

Bail Slip.

The Appellant herein/Accused viz Ramesh S/o. Loganathan was directed to be released on bail as per order of this Court dated 24.05.2012 made in M.P. 1/2012 in Crl.R.C.No.467 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :15.02.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.467 of 2012

Ramesh ... Petitioner

Versus

The State Rep. By
Inspector of Police,
S.R.M.C. Police Station,
Thiruvallur District
(Crime No.230/2008)

... Respondent

Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C., praying to call for the records on the file of the learned Additional District and Sessions Judge, Thiruvallur District in Crl.A.No.54 of 2011 dated 28.03.2012 and confirming the judgment and sentence passed in C.C.No.332/2009 on the file of the learned Judicial Magistrate No.1, Poonamallee, Thiruvallur District dated 23.08.2011 and set aside the judgment dated 28.03.2012.

For Petitioner :M/s. E.Kannadasan
For Respondent :Mr.T.Shunmuga Rajeswaran,

GA

सत्यमेव जयते
O R D E R

This revision petition is directed against the judgment of conviction imposed on the revision petitioner for the offence under Sections 279 and 304 (A) I.P.C.

2.The brief facts leading to this revision is as follows:

On 29.04.2008 at about 22.15 hours opposite to Ashok Residency Hotel, Poonamallee Road, Iyappanthangal, a two wheeler bearing registration No.TN-20-AQ-7164 driven by the accused in a rash and negligent manner hit the bicycle driven by one Mathappan and Murugan on pillion. Due to the said impact, Mathappan fell down on the mud road and Murugan fell down on the metal road. While Mathappan sustained bruises in his hand,

Murugan sustained head injury. He was immediately taken to S.R.M.C Hospital. Then the Doctor examined him and advised to get admitted as inpatient. He left S.R.M.C hospital and went to the Government Hospital, Chennai and got admitted as in-patient. On 07.05.2008, he died.

3. The respondent-police registered First Information Report on 30.04.2008 at about 11.30 hours for the offence under Sections 279 and 337 of IPC, based on the complaint given by Mathappan. Later, on getting intimation from the Government Hospital, Chennai that Murugan succumbed due to the injuries, the charge was altered to Sections 279 and 304(A) of IPC and Section 3 r/w 181 of Motor Vehicles Act.

4. To prove the charges, on the side of the prosecution, 12 witnesses were examined as PW-1 to PW-12. 11 exhibits were marked as Ex.P1 to Ex.P11. Mathappan the defacto complainant and the injured person in the accident was examined as PW.1. Sivakumar and Karthikeyan, who saw the accident were examined as P.W.2 and P.W.3 respectively. They both saw the accident while coming behind Mathappan at the time of occurrence.

5. Dr.Anandan(PW-4) attached to Sri Ramachandra Medical College (SRMC) Hospital treated Murugan for his head injury and advised him to get admitted as in-patient. The witnesses to the observation mahazer Kamalahasan [PW-5] and Vijayarajan [PW-6] turned hostile. Dr.S.Balasubramanian who conducted autopsy was examined as PW-7. Motor Vehicle Inspector Mr.Senthurvel was examined as PW-8, who has deposed about his report dated 08.05.2008 about the two wheeler bearing Reg.No.TN-20-AQ-7164. P.W.9 to P.W.11 are the Police Officials, who assisted the Investigating Officer Mr.Muniandi (PW-12) during the investigation. They have deposed about their respective role in the investigation.

6. The trial Court, after considering the evidence acquitted the accused for the offence under Section 3 r/w 181 of Motor Vehicles Act, Convicted him for the offence under Sections 279 of IPC and 304 (A) of IPC, Imposed a fine of Rs.1,000/- in default to undergo 3 months Simple Imprisonment for the offence under Section 279 of IPC and sentenced him to undergo two years Simple Imprisonment for the offence under Section 304 (A) of IPC. The period of sentence was ordered to run concurrently.

7. Aggrieved by the conviction and sentence passed by the trial Court, the accused has preferred appeal before the learned Additional District and Sessions Judge, Poonamallee in CrI.A.No.54/2011.

8. Before the lower Appellate Court the accused has contended that the eye witnesses are all interested witnesses and their presence at the time of accident is highly doubtful.

While the witnesses to the observation mahazar have turned hostile, the case of the prosecution regarding the manner in which the accident took place gets doubtful. Submitting that even before the death of the injured victim, the observation mahazar has mentioned that case has been registered under Section 304 (A) of I.P.C which clearly establishes that the prosecution has created the document later to suit their convenience without adverting to the true facts collected during the course of investigation.

