

BAIL SLIP

Crl.MP.No.1 of 2012
in
Crl.R.C.No.1544 of 2012

The Appellant/Accused Viz., K.Ayyappan, aged about 39 years, S/o.Kalai, was released on bail as per order of this court dated 20.12.2012 by BRJ. in Crl.Mp.No.1 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.1544 OF 2012

K.Ayyappan

...Petitioner/
Accused (Single)

Vs

The State rep by,
The Inspector of Police,
Traffic Investigation Wing (Central) Police Station,
Coimbatore District.
(Crime No.174 of 2006)

... Respondent/
Complainant

PRAYER:

Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the entire records connected with order of conviction and sentence passed on the petitioner in C.C.No.535 of 2010 dated 25.05.2011 by the learned Chief Judicial Magistrate, Coimbatore and the subsequent Order of Confirmation of the said Conviction and Sentence passed by the learned IV Additional Sessions Judge of Coimbatore in C.A.No.128 of 2011 dated 08.10.2012 and quash the same.

For Petitioner : Mr.K.Thilageswaran

For Respondent : Mr.T.Shanmugarajeshwaran
Government Advocate (Criminal Side)

O R D E R

The respondent police registered a case in Crime No. 174 of 2006, against the revision petitioner for the offence under Section 279 and 304(A) IPC. After investigation, the respondent police laid a charge sheet against the revision petitioner before the learned Judicial Magistrate No.8, Coimbatore. The learned Judicial Magistrate taken the charge sheet on file, subsequently, the same was transferred to the learned Chief Judicial Magistrate, Coimbatore. The learned Chief Judicial Magistrate has taken the case on file in C.C.No.535 of 2010, after trial the learned Chief Judicial Magistrate found guilty of the accused for the offence under Sections 279 and 304(A) IPC and convicted him as follows:

Sl.No.	Under Sections	Sentences
1	279 IPC	Six Months Simple Imprisonment and to pay fine of Rs.1000/- in default to undergo one month Simple Imprisonment.
2	304(A) IPC	One year Simple Imprisonment and to pay fine of Rs.5000/- in default to undergo 3 months simple Imprisonment.

2 Challenging the said order of the learned Chief Judicial Magistrate, Coimbatore, the accused filed an appeal before the learned Principal District and Sessions Judge, Coimbatore, in Crl.A.No.128 of 2011. The learned Principal District and Sessions Judge, made over the appeal to the learned IV Additional District and Sessions Judge, Coimbatore. After hearing the arguments, the learned IV Additional District and Sessions Judge, dismissed the appeal and confirmed the judgment of the learned Chief Judicial Magistrate. As against the said judgment of the learned IV Additional District and Sessions Judge, Coimbatore, in Crl.A.No.128 of 2011 dated 08.10.2012 the revision petitioner had filed the present Criminal Revision Case before this Court.

3 The learned counsel for the petitioner would submit that the occurrence place of the road is very narrow, the revision petitioner came from east side and turned towards north and could not have maintain the speed more than 20 k.ms., he could not have driven the vehicle in a rash and negligent manner. The rider of the motor cycle even did not posses a valid license, there is no insurance and R.C., book. None of the witnesses have spoken about the accident and not stated that the accident happened due to the rash and negligent driving of the offending vehicle (i.e.,) Lorry bearing Registration No.TN-38-

Z5636. The Courts below failed to consider the contradictory statements of prosecution witnesses. The deceased driven his motor cycle in a rash and negligent manner and he has not possessed valid license for driving the two-wheeler, did not wear helmet and transported heavy loaded Milk can in the said two-wheeler. The Courts below ought to have acquitted the appellant by giving the benefit of doubt, which warrants interference by this Court.

4 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the occurrence had happened due to rash and negligent driving of the petitioner. P.W.1, P.W.4, P.W.6 have clearly spoken about the rash and negligent driving of the lorry driver. Prosecution has proved its case beyond reasonable doubt and the Courts below have rightly appreciated the prosecution witnesses and convicted the accused, which does not warrant any interference by this Court.

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

6 On reading of the entire evidence and on seeing the rough sketch, the revision petitioner came from east and turned towards the north, he almost came in the center place of the road and the scooter came from the west to east that also came almost in the center place of the road. If the driver of the lorry and the rider of the motor cycle maintain the moderate speed then the accident could have been avoided. But, in this case, on reading of the evidence none of the witnesses except P.W.1 and P.W.6 has stated that the accident had occurred only to the rash and negligent manner of the petitioner. P.W.1 and P.W.6, only have stated that the lorry driver of the offending vehicle, came with a high speed and hit the motor cycle and he did not raise any horn or warning and dashed against the motor cycle. The motor vehicle Inspector has stated that the width of the road is only 20 feet and while, turning the vehicle, one cannot maintain the speed more than 20 Kms. The motor vehicle Inspector has also spoken about the inspection report and the damages caused to the vehicle, which itself clearly shows that the accident could have happened due to the negligence of the rider of the motor cycle also.

7 Even the defence counsel has put a suggestions before the Investigating Officer who laid a charge sheet, that the deceased has not possessed valid license at the time of accident, he has submitted that the rider of the motor cycle/deceased did not possess a valid license, even the prosecution has not found out the owner of the motor cycle. Therefore, in

the absence of specific materials, the prosecution has not proved its case beyond reasonable doubt and as stated by the learned counsel for the petitioner and also on seeing the rough sketch and from the evidence of the prosecution witnesses, this Court finds that prosecution has failed to prove its case beyond reasonable doubt, both the Courts below have failed to appreciate the evidence properly.

8 This Court finds that there is perversity in appreciation of the evidence by both the Courts and especially the witnesses have not specifically spoken that the revision petitioner driven the vehicle in a rash and negligent manner, therefore under these circumstances this criminal revision case is liable to be allowed.

9 Accordingly, the present criminal revision case is allowed and judgment of both the Courts below are set aside. The fine amount if any paid by the revision petitioner shall be refunded. The petitioner is acquitted from the offences under Section 279 and 304(A). Consequently, connected Criminal Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The learned Chief Judicial Magistrate, Coimbatore.
2. The learned IV Additional District and Sessions Judge, Coimbatore.
3. The State rep by, The Inspector of Police,
Traffic Investigation Wing (Central) Police Station,
Coimbatore District
4. Public Prosecutor, High Court, Chennai.

+1cc to Mr.K.Thilageswaran, Advocate, S.R.No.65426

Crl.R.C.No.1544 of 2012
and
M.P.No.1 of 2012

CA(CO)
CS/03/02/2020