

BAIL SLIP

The Petitioner/Accused namely Senthilkumar S/o.Madhuraj was directed to be released on bail as per order of this court dt.22.3.13 and made in MP 1&2/13 in CrI.R.C.397/13 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2018

PRONOUNCED ON :24.09.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.397 of 2013

Senthilkumar

.... Petitioner

- Vs -

State, rep. by the
Sub-Inspector of Police,
Town Police Station,
Ambur, Vellore District.
(Crime No.634/2009)

... Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to set aside the judgment dated 11.01.2013 passed in CrI.A.No.12 of 2012 by the learned III Additional Sessions Judge, Vellore @ Tirupattur, by confirming the judgment dated 31.10.2011 passed in C.C.No.72 of 2010 by the learned Additional District Munsif-cum-Judicial Magistrate, Ambur.

For Petitioner : Mr.B.Vasudevan

For respondent : Mr.R.Ravichandran

Government Advocate (CrI. Side)

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O R D E R

This Criminal Revision Case has been filed by the petitioner/accused seeking to set aside the judgment dated 11.01.2013 passed in CrI.A.No.12 of 2012 by the learned III Additional Sessions Judge, Vellore @ Tirupattur, by confirming the judgment dated 31.10.2011 passed in C.C.No.72 of 2010 by the learned Additional District Munsif-cum-Judicial Magistrate, Ambur.

2. The respondent police registered a case in Crime No.634 of 2009 against the revision petitioner/accused for the offences under Sections 279, 337 (3 counts) and 304A of IPC and after completing investigation, laid a charge sheet before the learned Additional District Munsif-cum-Judicial Magistrate, Ambur. The learned Magistrate taken the charge sheet on file in C.C.No.72 of 2010. After trial, the learned Magistrate found guilty of the revision petitioner for the offences under Sections 279, 337 (3 counts) and 304A of IPC, convicted and imposed fine of Rs.750/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 279 of IPC and to pay fine of Rs.500/- each, in default, one month Simple Imprisonment for the offence under Section 337(3 counts) of IPC and to undergo 6 months Simple Imprisonment and fine of Rs.1,000/-, in default, 3 months Simple Imprisonment, by judgment dated 31.10.2011. Challenging the said judgment, the convict filed an appeal in Crl.A.No.12 of 2012 before the learned Principal Sessions Judge, Vellore. The learned Principal Sessions Judge, Vellore made over the appeal to the learned III Additional Sessions Judge, Vellore at Tirupattur for disposal. After hearing the arguments advanced on either side, the learned III Additional Sessions Judge dismissed the appeal and confirmed the judgment of the trial Court, by judgment dated 11.01.2013. Again challenging the said judgment, the convict has filed the present revision before this Court.

3. The learned counsel appearing for the revision petitioner would submit that PWs-1 to 3 are injured witness and they did not depose that the revision petitioner drove the vehicle in a rash and negligent manner. PW-4/driver of the vehicle deposed that he stopped his vehicle to turn it, whereas, PW-1 says that PW-4 turned the vehicle. There are material contradictions between the evidence of PW-1 and PW-4, which has not been considered by both the Courts below. Further, the learned counsel would submit that the revision petitioner sustained fracture on his leg, took treatment for 6 months and filed claim petition under the Workmen Compensation Act before the Deputy Commissioner of Labour, Salem. The accident had not occurred due to rash and negligent driving of the driver of the offending vehicle viz., the revision petitioner. No witnesses have spoken about the accident had happened only due to rash and negligent driving of the revision petitioner. Even though the accident is admitted, it does not mean that the petitioner had driven the vehicle in a rash and negligent manner. The eye witnesses failed to mention the approximate speed of the truck, which was driven in a rash and negligent manner. The learned counsel has also placed reliance on the judgments in the cases of (i) Mahadeo Hari Lokre Vs. State of Maharashtra reported in [(1972) 4 SCC 758] (ii) State of Karnataka Vs. Satish reported in [(1998) SCC 493] and (iii) Sekar Vs. State by S.I. of Police reported

in 2001(2) MWN (Cr.) 249. In the absence of any specific evidence to show that the accident had occurred only due to rash and negligence driving of the driver of the vehicle, he cannot be convicted for the offence under Section 304 A of IPC. Both the Courts below failed to consider the oral and documentary evidence as also the legal and factual position, which warrants interference.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that at the time of the accident, PW-4/defacto complainant drove Tata 407 vehicle bearing registration No.TN 23 K 8094 with a load of chicken from Gudiyatham, when nearing Ambur Reddy Thoppu to unload the chicken at Ambur MC Road, a Eicher Vehicle bearing registration No.TN 30 AZ 3943 driven by the revision petitioner dashed behind the standing vehicle. PWs-1 to 3, who were travelling in the said vehicle sustained simple injuries and one Karthik, who was sitting on the back side of the said Tata 407 vehicle, fell down and the offending vehicle roll over him and he died at the spot. Therefore, the evidence of PWs-1 to 4 clearly shows that the accident occurred due to rash and negligent driving of the revision petitioner. The prosecution has proved its case beyond reasonable doubts. However, the learned counsel would submit that this Court and also the Hon'ble Supreme Court in various decisions observed that the words "rash and negligent" need not be mentioned by the witnesses if they have stated that the driver of the offending vehicle drove the vehicle with a rash and negligent manner is enough to convict the accused. Mere non mentioning of the words "rash and negligent" is not sufficient to interfere with the judgment of the Courts below. There is no perversity in the judgment of the Courts below, which does not warrant any interference.

