

Bail Slip

The Appellant herein/Accused viz., Ulaganathan S/o. Rajendran, was directed to be released on bail as per order of this Court dated 18.04.2012 made in M.P. 1/2012 in CrI.R.C.No.424 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Revision Case No.424 of 2012

Ulaganathan ... Petitioner

/versus/

State rep.by
Inspector of Police,
Traffic Investigation Wing,
G.N.T.Road,
Madhavaram,
Chennai-68.
(Crime No.46 of 2009) ... Respondent

Prayer: Criminal Revision Case filed under Section 397 & 401 of the Code of Criminal Procedure, praying to call for the records pertaining to the judgment made in C.A.No.45 of 2011 passed by the learned Additional Sessions Judge-cum-Fast Track Court IV, Ponneri, Thiruvallur District dated 16.03.2012 confirming the conviction and modifying the sentence under Section 304A of IPC sentencing him to undergo one month Simple Imprisonment as against the judgment of the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District made in C.C.No.263/2009 dated 28.07.2011 convicting him under 279, 337 & 304 A of IPC and sentencing him to undergo 2 months Simple Imprisonment under Section 304 A IPC and no separate imprisonment is imposed under Section 279, 337 IPC as per Section 71 of IPC and to set aside the same.

For Petitioner :Mr.T.R.Ravi

For Respondent :Mr.T.Shanmuga Rajeswaran,
Government Advocate (CrI.Side)

O R D E R

The revision petitioner is the accused in C.C.No.263 of 2009 on the file of Judicial Magistrate No.II, Ponneri, based on the complaint given by one Balaraman.

2. The case was registered against the revision petitioner on 22.01.2009 by the respondent police. According to the complaint, on 22.01.2009 at about 9.30 a.m, Balaraman along with his friend Sathish traveling in their two wheeler bearing registration No. TN 20 D 4953 towards their Office. The container lorry bearing registration No. TN 04 M 4512 came rash and negligently from their back and hit the two wheeler. While Sathish was run over by the lorry, the defacto complainant Balaraman had sustained injury on his left side shoulder. They were taken to Sugan Hospital for treatment. In the hospital, Sathish died, the police recorded the statement of Sathish who was in the hospital and proceeded with the investigation. The petitioner was arrested on the next day.

3. The trial Court tried the accused for the offences under Sections 279, 337 and 304 (A) of IPC.

4. To prove the charges, the prosecution has examined 15 witnesses and marked 16 exhibits. The Trial Court, relying upon the evidence of PW-1 [Balaraman] one of the injured witness, the evidence of Motor Vehicle Inspector [PW-9], the evidence of Post-mortem Doctor Kannan [PW-12] and the Accident Registers [Exs.P9 and P10], concluded that PW-1 [Balaraman] and the deceased Sathish got injury in the said accident and the accident has occurred due to rash and negligent driving of the accused/appellant. The trial Court has pointed out that in the Highways, heavy vehicles should maintain atleast a distance of 10 meters in between them but when the accused was driving the lorry, he has failed to maintain that distance and hit the motor vehicle driven by the deceased, thereby caused the accident. Therefore, the trial Court has held that the prosecution has sufficiently proved beyond doubt the guilt of the accused for the offences under Sections 279, 337 and 304 A of IPC. The lower appellate Court has also confirmed the conviction except modifying the sentence from 2 months Simple Imprisonment to one month Simple Imprisonment for the offence under Section 304(A) of IPC. Both the Courts below have not imposed separate imprisonment for the offence under Sections 279 IPC and 337 IPC. The trial Judge, while recording her decision not to impose separate imprisonment for the offence under Sections 279 and 337 of IPC, has referred to Section 71 of IPC. The lower appellate Court, while confirming the judgment of the trial Court had re-appreciated the evidence and modified the period of imprisonment from two months Simple Imprisonment to one month Simple Imprisonment.

