trailer hitting his motorcycle and therefore he swerved the vehicle. From the evidence of Arun Prasad (PW1), it transpires that the Tractor was not coming on the opposite side, but has entered the road from a street. One cannot expect a tractor to have a speed of a car or a bus, especially a tractor with a trailer attached. Puthuvai Nathan (PW9), the Motor Vehicle Inspector who inspected the tractor, trailer and the motorcycle, has stated that he did not find any damage or marks of collision in the front portion of the tractor. However, he had found that the motorcycle was heavily damaged. Had there been a head-on collision, there should have been some dent in the front portion of the tractor or even a scratch mark to show signs of collision. Therefore, under such circumstances, this Court is unable to infer that the Tractor with the trailer was driven by the accused rashly and negligently resulting in the accident in question for sustaining the conviction and sentence of the accused.

In the result, this criminal revision petition is allowed. The orders of the Courts below are set aside. The petitioner is acquitted of all charges in the case. Fine paid if any, shall be refunded to him.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

gpa

To

1. The Additional District Judge (FTC),
Namakkal
2. The Judicial Magistrate No.1
Namakkal.
3. The chief Judicial Magistrate,
Namakkal (For Information)
4. The Inspector of Police
Namakkal Police Station
Namakkal District
5. The Public Prosecutor,
High Court, Madras - 600 104.

Copy To
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.79608

Crl.R.C.No.1534 of 2012

SPD(CO)
GMY(25/10/2019)



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