

BAIL SLIP.

That the Appellant/Petitioner namely P.Mandiramoorthy S/o.Poonunadar released on bail as per order of this court dated 18.01.2012 MP.No. 1/12 in Crl.Rc.No. 81/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.02.2019
Pronounced on : 01.03.2019
CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.81 of 2012
and M.P.No.1 of 2012

P.Mandiramoorthy ... Petitioner

Vs.

The State rep.by the
Inspector of Police,
Traffic Investigation Wing, (west)
Coimbatore.
Crime No.259 of 2008

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the judgment of the learned Additional District and Sessions Judge and (Fast Track Court No.2) of Coimbatore, dated 12.10.2011 in Crl.A.No.99 of 2011 confirming the Judgment of the learned Judicial Magistrate No.8, Coimbatore, dated 19.04.2011 in C.C.No.591 of 2008.

For Petitioner : Mr.N.E.A.Dinesh

For Responden : Mr.T.Shanmuga Rajeswaran, GA

O R D E R

The Revision petitioner herein is the accused in C.C.No.591 of 2008 tried for an offence under Section 279 read with 304(A) IPC. Aggrieved by the concurrent findings of the Courts below held the guilty for the said offence the present revision petition is filed.

2.The case of the prosecution as spoken through the witnesses and the documents relied by the prosecution is that on 11.08.2008 at about 12.00 hours at R.S.Puram to Thadagam road in front of plantain business complex, the petrol tanker lorry bearing registration No.TN.38 T 9996 driven rashly and

negligently by the revision petitioner dashed against the Hero Honda motor cycle bearing registration TN.37 Y 6064 and caused damages to the two wheeler and also run over the pillion Smt.Mahalaksmi travelling on the pillion, she sustained multiple injuries and succumbed to the injury.

3. To prove the case, the prosecution examined 13 witnesses and marked 8 Exhibits. The trial Court convicted the accused for the offence under Section 279 r/w 304(A) IPC and sentenced him to undergo 1 year Simple Imprisonment and to pay a fine of Rs.1000/-; in default to undergo 3 months Simple Imprisonment. Aggrieved the sentence and conviction imposed by the trial Court, the accused preferred C.A.No.99 of 2011 before the learned Additional District and Sessions Judge, Fast Track Court, Coimbatore.

4. The lower appellate Court considering the grounds of appeal and on re-appreciation of the evidence, dismissed the appeal and confirmed the judgment passed by the trial Court in S.C.No.591 of 2008. Against the concurrent findings of the facts, the present revision petition is filed.

5. In the grounds of revision, the revision petitioner has contended that the Courts below has failed to properly appreciated the law. The guilt of the accused not proved beyond the reasonable doubt. The alleged accident could not have occurred in the manner in which the prosecution witnesses have deposed. PW.1, PW.2 and PW.4 to PW.6 could not have witnessed the accident as deposed by them. The presence of these witnesses at the spot of accident and noticing the accident is highly improbable. When some of the alleged eye witnesses admit that they turned to notice the accident only after hearing noise, would clearly show that they are not witnesses competent to say about the manner in which the accused driving his lorry. Pointing out the Motor Vehicle Inspector report Ex.P.3, the learned counsel appearing for the revision petitioner would submit that the back of the two wheeler is not damaged the offending lorry not sustained any damage. The Motor Vehicle Inspector PW.10, who issued the inspection report Ex.P.4 has pointed out the following damages in the two wheeler bearing registration No.TN 35 6064:

- "(i) Front both side indicator assembly broken
- (ii) Back right side indicator assembly broken.
- (iii) Scratches found on the side box.
- (iv) Right side rear view mirror broken.
- (v) Front fork assembly broken."

6. In the light of the above findings of the Motor Vehicle Inspector, the learned counsel for the revision petitioner

contended that the two wheeler has come on the left side of the lorry and hit the lorry on its own and not as contended by the prosecution witnesses that the lorry hit the two wheeler on the back.

7. The learned counsel referring Ex.P.7, the sketch prepared by the Investigating Officer PW.13, the Motor Vehicle Inspector report in respect of the two wheeler Ex.P.4 issued by PW.10 and Motor Vehicle Inspector report Ex.P.3 issued by PW.8 Sivakumar would submit that the two wheeler in which the deceased travelling has sustained damage on the front side and right side. No damage is noticed on the rear side of the two wheeler or any part of the lorry. The pillion rider Mahalakshmi had been run over by the rear wheel of the tanker lorry. Whereas, her husband was driving the two wheeler, has not sustained any injury. If really the tanker lorry has hit the two wheeler in its rear then there should have been damage of two wheeler on its rear portion and the impact should have caused some injury to the rider of the two wheeler. Therefore, the inference of the Courts below that the accident in the manner spoken by the eyewitnesses is baseless.