5. The learned counsel appearing for the revision petitioner would point out that the prosecution has failed to prove the case of rash or negligent driving as cause for the accident. The counsel would point out that none of the witnesses has identified the appellant as driver of the offending vehicle. The accident registers [Exs.P9 and P10] indicate that the two wheeler driven by PW-1 [Balaraman] carrying Sathish in the pillion hit against a container lorry. Whereas, PW-1[Balaraman] and other prosecution witnesses has deposed that the lorry hit the two wheeler from behind. A vital contradiction in the prosecution case is due to embellishment of PW-1[Balaraman] defacto complainant to cover up his fault of driving the two wheeler rash and negligently. The learned counsel would also submit that when the prosecution has failed to identify the driver of the trailer in the manner known to law, taking advantage of the surrender of the driver to the police pressure cannot be a ground for convicting the petitioner without proper identification of the driver and the offending vehicle.

6. Per contra, the learned Government Advocate (Crl.side) would submit that the statement recorded by the Doctor in the accident registers[Exs.P9 and P10] in a causal manner cannot be a substantive piece of evidence, except the identity of the injured person and the injury for other purpose the records in the accident register are only collateral document. Therefore, the learned Government Advocate (Crl.side) would submit that the complaint and the First Information Report, based on the complaint of the complainant (PW-1) has led to investigation. The owner of the offending lorry has been examined by the prosecution, who has categorically deposed that the accused called him over phone; informed about the accident; collected RC book of the lorry and surrendered the documents to the police on the next day of the accident, since R.C. Book of the vehicle, which caused the accident was collected by the Investigating Officer. Therefore, there cannot be no doubt regarding the identity of the vehicle or the driver.

7. As far as the rash and negligent driving is concerned, the counsel would submit that the motor vehicle inspector report would clearly prove that the two wheeler was extensively damaged on the rear side, which goes to show that the container lorry has hit the two wheeler from behind. The injury sustained by the deceased Sathish and PW-1 [Balaraman] clearly proves the gravity of injury due to rash and negligent driving of the appellant. The trial Court as well as the lower appellate Court ought to have given separate sentence for the offences under Sections 279 and 337 IPC along with Section 304 A of IPC, since the rash and negligence has caused death of Sathish and injury to Balaraman [PW-1]. The Courts below have taken a very lenient consideration on sentence, while the trial Court has imposed only two months

Simple Imprisonment, the same has been modified into one month Simple Imprisonment by the lower appellate Court, which needs no interference in the revision.

8. On cumulative appreciation of the evidence as well as the submissions made by the respective counsels this Court finds there is some discrepancy in the accident reports and the First Information Report regarding the manner in which the accident had taken place. Comparing the notings found in the accident register and the complaint given by the victim himself, the later gains more probative value since it is the statement of the eye witness whereas, what is recorded in the accident registers is only the statement recorded by the Doctor what he heard from the attender of the patient. It is not even certain whether the said statement was given by the injured person himself or the person, who brought the injured person. Further, the manner of accident and the conduct of the two wheeler and the container lorry could be easily visualized from the motor vehicle inspector's report that the two wheeler has sustained extensive damage on the rear side and not on the front side. Therefore, it is clear that the container lorry has hit the two wheeler from behind and not otherwise.

9. Regarding the identity of the driver, though it is contended by the learned counsel appearing for the petitioner that no witnesses have identified the driver, the evidence of PW-11 Supervisor of Indane Transport proves that the appellant called him over phone and informed about the accident. On the next day, he collected the RC book of the vehicle from him and surrendered the documents as well as the accused Ulaganathan to the police. In this regard, a doubt is raised by the learned counsel appearing for the revision petitioner that PW-11 [Alphones], who is running nearly 40 container lorries, is obliged to the police. Therefore, he has given RC book of one of the vehicle and surrendered the appellant, who is no way connected with the accident.

10. In the facts and circumstances, it is doubtful whether a person, who will voluntarily surrender and make a fake statement fully knowing the consequence. The evidence of PW-11 as it is spoken, has to be taken into consideration and it is improper to attribute some thing which is not available in his evidence. Hence, this Court holds that the identity of the offending vehicle as well as the driver is established by the prosecution. While the identity of the vehicle is disclosed and mentioned in the First Information Report itself, the evidence of PW-11, who discloses the fact that the accused called him over phone and informed about the accident as well as the RC book of the vehicle along with the accused surrendered to the police is suffice to hold that the accused is the person, who was driver of the offending vehicle at that point of time.

