

BAIL SLIP

The Petitioner/Accused namely Wesly, D/o.Issac was directed to be released on bail vide Order of this Court dated 22.06.2012 made in M.P.No.1/2012 in CrI.R.C No.628/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.RC.No.628 of 2012
and
M.P.No.1 of 2012

Wesly

...Petitioner

Vs.

The Inspector of Police,
Tiruppur North Police Station,
Tiruppur.
Crime No.1637 of 2007.

...Respondents

This Criminal Revision is filed under Section 397 and 401 of Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Additional District and Sessions Judge, FTC, Tiruppur, dated 30.12.2011 in C.A.No.228 of 2011 to undergo three months rigorous imprisonment for the offence under Section 304(A) IPC and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for one month by modifying the sentence of six months rigorous imprisonment made in judgment of the learned Judicial Magistrate-I, Tiruppur in C.C.No.207 of 2008, dated 17.09.2011.

For Petitioner : Ms.N.Valliamma
for Mr.M.Christopher

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

O R D E R

This revision has been filed to set aside the conviction and sentence passed by the learned Additional District and Sessions Judge, FTC, Tiruppur, dated 30.12.2011 in C.A.No.228 of 2011 by modifying the order in C.C.No.207 of 2008, dated 17.09.2011 passed by the learned Judicial Magistrate-I, Tiruppur.

2. The respondent police registered a case against the revision petitioner for the offences under Section 279 and 304 (A) IPC. After investigation, the respondent police laid charge sheet against the petitioner before the learned Judicial Magistrate-I, Tiruppur for the above said offences and the same was taken on file in C.C.No.207 of 2008.

3. Before the trial Court, in order to prove the case, the respondent police examined 9 witnesses and marked 8 documents. On the side of the defence, no witness was examined and no document was marked. After full-fledged trial, the learned Judicial Magistrate-I, Tiruppur, found the accused guilty for the offences under Section 279 and 304(A) IPC and convicted and sentenced him to undergo six month rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment.

4. Challenging the said order dated 17.09.2011, the convict had filed appeal in C.A.No.228 of 2011. The learned Additional District and Sessions Judge, FTC-V, Tiruppur, after hearing the arguments on either side, confirmed the conviction and modified the sentence from six months to three months for the offence under Section 304(A) IPC and to pay a sum of Rs.5,000/- as compensation to the deceased. Challenging the judgment dated 30.12.2011 in C.A.No.228 of 2011, the convict has filed the present revision before this Court.

5. The learned counsel for the petitioner would submit that P.W.3 has been cited as eyewitness and he would not have been eyewitness in this case, his evidence is only an artificial not natural one. The complaint given by P.W.3 is not genuine and the same was doubtful. The deceased, was 17 years at that time of the accident and he was not having any valid driving license. Without any license, he has ridden a two wheeler in a rash and negligent manner. He only dashed against the offending vehicle which came in the right direction. These facts have not been considered by both the Courts below. Further, there is a material contradictions between the evidence of P.W.1 and P.W.3. P.W.1 has not stated that P.W.3 was present at the time of the accident and also accompanied with him to the hospital. If at all P.W.3 was present, P.W.1 would have stated the presence of P.W.3. Therefore, there was a material contradictions about the presence of P.W.3 at the time of the accident which was also suspicious. After 2 ½ hours, the Police rushed to the hospital from the police station, which was very nearer to the occurrence place. If at all the accident was occurred, the revision petitioner ridden a vehicle in wrong direction and after the occurrence, there was a traffic jam and the police would have come immediately, there is no such report has been recorded. The

prosecution has failed to prove its case beyond reasonable doubt. Both the Courts, on sympathy ground that the deceased died and recorded the conviction, in order to help the victim to get compensation, which warrants interference.

6. The learned Government Advocate(Crl. Side) would submit that there is no dispute with regard to the accident. Only the manner of the accident alone is disputed. P.W.3 is an eyewitness, has clearly stated that the manner of the accident and also both the Courts have appreciated elaborately about the manner of the accident and also damages caused to the two wheeler and van itself shows that the accident has occurred due to rash and negligent driving of the driver of the revision petitioner. Even the Motor Vehicle Inspector has given an opinion, which was also supported the case of the prosecution. Both the Courts have rightly discussed the evidence of the prosecution and recorded the conviction and there is no reason to interfere with.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) and perused the materials available on record.

8. It is the case of the prosecution that on 02.10.2007 at about 07.15 a.m., near Tiruppur Kumaran road, the petitioner had driven the mini bus bearing registration No.TN 59 B 9819 with high speed in a rash and negligent manner, in a wrong route towards south to north and dashed against the deceased who was riding the TVS XL bearing registration No.TN 39 AA 6548. Due to which, the deceased sustained grievous injury and he died. The respondent police registered a case against the petitioner for the offence under Section 279 and 304(A) IPC and laid charge sheet against him.

