

**Bail Slip**

Selvam, S/o.Raju, Male 35 years old sole Accused was released on bail vide order of this court dated 20.03.2013 made in MP(MD) No.2/2013 in CRL RC(MD).No.263/2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL RC(MD)No.263 of 2013

Selvam

... Petitioner /Appellant/Accused

Vs.

The State,
Rep.by the Inspector of Police,
Lalapettai Police Station,
Karur District.
Crime No.139 of 2010.

... Respondent / Respondent /
Complainant

Prayer : This Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the judgment and conviction passed by the District Sessions Judge, Karur in Crl.A.No.29 of 2011 dated 04.12.2012 as well as the judgment and conviction passed by the Judicial Magistrate, I, Kulithalai in C.C No.43 of 2010 dated 07.06.2011 and set aside the conviction and acquit the petitioner herein.

For Petitioner	:	Mr.A.K.Azhagarsami
For Respondent	:	Mr.A.Robinson, Government Advocate (crl.side)

ORDER

The petitioner/accused was found guilty of the offence under Sections 279 and 304 (A) IPC in C.C No.43 of 2010 on the file of the learned Judicial Magistrate, Kuzhithalai. For the offence under Section 279 IPC, the revision petitioner was levied with a fine amount of Rs.1,000/-, in default, to undergo one month simple imprisonment and for the offence under Section 304(A) IPC, he was levied with fine of Rs.2,000/- and sentenced to undergo one year rigorous imprisonment. The appellate court set aside the conviction imposed on the revision petitioner under Section 279 IPC and confirmed the sentence for the offence under Section 304 IPC. Challenging the judgment dated 04.12.2012 passed by the appellate court, this criminal revision case has been filed.



2. Heard the learned counsel on either side.

3. The case of the prosecution is that the revision petitioner was driving the lorry bearing Registration No. TN 27 V 1977 on 01.03.2010 at about 06.15 A.M in Panchapatti - Tharagampatti road. When it was crossing near State Bank, the lorry in question hit a two wheeler bearing Registration No. TN 45 F 2810 from behind. The two wheeler rider died on the spot. P.W.1 Manickam who was an eyewitness to the occurrence spot, lodged Ex.P1 complaint. Crime No.139 of 2010 was registered on the file of the Lalapettai Police Station. Investigation was undertaken and final report was filed. The learned trial magistrate took cognizance of the offences under Sections 279 and 304 (A) IPC in C.C No.43 of 2010. The revision petitioner denied the charges framed against him and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Exs.P1 to P8. M.O.1 photographs were also marked. On the side of the accused, no evidence was adduced. The learned Trial Magistrate found the accused guilty and sentenced him to undergo one year rigorous imprisonment under Section 304 (A) and the same was also confirmed by the appellate court also.

4. The learned counsel appearing for the revision petitioner/accused strongly contended that the eyewitness in this case did not identify the revision petitioner herein as the driver of the offending vehicle. His core argument is that there is nothing on record to indicate that it was he who driven the vehicle in question. Therefore, the revision petitioner's counsel would contend that there was no evidence connecting the petitioner with the accident or the crime and therefore, he ought to be acquitted.

5. I am unable to agree with the submission of the learned counsel for the petitioner. This is for more reasons than one. As rightly pointed out by the learned Government Advocate (crl.side) that the lorry owner P.W.9 was examined and he had categorically deposed that the lorry belongs to him and that the accused was the driver of the vehicle at the relevant point of time and he continued to be his employee even on the date when he deposed before the court below. The lorry owner was not cross examined by the revision petitioner herein. It was never the case of the petitioner that he did not drive the lorry in question on the relevant point of time. In other words, the revision petitioner did not even put a suggestion to the prosecution witness that he did not drive the vehicle when it caused the accident. It has to be noted that the revision petitioner did not enter the witness box to adduce evidence in support of his contention. If he did not drive the offending vehicle which caused the accident, he should have simply entered the witness box and pleaded that he had nothing to do with the accident. Such a stand was not taken.



6.The prosecution by examining the lorry owner P.W7 has convincingly connected the revision petitioner with the accident in question. That apart, it has to be noted that after the accident had taken place, the investigation officer arrested the revision petitioner only. If the revision petitioner/accused had nothing to do with the offence in question, the question of arresting him would not arise at all. What clinches the case of the prosecution are the M.O.1 photographs. This Court had a look at the said photographs. The lorry was going from east to west. The TVS 50 was coming from west to east. The accident had taken place on the northern side of the road. The rough sketch Ex.P7 and M.O.1 photographs perfectly tally. It is obvious that the lorry on account of the rash and negligent driving had gone to the other end of the road and ran over the two wheeler which was coming from the opposite direction and thereby caused the accident in question. M.O.1 photographs would speak for themselves as to what had actually happened. A mere look at the photographs is sufficient to come to the conclusion that by the rash and negligent driving of the revision petitioner only the accident in question had occurred. The courts below have concurrently found the petitioner guilty of the offence under Section 304 (A) IPC. There is absolutely no merit in this criminal revision case. I find no ground to interfere with the conviction imposed by the courts below.

7.At this stage, the learned counsel appearing for the revision petitioner/accused pointed out that there are mitigating circumstances. Admittedly, the accused was not having a valid licence. In this regard, he placed reliance on the decision reported in 2017 (1) MWN (Cr.) 627 (C.Gunasekaran vs. State) in which, the fact that the two wheeler was driven by a person not having a driving licence, was taken note of by this Court. The revision petitioner's counsel also submitted that gravel stones were there on the road and that was probably the reason why the lorry had lost its control.

8.Taking note of all these aspects, I am of the view that the sentence of imprisonment imposed on the revision petitioner can be reduced from one year rigorous imprisonment to six months rigorous imprisonment. The fine amount levied by the court below is confirmed. The learned trial magistrate shall take steps to secure the accused and commit him in prison to serve the sentence of six months rigorous imprisonment. The sentence period already undergone by the accused shall be set off in terms of Section 428 of Cr.PC. Accordingly, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (AS)

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To

- 1.The District Sessions Judge, Karur.
- 2.The Judicial Magistrate No.I, Kulithalai
- 3.-DO- thro'The Chief Judicial Magistrate, Karur
- 4.The Inspector of Police, Lalapettai Police Station,
Karur District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to :

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

Skm
CRL RC(MD)No.263 of 2013
28.06.2019

NA (26.07.2019) 4P :8C