

BAIL SLIP

The Petitioner/accused namely D.Augustine was directed to be released on bail as per the Order of this Court dated 16.03.2012 made in M.P.No.1 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.03.2019

Pronounced on : 07.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.326 of 2012

and

M.P.No.1 of 2012

D.Augustine

... Petitioner

Vs.

State rep.by
The Inspector of Police,
Traffic Investigation Department,
Coimbatore
Crime No.664/2010

.... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records pertaining to the order dated 30.12.2011 passed in C.A.No.236 of 2011 by the Additional District Sessions and Fast Track Court No.III, Coimbatore confirming the order dated 12.10.2011 passed in C.C.No.514 of 2010 by the Chief Judicial Magistrate, Coimbatore, set aside the same.

For Petitioner : Mr.C.D.Sukumar

For Respondent : Mr.T.Shanmuga Rajeswaran, GA

O R D E R

This criminal revision petition is directed against the judgment passed by the Additional District Sessions and Fast Track Court No.III, Coimbatore in C.A.No.236/2011, confirming the judgment of the Chief Judicial Magistrate, Coimbatore in C.C.No.514/2010.

2. The revision petitioner herein was tried for offences under section 279 IPC and 304(A) IPC, for causing the death of Nagendiran in the motor accident, due to rash and negligent

driving. The trial court found him guilty of offences charged and convicted him. He was sentenced for the offence under section 279 IPC to undergo 6 months simple imprisonment and to pay fine of Rs 1000/-; in default to undergo 3 months. For the offence under section 304(A) IPC sentenced to undergo 1 year simple imprisonment and to pay fine of Rs. 5000/- in default 6 months S.I. The appeal preferred by the accused was dismissed.

3. Aggrieved by the conviction and sentence imposed on him, the present criminal revision is filed.

4. The case against the revision petitioner is that on 09/08/2008 at about 3.00 pm while he was driving the Tempo van bearing registration number KL 07 AG 2066 on the wrong direction of the one way street hit Nagendiran to death. The accident was witnessed by his friend Kanagaraj (PW-1), his sister Madavi (PW-2), Sivakumar (PW-3) and Karupusamy (PW-6). The victim and these witnesses all were returning home after attending a political meeting. The petitioner turned his vehicle towards the Vinayagar Temple street from the wrong direction, hit Nagendiran. Since, Sivakumar was not available for cross examination, his testimony in chief examination was eschewed by the court.

5. The petitioner contention is that, the exact place of accident whether at Vinayagar Street or Valluvar street is not proved by the prosecution. PW-1 say the accident happened while he and Nagendiran (deceased) walking together along the Valluvar Street. He has deposed that in the accident he also sustained minor injury. Whereas the case of the prosecution is that, the accident took place in the Vinayagar street. PW-2 has deposed that the accident happened at the junction of these two streets. PW-6 has deposed that the accident took place on the Vinayagar Temple Street. The Investigating Officer PW-7 has deposed the accident spot as the junction of Vinayagar temple street and Valluvar street. The sketch indicates the accident happened on the Vinayagar temple street. Thus, there is no consistency among the prosecution witnesses regarding the place of the accident. The prosecution has failed to prove that the Vinayagar temple street was a restricted street. PW-7 admits he do not remember whether any sign board kept to show the said street is restricted to one way. When PW-1, PW-2 and PW-6 are all related to the victim, the courts ought not to have believed the testimony of the interested witnesses.

6. The learned Government Advocate for the Respondent/State would submit that, the prosecution has proved the rash and negligence driving of the revision petitioner through the eye witnesses and the medical report which discloses the victim sustained multiple injuries in the road accident. The petitioner doubts the presence of PW-1, PW-2 and PW-6 at the spot of accident since they are all related to the victim. There is no legal bar for the relatives to be witness. The reason for their presences is explained by these witnesses. These witnesses along

with the victim were walking along the road after attending a political meeting. While the victim and PW-1 were walking ahead, others were walking behind them. The spot of accident is the place near the Vinayagar temple street and Valluvar street meets. The witnesses being rustic they were not able to give the exact name of the street. The said discrepancy need to be ignored due to the cogent and consistent evidence against the revision petitioner regarding his rash and negligent driving on the wrong direction in one way traffic street.

7. Heard the counsels. Records perused.

8. The witnesses PW-1 to PW-3 and PW-6 have identified the revision petitioner as the driver of the offending vehicle. They have deposed that he came on the wrong direction and hit Nagendiran. The doctor evidence and post mortem report proves that Nagendiran died in the motor accident due to multiple injuries he sustained. Whether there was sign board to indicate it was one way traffic street or not, whether there was any speed breaker in that street or not, the fact remains that due to the hit of the vehicle driven by the revision petitioner, Nagendiran died.

9. The accident is a strong ground to prima facie presume rash and negligence. But it is not sufficient to hold a person guilty of offence under section 279 or 304 (A) IPC. The rash and negligence must either seen directly or inferred from the circumstances.

10. In this case, the eye witnesses PW-1 to PW-3 and PW-6 along with the Investigating Officer PW-7 in unison say that Vinayagar Temple Street is a one way street. Vehicle from North to South is prohibited. As far as the vehicle of the revision petitioner, while proceeding towards North in that street, had hit Nagendiran. From PW-1, it is elicited the breadth of the Vinayagar Temple Street, which is about 20 to 30 feet. The evidence of the eye witnesses who were along with the victim during the accident appears very natural, consistent and cogent. Minor variations in their evidence about accident happened 2 years before cannot be of serious consequences to disbelieve the prosecution case. The multiple injuries found on the body of the victim speaks for itself. Unless the revision petitioner has driven his vehicle negligently, it is not possible to hit a pedestrian and cause multiple injuries all over his body.

11. Therefore, the contradictions pointed in the ocular evidence of the prosecution witnesses regarding the place of accident, is overridden by the consistency in their evidence regarding the manner in which the accident occurred. The place of accident spoken by these witnesses are one and the same though they were not specifying the same through street name. Being rustic loadmen and woman, in the deposition of these witnesses one should not expect answers in precision. On the

holistic analysis of the evidence for the prosecution, the case of rash and negligent driving is proved.

12. The learned counsel appearing for the revision petitioner would submit that the period of imprisonment of one year may be reduced, since the revision petitioner, being the driver by profession, is the sole bread winner of the family his long period of incarceration will deprive his family.

13. Having considered the facts and circumstances, this Court is of the opinion that the period of sentence for the offence under Section 304(A) IPC shall be reduced from 1 year to 9 months. Accordingly, the sentence is modified as 9 months Simple Imprisonment and fine amount imposed by the trial Court is confirmed. As far as the offence under Section 279 IPC is concerned, the sentence and the fine amount imposed by the Courts below is confirmed.

14. In the result, the revision petition is partly allowed. Consequently, the connected miscellaneous petition is also closed.

rpl

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Sessions
and Fast Track Court No.III,
Coimbatore.

2.The Chief Judicial Magistrate,
Coimbatore.

3. The Inspector of Police,
Traffic Investigation Dept.,
Coimbatore.

4.The Section Officer,
Criminal Section,
High Court, Madras.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.D.Sugumar, Advocate, SR.No.21664

Cr1.R.C.No.326 of 2012
and
M.P.No.1 of 2012

Kak(12/06/2019)