

Bail Slip

The Petitioner/Accused Viz., R.Devan S/O Raman was released on bail as per order of this Court dated 15/06/2012 in CrI.M.P.No.1 of 2012 in CrI.R.C.No.574 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.574 of 2012

R.Devan

.... Petitioner

Vs.

State by Inspector of Police,
Mandranmangalam Police Station,
Crime No.217 of 2006

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to setting aside the judgment of C.A.No.7 of 2011 dated 06.02.2012 on the file of Principal Sessions Judge, Dharmapuri confirming the judgment passed in C.C.No.98 of 2006 on the file of Judicial Magistrate, Palacode dated 10.03.2011.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate

सत्यमेव जयते
O R D E R

Heard the learned counsel for the revision petitioner and the learned Government Advocate (crl.side) for the respondent.

2. It is a case of motor accident where two persons were killed. The charges under Sections 279 and 304(A) (2 counts) were framed against the revision petitioner, who was a lorry driver involved in the accident. Adhikesavan and Govindaraj are the two persons who died in the accident. Adhikesavan was driving the two wheeler and Govindaraj was the pillion rider. On 15.09.2006, at about 6.45 a.m., while the lorry was proceeding from Rayakottai to Palacode, the two wheeler which was driven by Adhikesavan was proceeding towards Rayakottai from palacode, due

to rash and negligent driving of the lorry, the revision petitioner caused the accident. A complaint has been lodged by the driver of the lorry, the accused, who is the revision petitioner herein. He has reported the nearest police station about the accident at about 7.15 a.m. Based on the complaint, First Information Report has been registered and the investigation was proceeded. The prosecution relied upon the evidence of PW.1 and PW.2 who are the residents near the spot of accident. Both of them have spoken about the accident and the death of Adhikesavan on the spot and Govindaraj, who was shifted to the hospital, died on the same day.

3. The short point involved in this case is, whether the prosecution has proved the rash and negligent driving of the lorry driver who is the revision petitioner before us. Though both the Courts have held that the prosecution has proved the rash and negligent driving of the offending lorry driver, the learned counsel appearing for the revision petitioner would submit that the rough sketch relied by the prosecution which is marked as Ex.P7, is the telltale evidence to show how the accident occurred. The spot of accident is the middle of the road. Motor Vehicle Inspector report indicates that the right side bumper of the lorry has contacted and there is scratch in the right side tyre both would indicate that the two wheeler ramped into the right side of the lorry. As far as PW.1 and PW.2 whom both the Courts below have accepted as the eye-witnesses to the occurrence have not whispered anything about the rash and negligent driving of the lorry. In fact they have not seen the actual occurrence. They reached the spot on hearing the noise. In such circumstances, the learned counsel would submit that the Courts below have erroneously held the accused/revision petitioner guilty.

4. The learned Government Advocate (crl.side) appearing for the State would submit that the points raised by the revision petitioner have been considered by the Lower Appellate Court, wherein the Lower Appellate Court has observed that had the offending vehicle driver driven the vehicle slowly and cautiously even if the rider of the two wheeler riding the vehicle in wrong lane it would have been possible to avoid the accident. There is no whisper in his complaint about this aspect and therefore, the conduct of the lorry driver not deligently driving the vehicle to avoid collusion render him liable for the offence under Sections 279 and 304(A) IPC (2 counts).

5. On considering the rival submissions and perusal of the records, this Court finds that the submissions made by the learned counsel for the revision petitioner has force both legally and factually. To attract the offences under Sections 279 or 304(A) IPC, the prosecution is liable to establish rash

and negligence on the part of the accused. As far as the facts placed before the Court, only two persons have actually seen the occurrence. One the accused and another the cleaner. The accused is the complainant. His complaint is marked as Ex.P1 . The driver was examined as PW.13. PW.1 and PW.2 reached the spot only after the accident. The accused has gone to the police immediately and had narrated the facts in his complaint that the right side of the lorry bumper hit the two wheeler. His statement in the complaint corroborates with the Motor Vehicle Inspector's report which is marked as Ex.P4. The rough sketch of scene of occurrence marked as Ex.P7 also indicates that the lorry was not moving on the wrong side of the road.

6. On a cumulative assessment of these evidence, it is clear as crystal that it was the two wheeler which has been driven on the middle of the road had ramped into the lorry. The reasoning of the Lower Appellate Court that even if the two wheeler came on wrong side, the lorry driver should have slowed down the vehicle and avoided the accident is highly preposterous. The person who drive the vehicle either a two wheeler or a four wheeler he is bound to follow the lane discipline and drive the vehicle cautiously without causing injury to others. Having found that the two wheeler has proceeded on the middle of the road and when there is no evidence to show that the accused was driving his vehicle rash and negligent, the benefit of doubt has been extended to the accused. Furthermore, in this case unlike the most of the accident case, the lorry driver himself has gone to the police and reported the matter. His conduct speaks for itself. In such circumstances, the findings of the Courts below is improper, illegal and perverse. It is without proper appreciation of the evidence. Therefore, the findings of the Courts below is liable to be set aside.

7. The Criminal Revision Case is allowed. The judgment of conviction and sentence passed by the Principal Sessions Judge, Dharmapuri in C.A.No.7 of 2011 dated 06.02.2012, confirming the judgment of the Judicial Magistrate, Palacode in C.C.No.98 of 2006 dated 10.03.2011 is set aside. The revision petitioner is set at liberty. Bail bond if any executed by the petitioner shall be cancelled. Fine amount if any paid by the petitioner shall be refunded to him.

Sd/-
Assistant Registrar(V/O)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Palacode.

2.The Principal Sessions Judge,
Dharmapuri.

3.The Public Prosecutor,
High Court, Madras.

4.The Chief Judicial Magistrate,
Dharmapuri (For Information).

5.The Principal Sessions Judge,
Dharmapuri.

6.The Inspector of Police,
Mandranmangalam Police Station.

+lcc to Mr.R.Nalliyappan, Advocate Sr.39419

Cr1.R.C.No.574 of 2012

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srg 29/05/2019



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