



Bail Slip

The Petitioner/Accused Mr.Murugan, S/o.Sadaiyan, male was released on bail as per the order of this Hon'ble Court made in MP(MD)No.1 of 2014 in Crl.RC(MD)No.297 of 2014 dated 26/06/2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.297 of 2014

Murugan

: Revision Petitioner/
Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Velayuthampalayam Police Station,
Karur.
(Crime No.564 of 2008)

: Respondent/Respondent/
Complainant

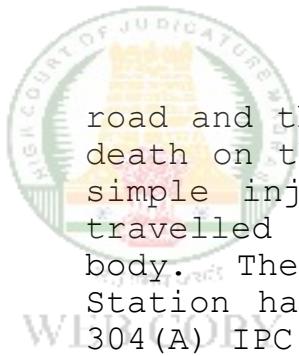
Prayer: Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment, dated 28.03.2014 passed by the Principal Sessions Judge, Karur, in Cr.A.No.1 of 2013, confirming the judgment of the Chief Judicial Magistrate, Karur, in C.C.No.86 of 2012, dated 24.12.2012.

For Revision Petitioner	: Mr.M.Karthikeya Venkatachalapathy
For Respondent	: Mr.APG Ohm Chairma Prabhu
	Government Advocate
	(Criminal side)

J U D G M E N T

This Criminal Revision is directed against the judgment, dated 28.03.2014 passed by the Principal Sessions Judge, Karur, in Cr.A.No.1 of 2013, confirming the judgment of the Chief Judicial Magistrate, Karur, passed in C.C.No.86 of 2012, dated 24.12.2012.

2.The case of the prosecution is that on 08.10.2008 at 1.35 pm in between Velayuthampalayam-Noyyal road and Semangi Pungodai, near the house of Lakshmanamoorthy, the complainant Maheshkumar drove the Hyundai Car TN-39-AR-0550 from west to east and at that time, the accused drove the Mahindra Van TN-28-AA-2280 in a rash and negligent manner from east to west without blowing horn and dashed against the Car and caused damages to both vehicle. Further, one Nallusamy, who was sitting on the cabin of the van fell down on the



road and the rear wheel of the van ran over his head and crushed to death on the spot. Further, the driver of the Hyundai Car sustained simple injuries all over the body and one Rathinakumar, who was travelled in the Car also sustained grievous injuries all over the body. The Inspector of Police attached to Velayuthampalayam Police Station has filed a final report under Sections 279, 337, 338 and 304(A) IPC against the accused examining the witnesses.

3. In the trial court, 9 witnesses were examined and 10 Exhibits were marked. When the accused was questioned about the incriminating circumstances, he denied the same. The trial court convicted the revision petitioner and sentenced him to undergo 6 months simple imprisonment and to pay a fine of Rs.1,000/-, in default to pay a fine amount to undergo one month simple imprisonment for the offence under Section 279 IPC; to pay a fine of Rs.500/- each for each count, in default to undergo one month simple imprisonment for the offence under Section 337 IPC (2 counts) and to undergo one year simple imprisonment and to pay a fine of Rs.3,000/-, in default to undergo 3 months simple imprisonment for the offence under Section 304(A) IPC. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.1 of 2013, which was heard by the Principal Sessions Judge, Karur. The first appellate Court has also confirmed the findings of the trial court. Aggrieved by the concurrent findings of the courts below, the petitioner is before this court.

4. The learned counsel for the revision petitioner/accused submitted that the prosecution has failed to establish the ingredients required for all the offences with which he stood charged and convicted him for the said offences and none of the witnesses have spoken that the accused has driven the vehicle either rashly or negligently and there is no specific allegation of negligence as against the accused in driving the vehicle and the eye witnesses are interested witnesses and the prosecution has failed to prove the case beyond reasonable doubt and the accused is entitled to acquittal and prays that the criminal revision may be allowed.

5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that both the courts below appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offences, convicted the revision petitioner for rash and negligent driving of the vehicle and passed proper sentence, which does not require any interference by this court and the accused is not entitled for acquittal and prays that the criminal revision may be dismissed.

6. Heard both sides and perused the materials available on



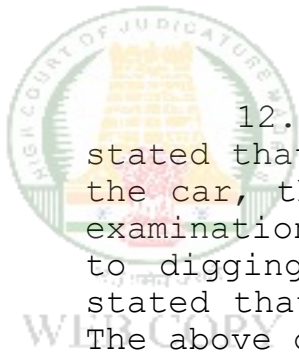
7.The main contention raised on the side of the revision petitioner/accused is that the offending vehicle was coming in a normal speed and there was no rash and negligent driving on the part of the accused and only the rash and negligent driving by PW1 is the sole reason for the said accident and PW1 either in the complaint or in the First Information Report did not disclose the fact that the said offending vehicle was driven by the accused wrongly by violating the road Rules and prays that the petitioner/accused is entitled to acquittal.

8.PW1 is the complainant and he gave Ex.P1 complaint. PW1 in his complaint and evidence stated that on 08.10.2008 at 1.35 pm in between Velayuthapalayam to Noyyal Road near the house of Lakshmanamoorthy, he drove his Hyundai Car TN-39-AR-0550 from west to east and in that Car, the owner of the above Car and one Kabilan travelled and at that time, the accused drove his vehicle in a rash and negligent manner on east to west without blowing horn and dashed against the Car and caused damages to the vehicle and one Nallusamy, who was sitting on the cabin of the Van fell down on the road by breaking the windscreen of the van and the rear wheel of the Van ran over his head and due to it, he died on the spot and PW1 also sustained injuries and then he gave a complaint to the police.

