

Bail Slip

The Petitioner herein namely D.Paramaguru, aged 24 yrs, S/o.Durairaj, was released on Bail of this Hon'ble Court dt.10.02.17 in Crl.MP.No.1977 of 2017 in R.C.No.174 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.174 of 2017

D.Paramaguru

.... Petitioner

Vs.

The State by
Inspector of Police
Kudavasal Police Station,
Tiruvarur District.
(Crime No.309 of 2013)

.... Respondent

PRAYER : Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment dated 09.01.2017 in C.A.No.13 of 2016 by the learned District cum Sessions Judge, Tiruvarur confirming the judgment made in CC.No.200 of 2014 on the file of the learned Judicial Magistrate, Tiruvarur dated 01.09.2016.

For Petitioner :Mr.V.Ramesh Vel

For Respondent :Mr.R.Suryaprakash
Government Advocate (Crl. Side)

O R D E R

The case of the prosecution is that the revision petitioner/accused is owner of the tractor bearing No.TN 50 J 9758. On 16.09.2003 at about 7.15 P.M., when the petitioner/accused drove the tractor on the reverse nearby the house of the deceased at Pulichakaadi, he dashed against the deceased viz., one Thillaikannu and the victim died on the spot. Therefore, the respondent police registered a case against the revision petitioner and after investigation, they filed charge sheet for offence under Section 304(A) of IPC before the learned Judicial Magistrate, Tiruvarur and the same was taken on file in C.C.No.200 of 2014. In order to prove the case of the

prosecution, as many as 12 witnesses viz., P.W.1 to P.W.12 were examined and 9 documents viz., Ex.P.1 to Ex.P9 were marked.

2. After completion of trial and considering the rival submissions made on either side, the learned Judicial Magistrate has come to the conclusion that the respondent has proved the case as against the petitioner/accused and found the petitioner guilty for offence under Section 304(a) IPC and convicted and sentenced him to undergo simple imprisonment for two years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one month by order dated 01.09.2016 in C.C.No.200 of 2014.

3. Against the said order of conviction and sentence, the petitioner has preferred an appeal before the learned District cum Sessions Judge, Tiruvarur in C.A.No.13 of 2016. After hearing the arguments advanced by both sides, the learned Judge confirmed the order of the learned Judicial Magistrate, Tiruvarur in C.C.No.200 of 2014 dated 01.09.2016.

4. The present Criminal Revision Case has been preferred by the petitioner/accused, against the order of the learned District cum Sessions Judge, Tiruvarur in C.A.No.154 of 2012 dated 07.12.2012.

5. Heard both sides and perused the materials available on record.

6. According to the prosecution, P.W.2 is an eyewitness and P.W.1 is the complainant who is none other than the daughter of the victim. P.W.1. P.W.2 admitted that no one was present in the place of occurrence and no one has seen the occurrence. On reading the materials placed by the prosecution, especially evidence of eyewitness, it is seen that there is no specific allegation that due to rash and negligence driving of the driver, the accident was caused. This fact has not been considered by both the courts below. Against the order of the Courts below, the petitioner has preferred the present revision before this Court.

7. While exercising the power of revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the entire evidence. While exercising revisional jurisdiction, this Court has to find out as to whether any perversity is found in the Judgment passed by the Courts below.

Section 304(A) IPC is reads as follows:

Causing death by negligence – Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be

punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

8. Even according to the prosecution, P.W.2 is an eyewitness. On a careful reading of evidence of P.W.2, it is seen that he has not stated that the accused was driving the vehicle in a rash and negligent manner. and due to his negligent driving, the victim died on the spot. Only P.W.2 has stated that the petitioner took the tractor on reverse and dashed against the deceased. The case of the prosecution is that the petitioner was driving the tractor in a rash and negligent manner and dashed against the deceased. The evidence of P.W.2 is clear that the petitioner took the tractor on the reverse and dashed against the deceased. Therefore, while taking the tractor in reverse, it is not possible to start it at a high speed. It is also to be noted that it is not possible to move the tractor connected with trailer in a rash and negligent manner on the reverse. While starting the tractor and taking reverse side, definitely some noise would arise. If the deceased was cautious, he could have avoided the accident.

