

BAIL SLIP

The Petitioner/Accused Viz., G.Kamaraj, S/o.Govindaraj, was released on bail as per Order of this Court dated 16/03/2017 in Crl.M.P.No.2980/2017 in Crl.RC.314/2017 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.314 of 2017 and
Crl.M.P.No.14999 of 2018

G.Kamaraj

...Petitioner

Vs.

State by
The Inspector of Police,
Attayampatti Police Station,
Salem District.

...Respondent

Criminal Revision case filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the judgment in C.A.No.67 of 2016 dated 02.11.2016 passed by the III Additional District and Sessions Judge, Salem, confirming the judgment in C.C.No.163 of 2015 passed by the Judicial Magistrate IV, Salem, dated 06.05.2016.

For Petitioner : Mr.P.Haribabu

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl.Side)

ORDER

The criminal revision case has been filed against the judgment of conviction made in C.A.No.67 of 2016 dated 02.11.2016 by the learned III Additional District and Sessions Judge, Salem, confirming the judgment of conviction made in C.C.No.163 of 2015 passed by the learned Judicial Magistrate IV, Salem, dated 06.05.2016.

2 Case of the prosecution is that on 29.05.2015 at about 8.30 a.m. one Karthik along with his wife as billion rider were riding in a two wheeler bearing Reg.No.TN-28-AX-8451 in the left side of the west side of Attayampatti Road. At that time, one SRN Twon bus bearing Reg.No.TN-67-AZ-7377, which was driven by the petitioner/accused came from the opposite side (west to east) with rash and negligent driving and hit the Two Wheeler and both of them fell down on the ground and sustained grievous injuries and died on the spot. Hence a case was registered against the petitioner/accused based on the complaint given by the defacto complainant. After completing investigation, the respondent police filed a charge sheet against the petitioner for the offence punishable under Section 279 and 304(A) of IPC before the jurisdictional Magistrate, which was taken on file in C.C.No.163 of 2015 by the learned Judicial Magistrate No.IV, Salem. The learned Magistrate, after trial, found the accused guilty of offence charged against him and hence by judgment dated 06.05.2016 convicted the petitioner and sentenced him to undergo rigorous imprisonment for a period of one year for each count for the offence under Section 304 (A) (2 counts) and no separate imprisonment for the offence under section 279 of IPC. Aggrieved against the same the petitioner has filed an appeal and the same was also dismissed by judgment dated 02.11.2016 in C.A.No.67 of 2016, against which, the petitioner is before this court with the present criminal revision.

3 According to the learned counsel for the petitioner, the deceased Karthik had not possessed any valid license to drive the vehicle and further was speaking in the mobile phone to some one, which resulted in the fatal accident. There was no materials to attract the ingredients of Section 304(A) of IPC. There is no proof to show that the petitioner/accused had driven the vehicle in a rash and negligent manner and prosecution did not prove that the accident had occurred only due to carelessness of the petitioner. The prosecution has failed to prove its case beyond reasonable doubt. Further the alleged occurrence is only an accident and not a pre-planned incident, but the prosecution has given a criminal color for the accident. The Court below has failed to consider the nature of the case and erroneously convicted the petitioner/accused.

4 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1 and P.W.2, who are the eye witness to the occurrence had clearly stated about the manner in which the accident had taken place. P.W.1 is the complainant, who was present at the place and time of occurrence, had corroborated the contents in Ex.P1. There is no

material contradiction. The petitioner/accused having seen that there was a vehicle coming from opposite direction, drove the vehicle at high speed in a rash and negligent manner and dashed against the two wheeler, due to which, both of them died on the spot. Both the Courts below had rightly appreciated the evidence on record and convicted the petitioner.