9. Though the learned counsel for the revision petitioner stated that the accident has occurred only due to non possessing of the valid license by the deceased and he has ridden the two wheeler in a rash and negligent manner. The accident has not occurred due to rash and negligent driving of the driver of the mini bus i.e. the revision petitioner. There was a material contradictions between the evidence of P.W.1 and P.W.3.

10. On a perusal of the records, it is seen that P.W.3 has cited as eyewitness, has clearly spoken about the occurrence and also the manner of the accident. But, there is no reason to disbelieve the evidence of P.W.3. On reading of the evidence of P.W.3, has stated to have been eyewitness and also the damages caused to the vehicle and evidence of Motor Vehicle Inspector, and evidence of the Doctor, who was done postmortem, the prosecution has proved its case beyond reasonable doubt. There

is no reason to interfere with the judgment of both the Courts. Though both the Courts have appreciated all the evidence of the prosecution. Since the lower appellate Court is final court of fact finding, re-appreciated the entire prosecution evidences independently and given cogent reason for recording the conviction. This Court being a revisional Court, while exercising the revisional jurisdiction, the scope of revision is very limited. While deciding a revision, this Court has to see as to whether there is any perversity in appreciating the evidence by the Courts below. On a reading of the entire materials, this Court does not find any perversity in the judgment passed by both the Courts below. Under these circumstances, there is no merit in the revision and this Court does not find any reason to take a different view.

11. Though the learned Magistrate has convicted the revision petitioner and sentenced to undergo six month for the offence under section 304(A) IPC and before the lower appellate Court, the learned Additional Sessions Judge modified the sentence from six months to three months for the above said offence. Therefore, both the Courts below have observed that the accident is not an intentional one.

12. However, since the accident is not an intentional, in order to meet ends of justice, the sentence alone is modified from three months rigorous imprisonment to two months rigorous imprisonment.

13. With the above modification and observation, this Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

rlr

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To

1.The Additional District & Sessions Judge,
Vth FTC, Tiruppur.

2.The Judicial Magistrate-I, Tiruppur.

3. -Do- Thro' The Chief Judicial Magistrate
Coimbatore.

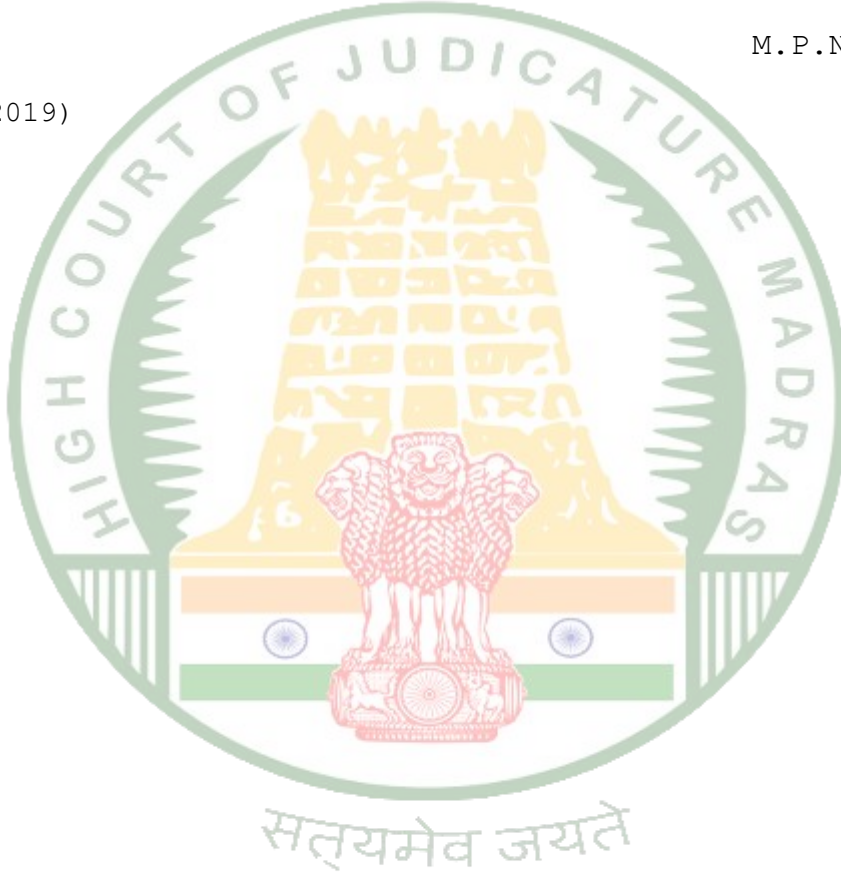
4. The Inspector of Police,
Tiruppur North Police Station,
Tiruppur.

5. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S.Dhanaraj, Advocate, SR.No.65384

CrI.RC.No.628 of 2012
and
M.P.No.1 of 2012

Kak(04/11/2019)



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