11. Coming to the conviction, this Court would wish to point out that when the Court holds the accused person guilty for several charges, imposing imprisonment for one proven charge and leaving the other distinct charges, without imprisonment, is not inconsonance with the law. More particularly, Section 71 of IPC cannot be invoked for offence under Sections 337 and 304A of IPC. Unfortunately, in this case, when the accident has caused the death of one person as caused injury of another person due to his rash and negligent act. Section 71 of IPC has no application when there are two victims one dead and another injured.

12. In any event, as far as the period of imprisonment as modified by the lower appellate Court for one month is concerned, this Court finds no error or excessiveness in the period of sentence. Hence, this Criminal Revision Case is liable to be dismissed.

13. In the result, this Criminal Revision Case is dismissed. The period of sentence already undergone by the accused shall be given set off. The respondent police is directed to secure the accused and commit him into the prison to undergo the remaining period of sentence.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

ari/bsm
To

1. The Additional Sessions Judge-cum-Fast Track Court IV,
Ponneri, Thiruvallur District.

2. The Judicial Magistrate II, Ponneri.

3. Inspector of Police, Traffic Investigation Wing, G.N.T.Road,
Madhavaram,
Chennai-68.

4. The Public Prosecutor, High Court, Madras.

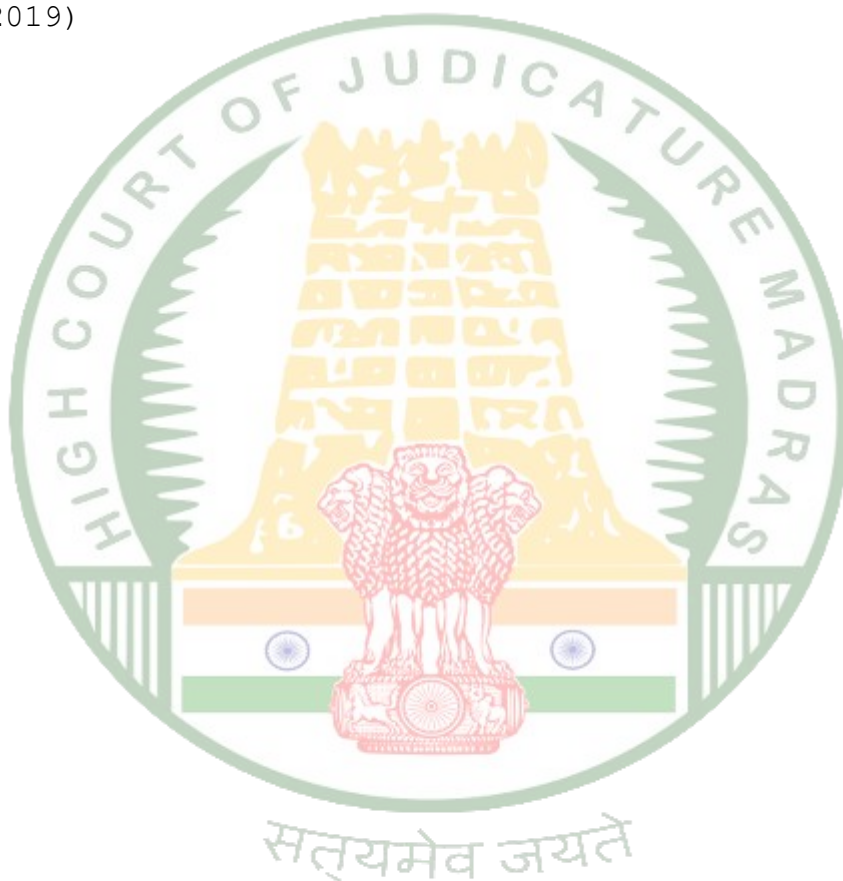
5. The Chief Judicial Magistrate, Thiruvallur (for information)

Copy to
The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.T.R.Ravi, Advocate sr 27248.

Cr1.R.C.No.424 of 2012

SP(06/05/2019)



WEB COPY