Bail Slip.

The Petitioner/Accused viz Murugan was directed to be released on bail as per order of this court dated 02.08.2012 and made in M.P. 1/2012 in Crl.R.C.No.903/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.923 of 2012

Murugan

.. Petitioner

Vs.

The State
rep. by Inspector of Police,
Gudiyatham Town Police Station,
Crime No.258/2008

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the judgment dated 03.07.2012 made in Crl.A.No.257 of 2011 passed by the learned Principal District and Sessions Judge, Vellore, modifying the judgment dated 16.11.2011 made in C.C.No.369 of 2008 passed by the learned Judicial Magistrate, Gudiyatham.

For Petitioner : Mr.B.Nedunchezhiyan

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision has been filed to set aside the judgment dated 03.07.2012 made in Crl.A.No.257 of 2011 passed by the learned Principal District and Sessions Judge, Vellore, modifying the judgment dated 16.11.2011 made in C.C.No.369 of 2008 passed by the learned Judicial Magistrate, Gudiyatham.

2. The case of the prosecution is that on 12.04.2008 at about 13.30 hours, when PW-1 along with his wife, who is deceased, proceeding from Pallikonda to Gudiyatham in their bicycle, at that time, near the R.S.Railway Gate, the accused drove the lorry branded under the name of M.S.K. bearing with registration No.KA-01-AT-5757 in a rash and negligent manner and

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dashed against PW-1's cycle and caused the accident, due to which, PW-1 sustained grievous injuries all over his body and whereas his wife sustained fatal injury, resulting in instantaneous death. A case in Crime No.258 of 2008 was registered against the accused for the offence under Sections 279, 338 and 304(A) IPC. After completing the investigation, the respondent filed a final report before the learned Judicial Magistrate, Gudiyatham and the same was taken on file in C.C.No.369 of 2008. After hearing the arguments, the learned Magistrate found that the revision petitioner/accused found guilty of the offence under Sections 279, 338 and 304(A) IPC and sentenced to undergo 6 months Simple Imprisonment for the offence under Section 279 IPC and 6 months Simple Imprisonment for the offence under Section 338 IPC and One year Rigorous Imprisonment and fine of Rs.3,000/- for the offece under Section 304(A) IPC and out of the fine amount, Rs.2000/- shall be paid to PW-1 for the pain and sufferings, by judgment dated 16.11.2011. Challenging the said judgment of the learned Magistrate, the convict preferred an appeal in Crl.A.No.257 of 2011 before the learned Principal District and Sessions Judge, Vellore. After considering the grounds of appeal and hearing the arguments, the learned Sessions Judge confirmed the conviction and set aside the offence under Section 279 IPC and modified the sentence to undergo 3 months Simple Imprisonment, instead of 6 months for the offence under Section 338 IPC and further sentenced to undergo 6 months Rigorous Imprisonment, instead of one year for the offence under Section 304(A) IPC, by judgment dated 03.07.2012. As against the said judgment, the accused preferred the present revision before this Court.

3. The learned counsel for the petitioner would submit that the prosecution has not proved its case beyond reasonable doubts. Except PW-1, there is no other eye-witness in this case. PW-1 is the interested witness and no other witness has spoken that the accident occurred due to rash and negligent driving of the revision petitioner. Investigation Officer has not properly investigated and the rough sketch itself shows that the accident has not happened as projected by the prosecution. In the absence of an independent eye-witness, it cannot be stated that the accident occurred only due to rash and negligent driving of the revision petitioner/accused. Therefore, the prosecution failed to prove its case. When two views are possible, the benefit of doubt would be extended to the accused. Therefore, the judment of the Appellate Court warrants interference.

4. The learned Government Advocate (Crl.Side) would submit that PW-1 is the injured witness, who drove the bicycle along with his wife. The lorry bearing registration No.KA-01-AD-5757 dashed the bicycle and ran over the wife of PW-1 and PW-1 also

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sustained injuries. PW-1 has clearly stated that the driver drove the lorry in rash and negligent manner, due to which, the accident occurred. PW-1 himself is an eye-witness and he has spoken about the accident. Therefore, the prosecution has proved its case beyond reasonable doubts.

5. Heard the learned counsel appearing for the revision petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the materials available on record.

6. It is the case of the prosecution is that the accused drove the lorry in a rash and negligent manner and dashed against PW-1's cycle and caused the accident, due to which, PW-1 sustained grievous injuries all over his body and whereas, his wife sustained fatal injury, resulting to instantaneous death. PW-1 is the only witness and he has clearly narrated the accident. Further, PW-1 has stated that the lorry was driven by the revision petitioner/accused in a rash and negligent manner and dashed against the bicycle, due to which, the accident occurred. The medical evidence and the Doctor's evidence also corroborated the same. On a reading of the entire evidence, it is seen that the prosecution has proved its case beyond reasonable doubts. There is no reason to discard the evidence of PW-1. On combined reading of the evidence of PW-1 and the medical evidence reveals that the deceased died due to the accident, which occurred due to rash and negligent driving of the revision petitioner/accused, as stated by PW-1.

7. In the circumstances, this Court does not find any perversity in the appreciation of the evidence by both the Courts below. The Appellate Court, as the final Court of fact finding, re-appreciated the entire evidence and rightly modified the sentence to the revision petitioner/accused. Hence, there is no sound ground and reason to interfere with judgment passed by the Appellate Court. Accordingly, this Criminal Revision Case is dismissed. The judgment dated 03.07.2012 made in Crl.A.No.257 of 2011 passed by the learned Principal District and Sessions Judge, Vellore, is hereby confirmed. The trial Court is directed to take effective steps to secure the revision petitioner/accused to undergo the remaining period of sentence, if any.

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s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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KMI
To
1.The Principal District and Sessions Judge,
Vellore.

2.The Judicial Magistrate,
Gudiyatham.

3.The Inspector of Police,
Gudiyatham Town Police Station.

4.The Public Prosecutor,
High Court, Madras-104

+1 Cc to Mr.B.Nedunchezhiyan, Advocate sr 51313(13/08/2019)

Crl.R.C.No. 923 of 2012

MP(CO)
SP(08/08/2019)

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