

Bail Slip

The Petitioner/Accused namely Panneerselvam S/o.Mathana Kamaraj was directed to be released on bail as per order dated 25/05/2012 made in MP No.1/12 in CrI RC No.529/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.529 of 2012
and M.P.Nos.1 and 2 of 2012

Panneerselvam Petitioner/Appellant/Accused

Vs.

The State Rep.by its
The Inspector of Police,
Poraiyar,
Poraiyar Police Station.

.... Complainants/Respondent/Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records of the Judicial Magistrate No.II, Mayiladuthurai in C.C.No.24 of 2004 and set aside the judgment dated 12.08.2010 as confirming the conviction and sentence passed by the District and Sessions Judge, Nagapattinam in C.A. No.84 of 2010 by judgment dated 06.03.2012.

For Petitioner : Mr.R.Shivakumar
for M/s.K.M.Vijayan Associates

For Respondent : Mr.T.Shanmuga Rajeswaran
Additional Public Prosecutor

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O R D E R

This Criminal Revision Case is directed against the concurrent findings of the Courts below held the revision petitioner guilty for the offence under Sections 304(A) (2 counts) and 337 IPC.

2. The case of the prosecution is that on 20.03.2003 at about 6.30 p.m., when Dhanalakshmi [PW.1] carrying two minor children in her bicycle, one in the front and another in the carrier near Kattuchery. The tipper lorry driven by the revision petitioner coming from East to West direction in rash and negligent manner dashed against the cycle. PW.1 and the two minor children were thrown away from the cycle. Both the children sustained injury and declared dead. Whereas, PW.1 went to the hospital on next day at 5.00 a.m., treated for the injury she sustained. Thereafter, the complaint was registered by the respondent police and the investigation was taken up. The Courts below considered the evidence of PW.1-the injured witness and PW.7, who was one of the witness to the accident had held that the accident was due to rash and negligent driving of the revision petitioner. The trial Court has observed that the high degree of negligence on the part of the accused could be inferred from the manner in which the accident occurred. As a result, the trial Court held him guilty and convicted and sentenced him to undergo 2 months S.I and pay a fine of Rs.250/-; in default 1 month S.I for offence under Section 337 IPC; sentenced him to undergo one year S.I and fine of Rs.500/-; in default 2 months S.I.for each count for offence under Section 304(A) IPC (2 counts). Ordered the period of sentence shall run concurrently. On appeal the District and Sessions Judge at Nagapattinam confirmed the said judgment and conviction.

3. Aggrieved by the concurrent findings, the present revision petition has been filed on the following grounds:-

(i) The prosecution has not explained the cause for the delay in registering the FIR.

(ii) The conduct of PW.1 injured witness not reporting the matter immediately to the police and not getting treatment for the alleged injury caused doubt immediately.

(iii) The police has miserably failed to recover the bicycle alleged to have been driven by PW.1.

(iv) The prosecution has not properly explained how the victims were taken to the hospital and when they were taken to the hospital.

(v) The private doctor who first attended the injured persons was not examined.

(vi) The auto driver who carried the two children was not examined.

(vii) The failure on the part of the prosecution to investigate the matter properly has led to miscarriage of justice. Hence, the perverse orders of the Courts below has to set aside.

4. Per contra, the learned Government Advocate(crl.side) would submit that the two children who died in the accident are

the children of PW.3 and PW.4 both are employed and these two children were at the time of accident in the custody of PW.1. When PW.1 was taking them in the bicycle, the tipper lorry driven by the revision petitioner rashly and negligently came and hit the bicycle which was on the extreme left. The evidence of PW.1 about the rash and negligent driving of the accused has also been corroborated by the evidence of PW.2 and PW.7. Prosecution has proved the negligence and rashness of the revision petitioner beyond doubt through these witnesses. The failure of the Investigating Officer to recover the damaged bicycle will not hold the petitioner not guilty, since the death due to motor accident, the rash and negligent driving are spoken by PW.1, PW.2 and PW.7. The injury noted by the post-mortem doctor in the report proves that the injuries were due to road accident and not otherwise. Both the victims Mohan aged about 16 months and Indhu aged about 7 years had sustained head injury. Their scalps were found fractured. The death occurred due to shock and hemerage cause due to the head injury.

5. Pointing out the sketch prepared by Investigating Officer, the learned Government Advocate(crl.side) would submit that width of 14 feet road in between Kattuchery and Poraiyur, the victim was on the extreme left on the mud road which is about 3 feet width. The tipper lorry has hit the cycle which was on the mud road at the time of accident. Referring the inquest report, the learned Government Advocate(crl.side) would submit that the body was taken to the private hospital at about 19.00 hours and seen by Dr. Chandrasekar. Thereafter, body was taken to the Government hospital for post-mortem and the post-mortem was conducted by PW.5 Dr.Sampathkumar on 21.03.2003 at about 10.00 a.m.. The next day the offending vehicle was sent to Motor Vehicle Inspector for examination on 22.03.2003. Motor Vehicle Inspector has submitted his report EX.P6 on the same day recording his opinion that the accident might not have been occurred due to any mechanical defect.

6. The perusal of the record and the grounds raised by the revision petitioner does not indicate that the death of two children was not due to motor accident. It is clear from the evidences of PW.1, PW.2 and PW.7 that the tipper lorry has caused the accident. PW.1 has sustained minor injury, therefore, gone to the hospital on next day. She has reported to the doctor at Government hospital Poraiyar that she sustained the injury during the motor accident.

7. The prosecution ought to have examined Dr.Chandrasekar, who seen the injured children first and should have also seized the damaged bicycle. But the omission to do so does not any way cause doubt about the accident or the manner in which it occurred as the injured witness or eye-witness spoken

before the Court. The deposition of PW.1, PW.2 and PW.7 had sufficiently inspires confidence of the Courts below. The finding of the facts by the Courts below does not show any trace of perversity. The witnesses have deposed naturally about the occurrence in the manner in which they have perceived. There is no reason to reverse the findings of the Courts below based on the lapse on the part of the investigation.

8. Therefore, this Court finds no reason to interfere the concurrent findings. Hence, the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.II, Mayiladuthurai
- 2.The District Judge, Nagapattinam.
- 3.The Inspector of Police,
Poraiyar Police Station,
Poraiyar.
- 4.The Public Prosecutor,
High Court, Madras.
5. The Chief Judicial Magistrate, Nagapattinam

+1cc to Mr.K.M.Vijayan, Advocate SR.No.28987

Cr1.R.C.No.529 of 2012

NRL(CO)
GMY(31/05/2019)

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