8. On perusal of the Exhibits and the evidence relied by the prosecution, the proven fact is that the accident has taken place on a 60 feet road. The sketch prepared by the Investigating Officer indicates as if the tanker lorry bend towards his left and hit the two wheeler. PW.1- Narayanan is one of the eyewitness of the occurrence. He is the brother-in-law of the deceased. In the cross-examination, he admits that he is not sure which part of the lorry hit the two wheeler. PW.2 Ganeshkumar is the husband of the deceased. He was riding the two wheeler carrying his wife in the pillion. He has deposed that the lorry driven negligently and rashly hit his two wheeler, he sustained minor injuries and his wife was run over by the said lorry. PW.4 by stander had deposed that he saw the accused lorry coming rash and negligently causing the accident. The pillion rider fall down due to the impact. The back wheel of the lorry run over the victim. PW.6 Kannan, who was passing through the Thadagam road at the time of accident has also deposed above the manner in which the accident occurred. PW.8 and PW.10 the Motor Vehicle Inspector have also deposed about the inspection of the two wheeler and lorry.

9. On a cumulative assessment of the ocular evidence and the documentary evidence, the impact of the damage found in the two wheeler makes its clear and due to some heavy impact, the two wheeler sustained damages on the front portion that is the reason why the pillion rider who was sitting on the back of the two wheeler has been fallen down and run over by the rear wheel of the tanker lorry. The very fact that the lorry has hit the

two wheeler, which has caused the accident cannot be doubted. In view of the overwhelming evidence placed by the prosecution through eye-witness the fact that the deceased Mahalakshmi was run over by the rear wheel of the tanker lorry well proved. Only if the driver of the lorry driven the vehicle negligently, the accident could have occurred.

10. The learned counsel for the revision petitioner would submit that PW.2 Ganeshkumar has lost his balance and fell down on his own. His wife unaware of this got under the wheels of the tanker lorry. This explanation for the accident cannot be sustained. In the light of the fact that the two wheeler has sustained heavy damage on the front portion indicating that the impact of the lorry and the two wheeler was on the front portion. Though, the eyewitness have said the vehicle was hit on the rear side, it is quite natural for the eyewitness to say so. It is highly impossible in an accident case for the eyewitness to say exactly about the point of impact. Therefore, this Court constraints that the accident has taken place only due to the negligence of the driver of the tanker lorry.

11. The Courts below have rightly appreciated the evidence placed by the prosecution. On a cumulative assessment of the evidence both oral and documentary, the Courts below held the accused lorry driver guilty. The term of imprisonment for the said offence is also not excessive. Therefore, the revision petition is dismissed. The judgment of the Courts below is confirmed. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate VIII,
Coimbatore.

2.The Additional District and Sessions Judge,
Fast Track Court,
Coimbatore.

3.The Inspector of Police,
Traffic investigating wing,
(West) Coimbatore.

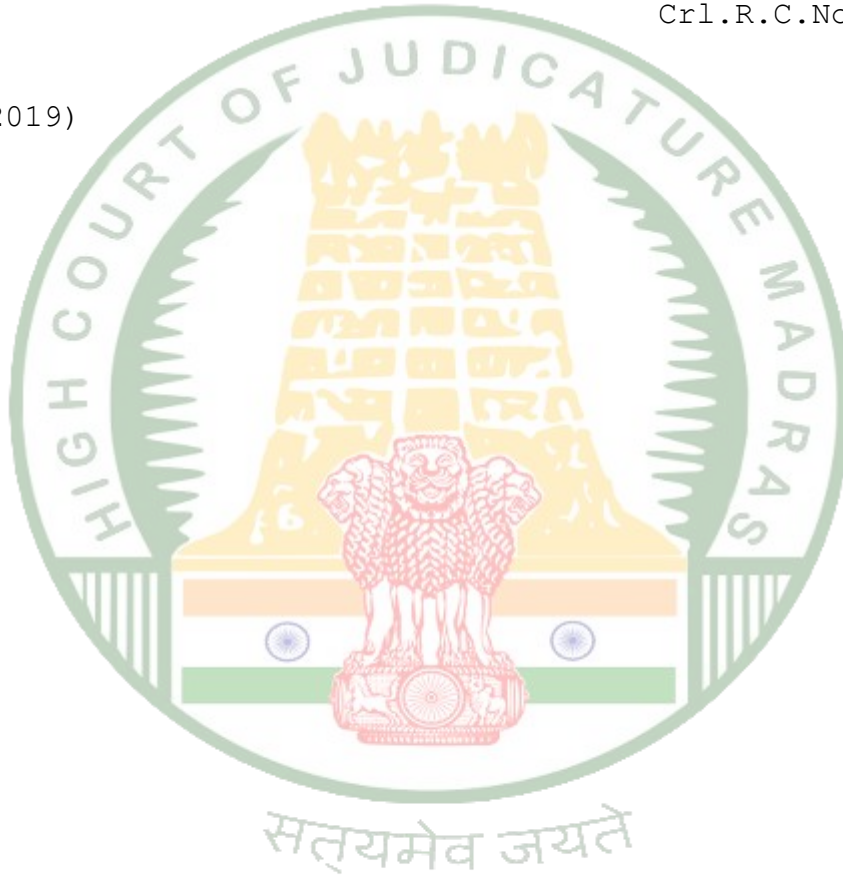
4.The Public Prosecutor,
High Court, Madras.

5.The Section Officer,
Criminal Section,
High Court, Madras..

+lcc to Mr.Nicholas, Advocate, S.R.No. 19614

Cr1.R.C.No.81 of 2012

MG(CO)
GN(01/04/2019)



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