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

6 On a perusal of the records, it reveal that P.Ws.1 and 2, who are eye witnesses to the occurrence, had clearly stated that the accident had occurred only due to the rash and negligent driving of the offending vehicle. P.W.7, the Doctor, who conducted autopsy on the deceased, had opined that the death had occurred only due to the injuries, which was grievous in nature, sustained by them at the time of accident. The accused, after seeing the vehicle coming from opposite direction, should have taken more care and conscious and should have reduced the speed and avoided the accident. After perusing the entire documents available on record, this Court is of the view that the prosecution had proved its case beyond reasonable doubts. The lower appellate Court, as a final Court of fact finding, had re-appreciated entire evidences on record and come to the conclusion, that the accident had occurred only due to rash and negligent driving of the driver of the offending vehicle and hence convicted the petitioner/accused, in which this Court does not find any reason to take a different view. However in order meet ends of justice, this Court is inclined to modify the sentence of imprisonment alone.

7 In the result, the conviction made by both the Courts below is hereby confirmed. The sentence of imprisonment for a period of one year for the offence under Section 304(A) of IPC alone modified to six months. The criminal revision is partly allowed to the extent as stated above. Consequently, connected miscellaneous petition is closed. Trial Court is directed to secure the petitioner/accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

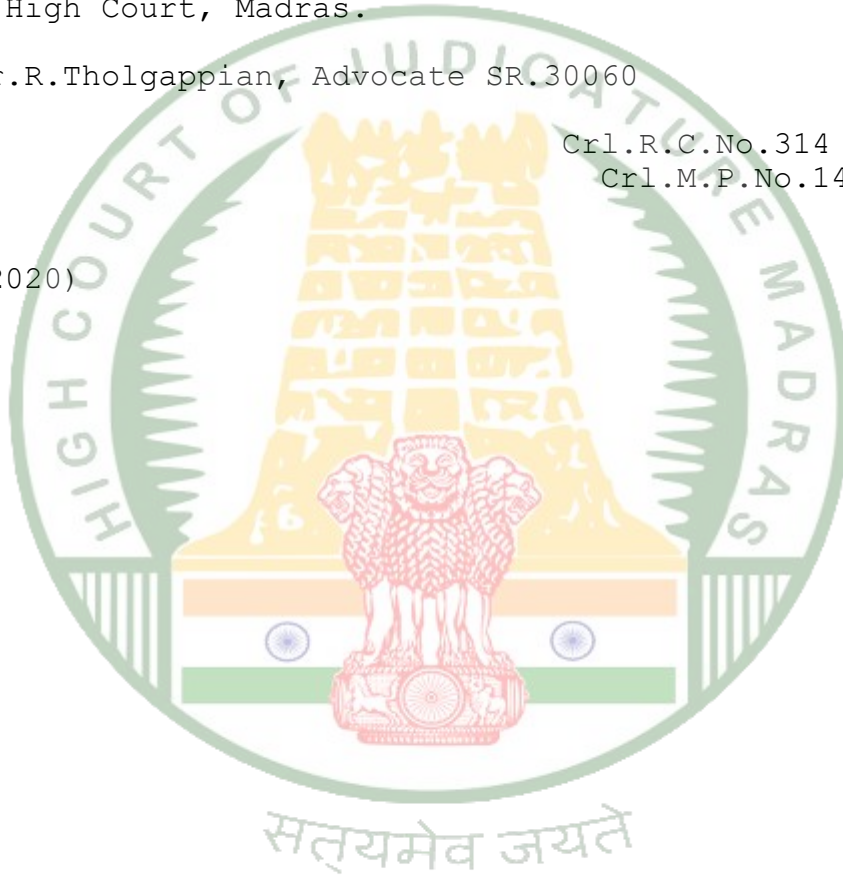
1. The III Additional District and Sessions Judge, Salem.
2. The Judicial Magistrate IV, Salem.
3. The Inspector of Police, Attayampatti Police Station,
Salem District.
4. The Chief Judicial Magistrate,
Salem.
5. The Public Prosecutor,
High Court, Madras-104.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Tholgappian, Advocate SR.30060

Crl.R.C.No.314 of 2017 and
Crl.M.P.No.14999 of 2018

NRL (CO)
CB(10/01/2020)



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