

Bail Slip

Kittusamy S/o. Marappa Goundar, accused in C.C.No.5 of 2006 Judicial Magistrate No.VIII, Coimbatore at 19.07.2011 was enlarged on bail in MP.No.1 of 2012 in Crl.Rc.383 of 2012 vide this Court order dt.29.03.2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 04.04.2019

CORAM
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.383 of 2012
and
Crl.M.P.Nos.1 & 3 of 2012

Kittusamy Petitioner

Vs.

State rep.by
Inspector of Police,
Transport Investigation Department(West)
Police Station, Coimbatore.
(Cr.No.187 of 2005)
... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the judgment passed against the petitioner in Crl.A.No.176 of 2011 by the Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore dated 24.11.2011 partly modified the judgment made in C.C.No.5 of 2006 by the Judicial Magistrate No.VIII, Coimbatore dated 19.07.2011 and acquit the petitioner in Crime No.187 of 2005.

For Petitioner : Mr.R.Rajan
for M/s.B.Nedunchezhiyen

For Respondent : Mr.R.Shanmuga Rajeswaran
Government Advocate(crl.side)

O R D E R

Heard the learned counsel for the revision petitioner and the learned Government Advocate(Crl.side) for the respondent.

2. This Criminal Revision Case is filed challenging the concurrent findings of the Courts below holding the petitioner guilty of offence under Sections 279, 337 and 304(A) IPC.

3. The case of the prosecution is that on 08.10.2005 at about 12.45 hours while Bharath Kumar aged about 11 years was walking along with his mother Lalitha and sister Suganya, carrying a child by name Kavyalakshmi aged about 2 years, daughter of Sekar, near Coimbatore Head post office Road at Brindavan Tea stall, a Tempo van driven by the accused came behind him and hit him at about 12.45 p.m. He dropped the child and he sustained injury on his head. On hearing the noise, his mother and sister came and took him to the nearby Rajagopal Clinic. After first aid, they all returned home. Since the child was constantly crying, the child Kavyalakshmi was admitted in the Government hospital, Coimbatore. On 09.10.2005, early morning Kavyalakshmi died. Hence, he gave a complaint to the police on 09.10.2005 at 7.00 a.m. The said complaint was registered in Crime No.187 of 2005 by the respondent police and had investigated.

4. Before the trial Court, 14 witnesses were examined and 13 Exhibits were marked. The findings of the Court below were based on the ground that there is a grave doubt as to which vehicle had caused the accident. The correction of the Accident Register in support to the eye-witness of the occurrence indicates that the accident has caused by the two wheeler. It is the admitted case of the prosecution that the injured persons were taken to the hospital in the Tempo by the revision petitioner. The child was carried by Bharathkumar[PW.1] was about 11 years old at that time. In his evidence [PW.1] has deposed that his mother and sister were walking ahead of him. The Tempo van came behind him and hit him. Whereas his mother Lalitha and sister Suganya who were examined as PW.2 and PW.3 would say that they were following Bharathkumar and saw the accident. From the evidence of PW.1 to PW.3 and PW.8, the contradiction clearly indicates that the witnesses would not have actually seen the accident though they were present at the time of accident.

5. The learned counsel appearing for the revision petitioner would further submit that the Accident Report Ex.P12 and Ex.P5 which has been issued by the doctor carries correction regarding the vehicle which has caused the accident. In both these Ex.P5 and Ex.P12, the words two wheeler is circled and van is written Further, the learned counsel would also submits that the same words had been written in the two accident registers Ex.P5 and Ex.P12. Pertaining to Kavyalakshmi Ex.P12 was issued by Dr.Bhuvana. Dr.Bhuvana was examined as PW.7. Referring the evidence of PW.8, the learned counsel for the revision petitioner would submit that the prosecution has failed to prove that the injury sustained by the child Kavyalakshmi was due to the impact of the Tempo van driven by the revision petitioner.

Since there is contradiction and discrepancy on the evidence of the prosecution, the Court below ought to have acquitted the revision petitioner. But without considering the vital contradiction, the Courts have erroneously come to the conclusion of convicting the accused.