9.PW2 deposed that on 08.10.2008, when he, PW1 and Kabilan travelling in the Car belongs to PW2 and when the Car proceeded in between Velayuthapalayam to Noyyal Road near the house of Lakshmanamoorthy, PW1 drove the Hyundai Car TN-39-AR-0550 from west to east and at that time, the accused drove his vehicle in a rash and negligent manner from east to west without blowing horn and dashed against the Car and caused damages to the vehicle and one Nallusamy, who was sitting on the cabin of the Van fell down on the road by breaking the windscreen of the van and the rear wheel of the Van ran over his head and due to it, he died on the spot and PW1 gave a complaint to the police. Hence, the evidence of PW2 is corroborated with the evidence of PW1.

10.On Careful perusal of the evidence of PW1 and PW2, it reveals that due to dashing of Van with Hyundai Car, a person who sat in the Van of the front side was thrown away, after breaking of the windscreen of the van and then Van ran over the above person and he died on the spot.

11.In this case, the person, who travelled in the Van was examined as PW3. PW3 deposed that the accused drove his vehicle in a normal speed and since the road was dug up on the left side, the Van came to the right side and Nallusamy, who travelled in the van was thrown out of the van through broken windscreen and fell down in front of the Van and he got down in front of the Van and Nallusamy died on the spot.



12.It is to be noted that when PW3 was cross examined, he has stated that Car alone came from the opposite direction and on seeing the car, the accused turned the van to his left side. In the chief examination, he has deposed that the van came to the right side due to digging up of pit, whereas in the cross examination, he has stated that the van was driven to the left side, on seeing the car. The above discrepancy would show that he has not spoken truth.

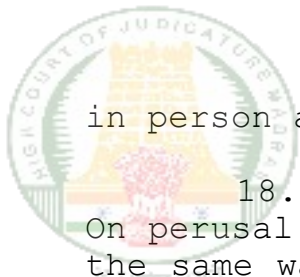
13.In this case, Observation Mahazar was marked as Ex.P2. On perusal of Ex.P2, it does not refer any pit alleged to have been dug up on the western side of the road. PW4 and PW5, who are witnesses to Ex.P2 would not say about the carrying out of the road work and pit. Further, on perusal of Ex.P6 Rough Sketch, in which also, there is no mention about the pit. Further perusal of the records would show that the accident place has been shown as on the northern side of east-west road. Admittedly, the car was coming from west to east and van was coming from east to west.

14.In this case, PW3 has admitted in the cross examination that the Car alone was coming from the opposite direction. So, if the accused would have kept his left side, the accident would not have happened. Further, the place of accident would show that the accused had driven the car to the right side and after violently dashing on the Car, the van came again to southern side and fell down on the road side.

15.It is pertinent to note her that PW3 travelled in the van, Hence in order to safeguard accused, he deposed that the accused drove his vehicle in a normal speed, but PW3 has not explained how the person inside the vehicle was thrown out through the broken of wind screen, when the vehicle was driven in a normal speed. Hence, the evidence of PW3 evidence is not believable and much importance cannot be given to the evidence of PW3. Further, PW1 and PW2 have categorically deposed that the accused drove the offending vehicle in a rash and negligent manner. Hence, it shows the rash and negligent driving on the part of the accused.

16.In this case, the Motor Vehicle Inspector was examined as PW7. PW7 deposed that he inspected the offending vehicle and found damage on the windscreen glass, bonnet, front right pumper, Radiator Assembly, front right mud card pumper, Head light, Indicator light and front two doors. Further, PW7 stated that the offending vehicle was not in a functional position. Hence, this court is of the considered view that the accident had not occurred due to mechanical defects in the offending vehicle.

17.PW1 has lodged a complaint with PW8 under Ex.P1. According to defence, real complaint has been suppressed by the prosecution. It is further seen that PW1 has stated in the evidence that he gave written complaint, whereas PW8 has stated in the cross examination that before coming to the hospital, the complainant came



in person and lodged a complaint.

18.In this regard, this Court referred to Ex.P1 complaint. On perusal of Ex.P1 would show that PW1 has given oral statement and the same was recorded by PW8. Further, PW2 has stated in the cross examination that the police came to the hospital and enquired him and received a signature to him.

19.It is true that there is discrepancy in the evidence of PW1 and PW8. But the perusal of Ex.P1, makes it clear that PW1 has not given any written complaint and he has given oral complaint and the same was recorded by PW8. So this Court is of the considered view that there is no suppression of earlier complaint given by PW1. Further, on perusal of Ex.P1 would show that PW1 has given complaint as deposed before the Court as PW1.

20.For all the reasons stated above, this court is of the considered view that the findings of the courts below does not require any interference by this court. However, considering the family circumstances of the petitioner, the punishment imposed on the petitioner requires modification.

21.In the result, this Criminal Revision is **partly allowed**. The punishment imposed on the petitioner for the offence under Section 304(A) IPC is reduced to 6 months SI. In other aspects, the findings of the trial court is confirmed. The sentences are directed to run concurrently. The period of sentence, if any already undergone by the petitioner shall be given set off under Section 428 of Cr.P.C. The petitioner, after adjusting the period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Sessions Judge, Karur
2. The Chief Judicial Magistrate, Karur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Velayuthampalayam Police Station,
Karur

5. The Superintendent,
Central Prison, Trichy

WEB COPY

Copy to:

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

+1 CC to Mr.K.BALASUBRAMANI, Advocate (SR-78335[F] dated
29/07/2019)

Judgment made in
CrI.R.C (MD) No.297 of 2014
29.07.2019

er
MK (08.11.2019) 6P 9C