

Bail Slip

The Appellant/Accused, namely Nagesh @ Rajendran aged 46 years S/o.Thangavel is directed to be released on bail as per order dated 23.07.2012 in MP.NO.1/12 IN CrI.R.C.No.868 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
CrI.R.C.No.868 of 2012

Nagesh @ Rajendran

...Petitioner/Accused

Vs

State Rep., by,
The Inspector of Police,
Nagore Circle Police Station,
Nagapattinam District.
Thittacherry Police Crime No.271 of 2008

...Respondent/Complainant

PRAYER: Criminal Revision filed under Article 397 r/w 401 of Criminal Procedure Code, to set aside the conviction and sentence imposed in C.C.No.33 of 2010 dated 20.05.2010 on the file of the Chief Judicial Magistrate Court, Nagapattinam and confirmed in C.A.No.69 of 2010 dated 19.03.2012 on the file of the District and Sessions Court, Nagapattinam.

For Petitioner : Mr.R.Sankara Subbu

For Respondent : Mr.R.Shanmugarajeswaran

Government Advocate (Criminal Side)

ORDER

The Criminal Revision is directed against the concurrent Judgments of conviction by both the Courts below.

2 The respondent police registered a case against the revision petitioner/accused in Crime No.271 of 2008 for the offence under Section 279, 304(A) IPC and r/w 181 of Motor Vehicles Act. After completion of investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No-II, Nagapattinam. The learned Judicial Magistrate, taken charge sheet on file in C.C.No.114 of 2009. During the trial the case was transferred to the learned Chief Judicial Magistrate, Nagapattinam and the same was taken on file in C.C.No.33 of 2010.

3 The learned Chief Judicial Magistrate, Nagapattinam, after completing trial and hearing the arguments, found the petitioners guilty for all the offences charged against him, and convicted him for the offence under Section 279 IPC imposed a fine of Rs.500/-, in default of payment to undergo Simple Imprisonment for one month, for the offence under Section 3 r/w 181 of Motor Vehicle Act, imposed to pay Rs.500/- in default of payment of fine to undergo Simple Imprisonment for one month and for the offence under Section 304(A) IPC to undergo Rigorous Imprisonment for two years . Challenging the said judgment of the learned Chief Judicial Magistrate, Nagapattinam the revision petitioner filed an appeal in Crl.A.No.69 of 2010 before the District and Sessions Judge, Nagapattinam. After hearing the arguments and considering the entire materials, the learned District and Sessions Judge, Nagapattinam dismissed the appeal and confirmed the conviction passed in C.C.No.33 of 2010 by the learned Chief Judicial Magistrate, Nagapattinam.

The brief facts of the prosecution case:

4 On 04.07.2008 at about 19.00 hours when the deceased Chinnadurai proceeded in his bicycle from north to south direction in the Thirumarugal main road keeping extreme left side of the road, at that time, one tractor bearing registration No. TN 32 V 5277 along with trailer bearing registration number TN51/0548 driven by the revision petitioner without having any valid driving licence, in a rash and negligent manner and dashed against the deceased Chinnadurai. As a result of which, the deceased sustained grievous injuries and thereby he died on the spot itself. Hence, the accused committed the offences punishable under Sections 279, 304(A) IPC and 3 r/w 181 Motor Vehicle Act. A case in Crime No.271 of 2008 was registered against the accused on 04.07.2008. On completion of investigation, final report was filed against the petitioner. The trial Court after appreciating the evidence placed before it, held the petitioner guilty and convicted him as mentioned above.

5 The learned counsel for the petitioner would submit that, the road, in which the said accident took place is a very narrow with lots of pitches and also it is a mud road. In such a road, driving the vehicle in a rash and negligent manner is not possible. More over, it is submitted that, P.W.10 is the interested witness, who is none other than the father of the deceased. P.W.4 could not be an eye witnesses. At the time of the accident, the deceased consumed alcohol which was established clearly through P.W.10/Doctor. The learned counsel further submitted that the accident took place on 06.07.2008 at about 19.00 hours, whereas the case registered at about 24.00 hours, with a delay of 5 hours. From the evidence of P.W.1 it seems that the police officials came to the spot and registered

the case, whereas, the Investigation Officer has stated that P.W.1 came to the police station and gave the complaint. Therefore, the material contradiction in registering the case and the delay in registering the case have not been properly explained. Both the Courts have failed to consider the material evidence and simply convicted on the ground of sympathy and not from the materials placed before the Court. Therefore, the judgments of the Courts below warrants interference of this Court.

6 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that, P.W.1 is the father of the deceased and as well as an eye witness to the occurrence. P.W.3 and P.W.4 are also the eye witnesses. The learned Government Advocate further would submit that the Motor Vehicle Inspector also stated that the offending vehicle has no mechanical defect. Moreover, the doctor evidence clearly speaks about the death of the deceased, which was due to the rash and negligent driving of the petitioner. Both the Courts have rightly appreciated the evidence and come to conclusion that the petitioner has committed offence. Therefore, there is no reason to interfere with the judgments passed by the Courts below.

7 Heard the learned counsel for the petitioner as well as the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on records.

8 Before deciding the revision case, it is necessary to look into the judgments of the Courts below. In order to prove the case of the prosecution before the trial Court, as many as 15 witnesses were examined, out of which, P.W.1 to P.W.4 are eye witnesses. P.W.1 has clearly narrated the manner of the accident and P.W.3 and P.W.4, have also corroborated the same. During the cross examination, the learned counsel for the petitioner attempted to say that since, the lane in which the accident alleged to have taken place is narrow lane and there are lot of pitches in the lane. In that village, a tractor with the sand could not have been driven in the rash and negligent manner.

9 The trial Court has convicted the accused for the offence under Sections 279, 304(A) IPC and r/w 181 of Motor Vehicles Act. The appellate Court being a final Court of fact finding, re-appreciated the entire evidence and came to the conclusion that the accident had happened due to the rash and negligent driving of the revision petitioner.

10 On a perusal of records, it shows that the revision petitioner was not having valid license to drive the tractor, at the time of accident which is clearly established the case of the prosecution. Therefore, the appellate Court correctly re-

appreciated the evidence and dismissed the appeal and confirmed the sentence imposed by the trial Court.

11 Since this Court is a revisional Court, it cannot sit in the arm chair of the appellate Court and re-assess the entire evidence. While deciding a revision, this Court has to see as to whether there is any perversity in appreciating the evidence by the Courts below. This Court finds that there is no perversity in appreciating the evidence by the trial Court as well as the appellate Court. Therefore, this Court finds that there is no merit in the revision case. This revision is liable to be dismissed.

12 However, the accident may not be an intentional one and it is only due to the rash and negligent driving. Therefore, this Court while deciding the revision for confirming the conviction recorded by both the Courts below, inclined to modify the sentence instead of two years to six months, which would meet the ends of justice.

13 Accordingly, this Criminal Revision Case is partly allowed and the period of imprisonment of two years alone modified to six months for the offence under Section 304 (A) IPC and sentence imposed for remaining offences shall remain intact. Trial Court is directed to secure the petitioner to undergo remaining period of imprisonment, if any.

Sd/-

Deputy Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Chief Judicial Magistrate Court,Nagapattinam.

2.The District and sessions Court, Nagapattinam.

3.The Inspector of Police,
Nagore Circle Police Station,
Nagapattinam District.

4.The Public Prosecutor,
High Court,
chennai.

Cr1.R.C.No.868 of 2012

A.SK(27/01/2020)