6. Perusing the records, this Court finds that on 08.10.2005 at about 12.45 hours, the accident has taken place as per the complaint given by PW.1 on the next day at about 7.00 a.m. The said complaint has been taken on file by the respondent police and forwarded to the Court after 4 days i.e., on 13.10.2005 at about 11.00 a.m. Bharathkumar [PW.1] had spoken the incident through his complaint as well as by his deposition. In the accident, he has sustained minor injury, the child whom he was carrying fell down and due to the multiple injuries, has succumbed to it. Post-mortem certificate which has recorded the external injuries indicates that the deceased has sustained abrasion over her back of right forearm and abrasion present on right and left side of face. But, from the evidence of PW.1, we find that the child was not treated immediately. After getting some first aid from local doctor they have returned home and only after the constant cry of the child, Kavyalakshmi was taken to the hospital at about 3.40 p.m., and Bharathkumar [PW.1] was admitted on the next day at 11.30 a.m., after lodging the complaint.

7. The contradiction between PW.1 the injured person and his mother and sister PW.2 and PW.3 who were accompanying him at the time of accident also creates doubt whether the accident was due to the rash and negligent driving of the Tempo van driver or due to the fall of the deceased child from the hands of PW.1 due to some other impact of force. In such circumstances, there is a grave doubt about the manner of accident

8. In the light of the correction found in the Accident Register and the evidence of PW.8 and independent witness it is unsafe to hold the accused guilty. More particularly, even according to PW.1 and other records, the injured persons were taken to the hospital in the van of the revision petitioner and PW.8 admits that there was a two wheeler parked unclaimed and abandoned at the scene of occurrence. This strengthens doubt about the prosecution case. Therefore, the revision petitioner is entitled for benefit of doubt.

9. In the result, the Criminal Revision Case is allowed. Consequently, the connected miscellaneous petitions are closed. The judgment of conviction and sentence passed by the Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore in C.A.176 of 2011 dated 24.11.2011, partly modified the judgment of the Judicial Magistrate No.VIII, Coimbatore in C.C.No.5 of 2006 dated 19.07.2011 is set aside. Fine amount, if

any, paid by the accused shall be refunded to him. Bail bond, if any, executed by the accused shall stand cancelled.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

rpl

To

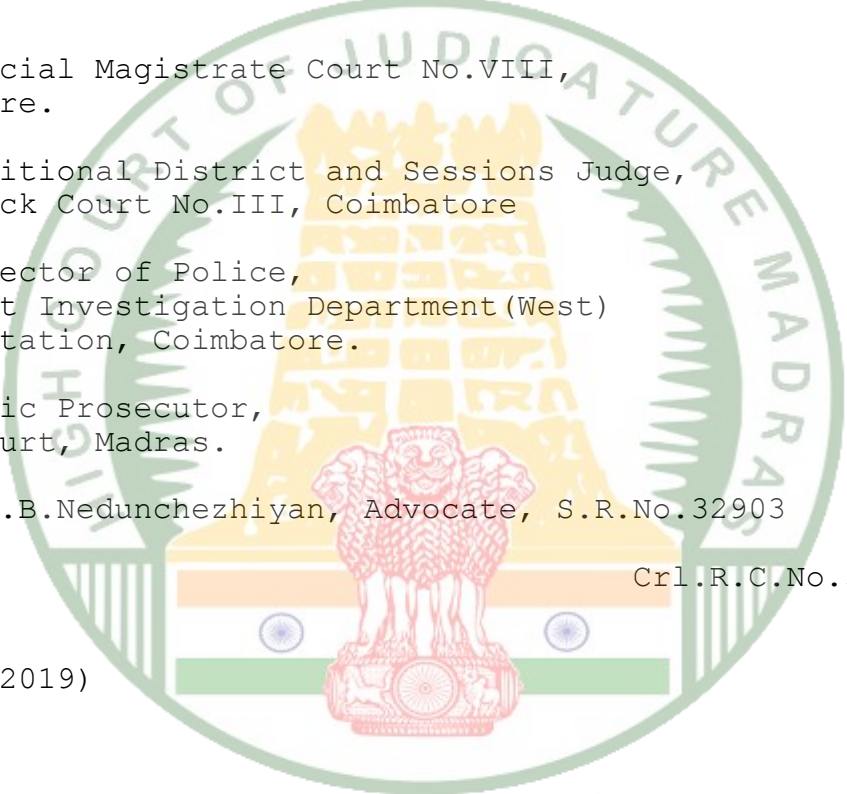
- 1.The Judicial Magistrate Court No.VIII,
Coimbatore.
- 2.The Additional District and Sessions Judge,
Fast Track Court No.III, Coimbatore
- 3.The Inspector of Police,
Transport Investigation Department (West)
Police Station, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.32903

CrI.R.C.No.383 of 2012

SS (CO)

RRS (30/05/2019)



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