

Bail Slip

The Appellant/accused namely R.Soundarrajan, S/o.Ramasamy was directed to be released on bail as per order dated 13.03.2012 in M.P.No.1 of 2012 in CRL RC No.299 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:22.02.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.299 of 2012

R.Soundarrajan .. Petitioner/Appellant

/versus/

State (Inspector of Police),
Traffic Investigation Wing East,
Coimbatore.
(Cr.No.382/2005)

.. Respondent/Respondent

Criminal Revision Case has been filed under Section 397 r/w Section 401 of Cr.P.C against the judgment passed on the petitioner in C.A.No.92 of 2011 dated 09.11.2011 by the I Additional District and Sessions Judge, Coimbatore, confirming the conviction and sentence passed by the Judicial Magistrate-VIII, Coimbatore in C.C.No.27 of 2006, by his judgment dated 09.04.2011 for an offence under Section 279 IPC r/w Section 304-A IPC, viz., 1 (one) year Simple Imprisonment and a fine of Rs.3,000/-in default to undergo 3 (three) months Simple Imprisonment and modifying the imprisonment of one year to 9 (nine) months Simple Imprisonment maintaining the fine of Rs.3,000/-.

For Petitioner :Mr.J.I.Rajkumar Roberts

For Respondent :Mr.T.Shamuga Rajeswaran
Government Advocate

O R D E R

The revision petition is directed against the concurrent finding of the Courts below holding the accused guilty of the offence under Section 279 of IPC r/w 304 -A of IPC.

2. The trial Court held the accused guilty and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.3,000/-, in default to undergo three months Simple Imprisonment. On appeal, the lower appellate Court, while confirming the judgment of conviction, modified the sentence from one year Simple Imprisonment to nine months Simple Imprisonment with fine of Rs.3,000/-. Aggrieved by the said sentence, the present revision petition is preferred.

3. Normally, the High Court under the revisional jurisdiction will not revisit the concurrent finding on facts of the Courts below, unless it bristles with serious infirmities and improper appreciation of evidence. In this case, this Court is of the view that the finding of the Courts below has to be interfered due to the serious lapse on the part of the Courts below in appreciating the evidence, the inconsistency and the contradictions between the eye witnesses to the accident.

4. According to the prosecution on 01.12.2005 at 01.15 p.m., the Government bus bearing Reg.No.TN 33 1796 moving from west to east on the Avinashi road near Rajalakshmi Cars, hit the two wheeler bearing Reg.No.TN-38 AP 7169. Due to the impact, the two wheeler rider Balakrishnan fell down and sustained injury and he was taken to the hospital, where he was declared brought dead.

5. To substantiate their case, the prosecution has examined 13 witnesses as PW-1 to PW-13 and marked 10 exhibits as Exs.P1 to P10. PW-1[Vijayakumar] and PW-2[Kanagaraj] and PW-8 [Vijayakumar] are the eye witnesses, who have spoken about the accident. PW-6[Mani] is the Motor Vehicle Inspector, who has given the certificate regarding the damages sustained by the offending bus as well as the two wheeler driven by the deceased. PW-12 [Arumugam] Investigating Officer has conducted the Investigation and filed the final report. PW-1 and PW-2 claim themselves to be friends talking near a petrol bunk, while the accident took place. While PW-2 has deposed that he and PW-1 were at the petrol bunk since 11.30 a.m and the accident took place at about 01.00 p.m.

6. Yet another eye witness to the occurrence is PW-8 [Vijayakumar], who claims to be hotel worker present near the scene of accident and had deposed about the rash and negligent driving of the driver for causing the accident, resulting in the death of Balakrishnan.

7. On a combined reading of the deposition of PW-1, PW-2 and PW-8, contradictions in their evidence regarding the place of occurrence and the improvised version of PW-8 saying the accused driving the offending vehicle rash and negligently which the

other two witnesses PW-1 and PW-2 does not say, creates a serious doubt about their very presence at the scene of occurrence. Their previous statement to the investigating officer is not in consonance with the testimony before the Court. The contradictions in the previous statement vis-a-vis the testimony of the witnesses before the Court has been pointed to the Investigating Officer to elucidate that what is deposed before the Court by PW-1 and PW-8 are not in the previous statements given before the Investigating Officer. Referring the Motor Vehicle Inspector's report regarding the damages to the offending vehicle and the two wheeler of the deceased, the learned counsel appearing for the petitioner would submit that the two wheeler has sustained dent on the right side of its body while overtaking the bus. This has lead to the accident. In support of his submission, the learned counsel would point out the suggestion put to the motor vehicle inspector, who has admitted that such a damage could occur, if the two wheeler is hit by the bus on the side.

8. However, the learned Government Advocate would submit that as per the motor vehicle Inspector report [Ex.P3], the two wheeler has sustained severe dent on the back side. The entire tail lamps have been damaged. Therefore, from the motor Vehicle Inspector Report Ex.P3, though it is suggested to him that the damage could have been caused by the vehicle due to the hit by the side, the first two damages noted on the two wheeler would clearly show that the impact was only on the front left side mudguard portion of the bus and the back side of the two wheeler.

9. In any case the court has to determine whether the accident took place due to rash and negligent of the accused/petitioner or not. From the evidence of PW-1, PW-2 and PW-8 it could not be conclusively held that the accident was only due to rash and negligent driving of the accused.

10. More particularly, to a specific question put to the Investigating Officer whether the deceased Balakrishnan possessed any driving licence, the Investigating Officer admits he did not recover his driving license. When the rash or negligent driving is attributed to one person, it is also to be borne in mind that whether there was any contribution on the part of the victim. In a criminal prosecution involving more than one motor vehicle attributing rash and negligence the investigating officer should also ensure that the victim had not contributed for the accident.

11. In the light of the above fact, this Court is of the view that the evidence of PW-1, PW-2 and PW-8 that they were present at the scene of occurrence is highly doubtful. There is

not sufficient evidence to hold the accident occurred only because of rash and negligent driving of the revision petitioner.

12. In the light of the above facts, the judgments of the courts below are set aside. Accordingly, this Criminal Revision Case is allowed. Fine amount, if any, paid by the accused shall be refunded to him.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District and Sessions Judge, Coimbatore.

2.The Judicial Magistrate-VIII, Coimbatore.

3.Do through The Chief Judicial Magistrate, Coimbatore.

4.The Inspector of Police,
Traffic Investigation Wing East, Coimbatore.

5.The Public Prosecutor, High Court, Madras.

+3 cc's to M/s.J.I.Rajkumar Roberts, Advocate Sr.No.16489

Cr1.R.C.No.299 of 2012

KK(CO)
CSL/15.03.2019

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