9. The lower appellate Court, on re-appreciation of the evidence and on considering the grounds put forth by the accused/appellant, negatived the plea and dismissed the appeal. The conviction and sentence imposed by the trial Court was confirmed. Aggrieved by the concurrent finding of fact, the present revision petition is preferred.

10. The learned counsel appearing on behalf of the revision petitioner would submit that the prosecution has failed to prove that the petitioner has caused the accident. The prosecution has not placed any material to show that the head injury sustained by the victim was due to hit of the two wheeler. The courts below have failed to appreciate the fact that the victim had left S.R.M.C Hospital against the medical advice and got himself admitted in the Government Hospital on 30.04.2008. He died, after a week i.e 07.05.2008. In such circumstances, the offence under Section 304 (A) of IPC will not get attracted.

11. The learned counsel appearing for the revision petitioner would also submit that the First Information Report alleged to have been recorded on 30.04.2018 was forwarded to the Magistrate belatedly only on 05.05.2008. Though the vehicle number is mentioned in the First Information Report, neither the owner of the vehicle nor the name of the person, who has driven the vehicle at the time of occurrence, find place in the First Information Report. The alleged eye witnesses PW-1 to PW-3 in their testimonies before the Courts have categorically stated that they did not remember the vehicle number. In such circumstances, when the investigation could not link the accused with the offending vehicle and the witnesses could not identify the vehicle number, the petitioner herein could not be held guilty. The Courts below have miserably failed to consider this missing link and erroneously convicted the petitioner.

12. In contradiction, the learned Government Advocate would submit that the accident which took place on 29.04.2008 at about 10.15 hours is an undisputed fact. Ex.P-2 Accident Register maintained by Sri Ramachandra Hospital clearly indicates that Murugan was brought by his friend Bharathiraja for treatment. On examination, PW-4 found that Murugan(PW-1)has sustained lacerated wound on his right occipital region, which he

sustained when he fell down from his bicycle hit by the two wheeler at S.R.M.C. Hospital gate around 10.10 p.m on 29.04.2008. Thereafter, injured victim was admitted in the Government Hospital, Chennai and treated for head injury. He succumbed to the injury on 07.05.2008. PW-1 to PW-3, who are all employees in S.R.M.C Hospital. Their presence in the occurrence place cannot be doubted, since the accident spot was near S.R.M.C. Hospital gate. The failure to these witnesses to mention the vehicle number will not exonerate the accused. Since after knowing that the accident victim succumbed to the injury, he himself came to the police station, handed over the offending vehicle and surrendered. The failure of the prosecution to secure the details about the ownership of the vehicle will noway cause doubt about the culpability of the accused, since the witnesses to the accident have identified the accused before the Court in the course of trial.

13. The learned Government Advocate would further submit that the offending vehicle was inspected by the motor vehicle inspector [PW-8], who has certified that there was no mechanical fault in the vehicle and the two wheeler bearing registration No. TN-20-AQ-7164 was damaged on the front portion. Therefore, the learned Government Advocate has submitted that the Courts below have come to the right conclusion after proper appreciation of the evidence before it and therefore, it requires no interference.

14. The points to be answered in this revision petition are primarily, wheher the prosecution evidence is sufficient to fix the revision petitioner as the person, who drove the offending vehicle. In this regard, no doubt, the prosecution has not collected any evidence regarding the ownership of the vehicle or adequate particulars about the accused. However, when PW-1 to PW-3 in the witness box, could clinchingly identify the accused person, who has driven the offending vehicle, there is no reason to doubt the identity of the offender.

15. The next point will be whether the act of the accused was rash or negligent which likely to cause the death of the person to attract offence under Section 304(A) of IPC.

16. From the narration of the facts by the eye witnesses and the medical evidence, it is clear that the bicycle in which the victim was travelling on the pillion was hit by the two wheeler driven by the petitioner. The rider of the two wheeler PW-1 fell on the mud road and sustained only minor injury in his hand. PW-1 has also not deposed anything notable about the injury he sustained. Whereas, Murugan who was on the pillion had sustained head injury since he has fallen on the metal road. Post-Mortem report [Ex.P5] clearly shows that the death was due to head injury. So, one can be very sure that it was not the

direct impact of the two wheeler and bicycle which has caused the head injury but fall of the victim on the metal road and it impact caused fatal injury.