9. Under these circumstances, this Court finds that the prosecution has not proved its case beyond all reasonable doubts. Both the Courts below have not at all considered the materials available on records and the evidence of P.W.2. in a proper manner. This Court while exercising the power under revisionary jurisdiction would normally not interfere in the concurrent judgments of the Courts below. But when there is manifest error, apparent on the face of the record. This Court shall upset the lower Court order to render substantial justice.

10. For the reasons mentioned above, this revision is allowed and the judgment passed by learned District cum Sessions Judge, Tiruvarur in C.A.No.13 of 2016 dated 09.01.2017 and the order made in CC.No.200 of 2014 on the file of the learned Judicial Magistrate, Tiruvarur dated 01.09.2016 is set aside and if any fine amount paid by the petitioner is ordered to be refunded.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District cum Sessions Judge,
Tiruvarur.

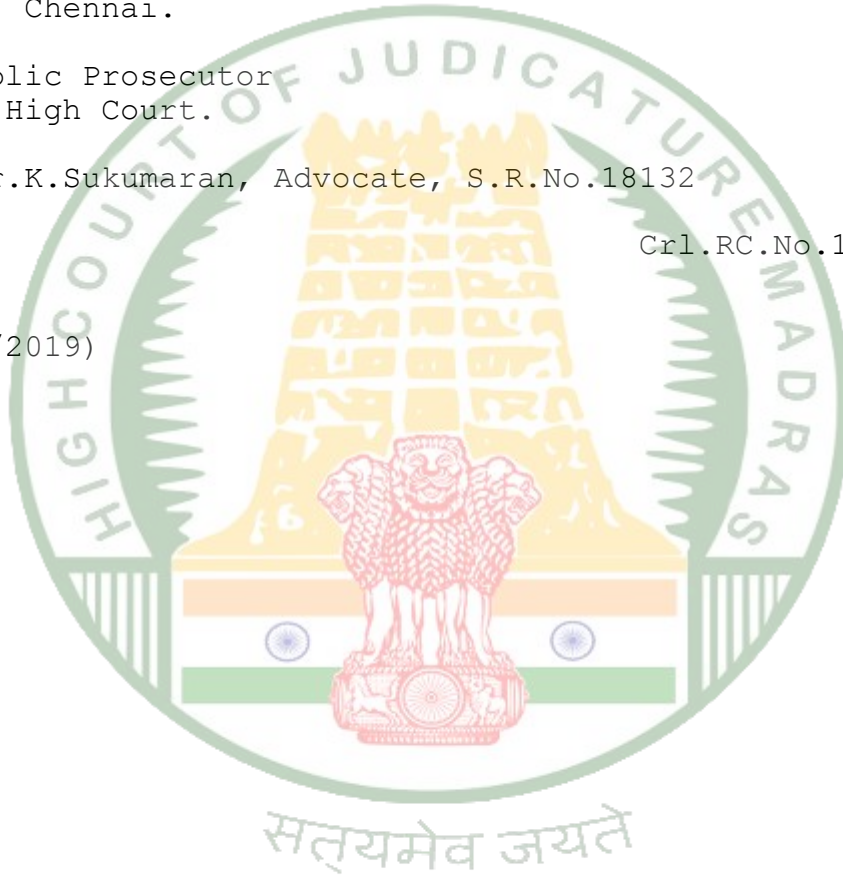
2. The Judicial Magistrate,
Tiruvarur.
3. The Inspector of Police
Kudavasal Police Station,
Tiruvarur District.
4. The Chief Judicial Magistrate,
Tiruvarur.(For Information).
5. Dy. Superintendent of Police,
Myllore, Chennai.
6. The Public Prosecutor
Madras High Court.

+1cc to Mr.K.Sukumaran, Advocate, S.R.No.18132

Cr1.RC.No.174 of 2017

BS (CO)

RRS (20/06/2019)



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