

BAIL SLIP

The Petitioners/Accused namely K.Senthil Kumar S/o.Kittapparaj was directed to released on bail in Criminal Miscellaneous Petition No.1/12 in Criminal Revision Case No.392/2012 order dated 02/04/2012 by this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.392 of 2012 and

K.Senthil Kumar

...Petitioner/Accused

-Vs-

State Rep. By its
The Inspector of Police,
Sulur Police Station,
Coimbatore.
(Crime No.717 of 2007)

...Respondent/Complainant

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C. to set aside the judgment of conviction made in Crl.A.No.258 of 2011 dated 24.02.2012 passed by the learned Additional District and Sessions Judge, Fast Track Court-V, Tiruppur, confirming the judgment of conviction passed by the learned Judicial Magistrate, Palladam in C.C.No.137 of 2008 dated 09.11.2011.

For Petitioner : Mr.K.Thilageswaran

For Respondent : Mr.T.Shanmugarajeswaran

Govt. Advocate (Crl. side)

O R D E R

This revision has been filed to set aside the judgment in Crl.A.No.258 of 2011, dated 24.02.2012, passed by the learned Additional District and Sessions Judge, Fast Track Court-V, Tiruppur, by confirming the judgment passed by the learned Judicial Magistrate, Palladam in C.C.No.137 of 2008 dated 09.11.2011.

2. The case of the prosecution is that on 18.08.2007, at about 8.30 a.m., near R.L.M.Company, the petitioner was driving a lorry bearing registration No.TCN 6336 in rash and negligent manner, from north to south and dashed back side of the motor bike bearing Registration No.TN 29 N 2986. Due to the accident, the pillion rider of the motor bike died and both the vehicle

was damaged.

3. The respondent police registered a case against the revision petitioner for the offence under Section 304(A) of IPC and after investigation, the respondent police laid charge sheet before the learned Judicial Magistrate, Palladam and the same was taken on file in C.C.No.137 of 2008. Before the trial Court, in order to prove the case of the prosecution, the respondent police has examined as many as 10 witnesses and marked 8 documents. On the side of the defence, no oral and documentary evidence was produced. After full-pledged trial, the learned Magistrate has found the petitioner guilty for the offence under Section 304(A) IPC and convicted and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months simple imprisonment.

4. Challenging the said judgment passed by the learned Magistrate, the convict filed appeal before the learned Principal District and Sessions Judge, Tiruppur, the same was taken on file in C.A.No.258 of 2011 and made over to the learned Additional District and Sessions Judge, (Fast Track Court-V) Tiruppur. After hearing the arguments on either side, the learned Additional District and Sessions Judge, confirmed the judgment of the learned Magistrate and modified the sentence from one year to three months. Challenging the said judgment dated 24.02.2012, the petitioner has preferred the present revision before this Court.

5. The learned counsel for the petitioner would submit that the prosecution has failed to prove its case beyond reasonable doubt that the accident had happened due to rash and negligence driving of the driver of the offending vehicle viz., the revision petitioner. The trial Court has convicted the petitioner on the sympathy ground, not on merits. The learned Sessions Judge, without appreciating the evidence, confirmed the conviction and modified the sentence, which warrants interference of this Court.

6. The learned Government Advocate (crl. Side) would submit that P.W.1 and P.W.3 are eyewitnesses. P.W.3 has corroborated the evidence of P.W.1. P.W.1 has clearly spoken about manner of the accident. P.W.5 the mahazar witness has supported the case of the prosecution. P.W.6 Doctor, who made the post mortem, has opined that due to the accident, he died. The prosecution has proved its case beyond reasonable doubt. Therefore, both the Courts below has rightly convicted the petitioner and there is no valid reason to interfere it.

7. Heard the learned counsel for the petitioner and the learned Government Advocate and perused the materials available on record.

8. Admittedly, in this case, both the parties are admitted the accident and also the manner of the accident. The learned counsel for the petitioner has vehemently contended that the motor vehicle inspector has opined that the motor bike has damaged only in the front side. Whereas P.W.1 stated that the motor bike damaged in the backside which creates doubt. There is a benefit of doubt should be extended to the accused not the prosecution. There is a perversity in appreciation of the evidence by the both the Courts below.

9. On careful reading of the evidence of P.W.1 and P.W.3, it could be seen that they have stated to be an eyewitnesses. Both the witnesses have not stated that the accident has occurred due to rash and negligence driving of the driver of the offending vehicle.

10. It is well settled proposition of law that the accident is not intentional one. The prosecution has established that the accident has occurred, due to rash and negligence driving of the driver of the offending vehicle. In this case, on reading of the entire materials, which absence. Both the Courts have approached this case that sympathetic manner rather they approached legal as well as factual manner. This Court finds that there is a perversity in the appreciation of evidence by both the Courts. This Court is inclined to set aside the judgment passed by the appellate Court.

11. Though the Appellate Court as a final Court of fact finding Court can re-appreciate the evidence and give an own findings independently. On reading of the materials and also the judgment of the appellate Court, this court finds that the appellate Court has not properly appreciated the evidence in the manner known to law, therefore, which warrants interference.

12. In the result, this Criminal Revision is allowed, by setting aside the judgment in CrI.A.No.258 of 2011, dated 24.02.2012 passed by the learned Additional District and Sessions Judge, Fast Track Court-V, Tiruppur. The revision petitioner/accused shall stand acquitted from the charge levelled against him. The fine amount paid by the petitioner

shall be refunded, if any. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court-V, Tiruppur,
2. The Judicial Magistrate,
Palladam.
3. The Inspector of Police,
Sulur Police Station,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.Thilageswaran Advocate sr63308

Cr1.R.C.No.392 of 2012
and
Cr1.M.P.No.1 of 2012

aa03/02/2020