17. The rash and negligence which is now attributed to the petitioner is on the face of it was not the likelihood of causing the death. It was the impact on the metal road that has caused the death. Further factors, as Dr.Anandan(PW-4) has deposed that the accident victim left the hospital against the medical advise. There is no material to know what transpired after the victim left SRMC hospital, Porur on 29.04.2008 till he got admitted in to the Government Hospital at Chennai and died on 07.05.2008. The Case sheet for his treatment at Government Hospital, is not available. The Government Hospital Doctor, who was shown as LW-7, expected to depose about the treatment given to the victim at Government Hospital not examined and dispensed by the prosecution.

18. In the said circumstances, when there is no convincing evidence that the rash and negligent act of the accused was the cause for the death, this Court finds that the offence made out against the accused falls under Section 337 and not under Section 304(A) of IPC. While considering the sentence for the proven offence, this Court holds that the Simple Imprisonment for a term of 3 months and fine of Rs.500/- will be suffice for the altered offence of Section 337 of IPC.

19. Accordingly, this Criminal Revision Case is partly allowed. The revision petitioner shall surrender before the trial Court within a period of 30 days from today, to undergo the remaining period of sentence imposed by this Court. The period of sentence already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C. Bail bond, if any, executed by the accused, shall be cancelled.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge,Poonamallee Thiruvallur.

2.The Judicial Magistrate No.1, Poonamallee, Thiruvallur District.

3.The Inspector of Police, S.R.M.C. Police Station, Thiruvallur District (Crime No.230/2008).

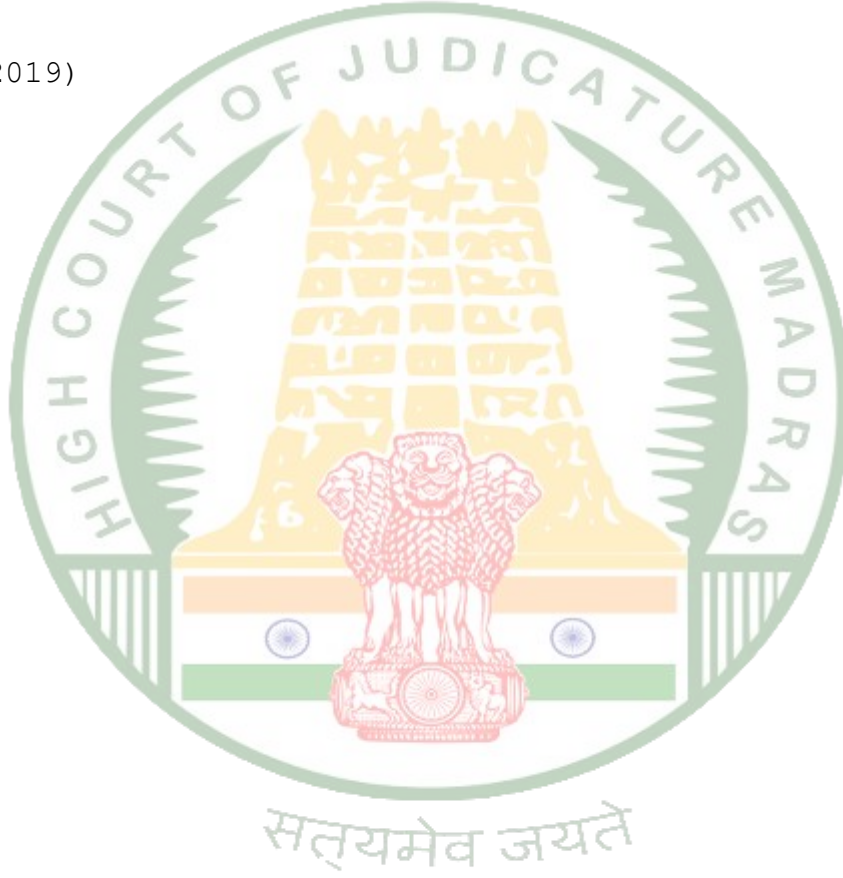
4.Public Prosecutor, High Court, Madras.

5. The Chief Judicial Magistrate
Thiruvallur.

+1 CC to Mr.E.Kannadasan, Advocate sr 14240.

Cr1.R.C.No.467 of 2012

PM(CO)
SP(27/03/2019)



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