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

6. The case of the prosecution is that on 16.09.2011 at about 4.30.a.m, PW-4/de facto complainant drove a Tata 407 vehicle bearing Registration No. TN 23 K 8094 with a load of chicken from Gudiyatham to Ambur Road. When the vehicle was nearing Ambur Reddi Thoppu to unload the chicken at Ambur MC Road Rajiv Gandhi Area and waiting to take turn from the direction of Vaniyambadi to Ambur a Eicher vehicle bearing registration No. TN 30 AZ 3943 driven by the revision petitioner and dashed behind the standing vehicle Tata vehicle. Out of the accident, PWs-1 to 3 and the deceased Karthik, who were travelling in the said vehicle fell down and the offending vehicle ran over the deceased Karthik, who died at the spot. PWs-1 to 3 also sustained simple injuries, for

which, PW-14/Inspector of Police registered a case in Crime No.34 of 2009 for the offences under Sections 279, 337 (3 counts) and 304(A) of IPC. After completing investigation, the respondent police laid a charge sheet before the learned Additional District Munsif-cum-Judicial Magistrate, Ambur and the same was taken on file in C.C.No.72 of 2010. The learned Magistrate, after trial, came to the conclusion that when the Tata 407 vehicle bearing Registration No.TN23 K 8094 with load of chicken was standing on the road, the offending vehicle driven by the revision petitioner came on the very same direction and dashed behind the standing vehicle, due to which, PWs-1 to 4 and the deceased viz., Karthik, who were travelling in the said vehicle, were fell down and the offending vehicle ran over the said Karthik and he died on the spot.

7. Since the offending vehicle came on the same direction and when it dashed against the standing vehicle and the persons, who were sitting in the vehicle, were thrown away and ran over one of the passenger, due to which, he died on the spot, which shows that if at all he came in the moderate speed with caution, even if he had seen the opposite vehicle in very short distance at least he ought to have lightly dashed and stopped his vehicle, then it would not have run through the person and caused death, which itself shows that the accident had occurred due to rash and negligent driving. PW-4 is the driver of Tata 407 vehicle bearing Registration No.TN23 K 8094. PWs-1 to 3 are the eye-witnesses, who also sustained injuries. Both the Courts have rightly appreciated the entire evidence of the eye-witnesses viz., PWs-1 to 4 and also the evidence of PW-10/doctor and convicted the revision petitioner/accused. This Court does not find any perversity in the judgments of the Courts below. There is no quarrel with the settled proposition of law laid down by the Hon'ble Supreme Court in various decisions that in the absence of any evidence to show that the driver of the offending vehicle driven in a rash and negligent manner, the accused cannot be convicted for the offences either under Section 304A of IPC or 279 of IPC. It is equally settled proposition of law mere non mentioning of the words "rash and negligence" itself is not the ground for acquitting the accused but the entire evidence and materials shows that the accident had occurred due to rash and negligent driving of the driver of the offending vehicle, he can be convicted under Section 304A of IPC. In this case, both the Courts have rightly appreciated the evidence and came to the conclusion that the accident had taken place only due to rash and negligent driving of the driver of the offending vehicle/revision petitioner. This Court cannot exercise the power of the Appellate Court and re-appreciate the entire evidence. There is no perversity in the appreciation of evidence and this Court finds no reason to interfere with the judgment of the Appellate Court.

8. In the result, this Criminal Revision Case is dismissed. The order dated 11.01.2013 passed in CrI.A.No.12 of 2012 by the learned III Additional Sessions Judge, Vellore @ Tirupattur, is hereby confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The III Additional Sessions Judge,
Vellore @ Tirupattur.
2. The Additional District Munsif-cum-Judicial Magistrate,
Ambur.
3. The Sub-Inspector of Police,
Town Police Station,
Ambur, Vellore District.
4. The Public Prosecutor,
High Court of Madras,
Chennai-600 104.

Copy to: The Section Officer,
High Court, Madras-104.

+1cc to Mr.B.Vasudevan, Advocate SR.82237

CrI.R.C.No.397 of 2013

RK(CO)
CB(05/12/2019)

सत्यमेव जयते

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