

BAIL SLIP

The Appellant/Accused namely Annamalai S/o.Elumalai was directed to be released on bail in CrI.Mp.No. 1/12 dated 04/06/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.03.2019	Pronounced on: 25.03.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Case No.474 of 2012

E.Annamalai,
S/o.Elumalai,
No.181, Annai Indira Nagar,
Egattur Village,
Thiruvellore Taluk & District. ... Petitioner/Accused

/versus/

State represented by:
The Inspector of Police,
Tiruvallur Town Police,
Tiruvallur District.
(Crime No.488 of 2008) ... Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C, praying against to set-aside the judgment dated 29.03.2012 passed in C.A.No.5 of 2012 on the file of the learned Additional District Judge, Fast Track Court No.III, Tiruvellore confirming the judgment dated 26.12.2011 in C.C.No.15 of 2010 on the file of the Learned Judicial Magistrate No.I, Tiruvallur convicting the petitioner for the offence under Section 279 & 304-A of I.P.C (1 Count) and acquit the petitioner.

For Petitioner : Mr.S.Anand Venkatesh
for Mr.T.Ravi

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

O R D E R

The Revision Petitioner herein aggrieved by the concurrent finding of the Courts below holding him guilty for offences under Sections 279 and 304 (A) of I.P.C has preferred

the present revision petition.

2. According to the prosecution, on 14.07.2008, at about 7.30 a.m at Tiruvallur Periyakuppam Bye pass Road near Ambedkar Statue, when the deceased Gnanasoundari was going in her bicycle towards Tiruvallur from Manavala Nagar. The revision petitioner herein, rash and negligently, driven the van bearing registration No.TN.30.F.5618 in the same direction and hit Gnanasoundari and ran over. The victim was taken to the hospital but succumbed to injury on the same day. PW.3 Pattabi Sambhav Sachi, who saw the accident informed to PW.1 father of the victim. The police registered the complaint given by PW.1 and taken up the investigation. The revision petitioner, who run away immediately, after causing accident, was arrested by PW.11 (Duraipandiyan), the Sub-Inspector of Police, on 14.07.2008, at about 1.00 p.m. On completion of investigation, the appellant was prosecuted for offences under Sections 279 and 304 (A) of I.P.C., before the Judicial Magistrate No.I, Tiruvallur.

3. To prove the charges, the prosecution has examined 13 witnesses. 10 Exhibits were marked. On the side of the defence no documents and no witnesses were examined.

4. The trial Court held the accused guilty for offences under Sections 279 and 304 (A) of I.P.C. since, the offence under Section 279 of I.P.C., is merged with the offence under Section 304 (A) of I.P.C, no separate punishment was given for offence under Section 279 of I.P.C. For offence under Section 304 (A) of I.P.C., sentenced him to undergo 6 months R.I and to pay a fine of Rs.1,000/-, in default 3 months S.I was imposed.

5. Aggrieved by the conviction and sentence, the Criminal Appeal was filed before the Additional District Judge, Fast Track Court No.III, Tiruvallur, in C.A.No.5 of 2012.

6. On re-appreciation of evidence, the Lower Appellate Court confirmed the judgment of the trial Court. Hence, the present revision is filed.

7. The learned Counsel appearing for the revision petitioner would contend that the prosecution has failed to prove that the revision petitioner was the driver of the offending vehicle. The prosecution failed to establish the fact that the accident has occurred due to rash and negligent driving of the revision petitioner. PW.3 (Pattabi) evidence is unreliable. The contradictions in his deposition establishes that he was not on the spot, when the accident took place. The observation mahazar (Ex.P.7) relied by the prosecution, admittedly prepared at 7.30 a.m, on the date of occurrence.

Whereas, the complaint itself was received by the respondent police only at 10.00 a.m. The contradiction in the time of registration of the F.I.R and the observation mahazar, disprove the case of the prosecution. The Investigation Officer Kannan (PW.13) admits that he has not inspected the place of crime and he is not aware of the directions. The Rough Sketch marked as Ex.P.8 does not corroborate the version of PW.3 (Pattabi) and others regarding the accident.

8. The learned counsel appearing for the revision petitioner would submit that PW.3, in his previous statement has deposed that, he saw the accident while coming from the opposite direction towards Manavalar Nagar. Whereas, in his previous statement to the police, he has deposed that while he was walking on the same direction of the offending vehicle, which came behind him, rash and negligently hit the victim. PW.3 in his deposition had said that he accompanied the victim to the hospital and in the hospital, she was declared died. Whereas, PW.9 Dr.Jagadeesh Kumar, who treated the victim in the hospital has deposed that the victim Gnanasoundari was brought in unconscious state and her breathing was not regular. The post-mortem Dr.Muruganatham (PW.10) has deposed that the post-mortem was conducted at 1.00 p.m on 14.07.2008. The victim would have dead 4 to 16 hours prior to post-mortem. Therefore, the contradictions between the evidence of PW.3, PW.9 and the opinion of PW.10, coupled with the fact that the observation mahazar being prepared at 7.30 a.m itself, much prior to the registration of F.I.R, cause grave doubt and suspicion about the case of the prosecution. Despite the lacuna, the Courts below have perversely held the accused guilty. Though none of the witnesses have identified the driver of the offending vehicle. Hence, sought for reversal of the judgment rendered by the Courts below.

9. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent/state would submit that the accident van bearing registration No.TN.30.F.5618 occurred at about 7.30 am in the morning, in a very busy road. PW.3 who is the Former Panchayat President of that locality had witnessed the accident. The victim girl was proceeding to her computer class in the bicycle, was hit from the back by the van and run over. PW.3 on seen the accident had rushed to say the victim. From the book of the victim PW.3 has found the phone number of PW.1 father of the victim and informed him. Thereafter, PW.1 and the other relatives of the victim girl had rushed to the spot. The residence of the victim and the place of accident is not too far of. PW.3 is a local Panchayat President. His presence at that time is spoken by himself. He has never deposed that the victim died on the spot. In his chief examination, PW.3 has only said that he accompanied the victim

to the hospital, in the hospital Dr.Jagadeesh Kumar (PW.9) informed him the death of the victim.

10. Regarding the time mentioned in the observation mahazar, the learned Government Advocate (Crl.Side) would submit that invariably the witnesses have deposed that soon after the accident, the policeman nearby came to the spot and taken up the enquiry. PW.1, father of the victim girl who rushed to the hospital, on hearing the news, learnt that his daughter succumb to the injury and thereafter he came to the police station to lodge the written complaint marked as Ex.P.1. Based on that the complaint, First Information Report (Ex.P.4) has been registered, at 10.00 a.m. In the said circumstances, the time mentioned in the observation mahazar is only an error, which is not fatal to the prosecution, nor anyway prejudicial to the accused.

11. Heard the respective counsels. Perused the records.

12. The complaint (Ex.P.1) is given by the father of the victim Dayalan (PW.1). He is not witness to the occurrence. He came to know about the accident through PW.3 (Pattabi). The other witnesses to the prosecution, except PW.3 all came to know about the accident only thereafter. So, the key witness to the prosecution to speak about the rash and negligently driving is PW.3. The presence of PW.3 at the SOC itself is doubted by the revision petitioner. Whereas, the deposition of PW.3 establishes the fact that PW.3 is a resident of Manavala Nagar. He is the former Panchayat President. The accident has taken place, not far of from the place of his residence. He had spoken about the manner in which the offending van came and hit the bicycle of the victim girl, going ahead of the van. The van driver, after the hit, has ran away from the place. Therefore, he could not see the driver of the van. However, the offending vehicle which was stationed after the accident is noted by PW.3 and the police who has come to the spot, drawn the sketch and observation mahazar. The post-mortem report (Ex.P.6) indicates the victim sustained crushed injury over the hip exposing the intestine. The approximate time of death mentioned by the post-mortem Doctor. The A.R report (Ex.P.5) mentions that the patient was brought to the hospital at 7.50 a.m. The history of road accident at about 7.30 a.m on 14.07.2008 as well as the evidence of PW.3 are corroborating each other and proves the fact that the accident has taken place at around 7.30 a.m. The victim was taken to the hospital before 8 'o' clock, she was found unconscious, she died without regaining conscious. By 1.00 p.m, the post-mortem has been conducted. Duraipandiyan (PW.11), the Sub Inspector of Police, has deposed that, he arrested the accused near Tiruvallur Bazaar.

13. The rash and negligent driving of a motor vehicle could be inferred from the circumstantial evidence collected by the Investigation Agency. In this case, the victim had been run over by the van driven by the accused. The entire intestine of the victim has got crushed. The petitioner herein had run away, from the place, deserting the vehicle, after committing the accident. PW.3 who had viewed the accident had deposed that the vehicle was coming very rashly and negligently. The manner in which the accident has occurred proved through the ocular evidence of PW.3. He is not the stranger to that locality. His presence at the scene of accident is natural. In the said circumstances, the minor discrepancies and contradictions pointed by the learned counsel for the revision petitioner are bound to be ignored. The Courts below have rightly appreciated the evidence and had arrived at a conclusion that the death of Gnanasoundari was only due to rash and negligent act of the revision petitioner. The finding of the Courts below are in consonance with law and facts. Hence, requires no interference.

14. Accordingly, the Criminal Revision Case is dismissed. The conviction and sentence of the Courts below is confirmed. The trial Court shall secure the revision petitioner and commit him in prison, to undergo remaining period of sentence.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Additional District Judge,
Fast Track Court No.III, Tiruvallur.
2. The Judicial Magistrate No.I,
Tiruvallur.
- 3.The Chief Judicial Magistrate,
Tiruvallur.
4. The Inspector of Police,
Tiruvallur Town Police,
Tiruvallur District.

5. The Public Prosecutor,
High Court, Madras.

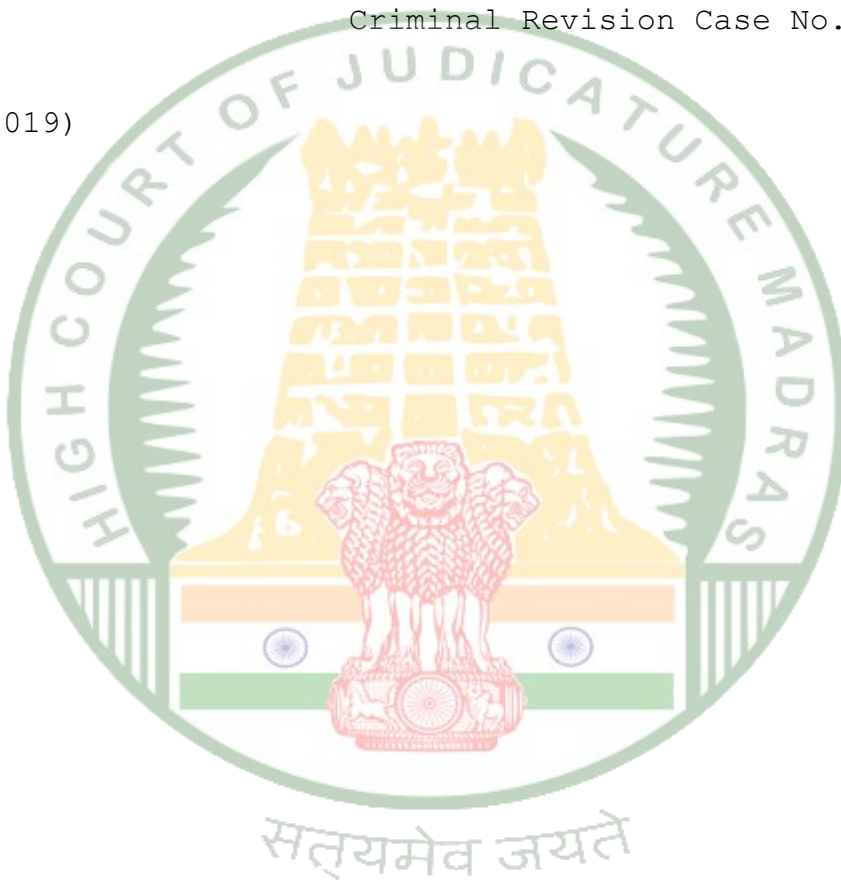
Copy To

The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Mr.T.Ravi, Advocate, S.R.No. 28307

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SSI(CO)
GN(02/05/2019)



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