



Bail Slip

The Petitioner/Accused Mr.Raja, S/o.Karuppiyah, Male, aged 38 years, has been released on bail as per the order of this Court made in Crl MP(MD)NO.2 of 2014, in Crl.RC(MD)No.60 of 2014 dated 21.01.2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: **06.08.2019**

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.RC(MD)No.60 of 2014**

Raja : Revision petitioner/Accused

Vs.

State through
The Sub Inspector of Police,
Ammapettai Police Station,
Ammapettai,
Thanjavur District.

: Respondent/Complainant

Prayer: Criminal Revision filed under Sections 397 and 401 of the Code of the Criminal Procedure, against the judgment made in C.A.No.27 of 2012 on the file of the Principal Sessions Judge, Thanjavur, dated 13.11.2013, confirming the judgment of the District Munsif-cum-Judicial Magistrate, Papanasam, Thanjavur District made in C.C.No.405 of 2008, dated 29.05.2012.

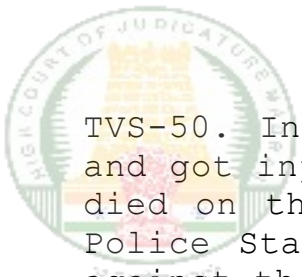
For Petitioner : Mr.S.Poorna Chandran

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 made in C.A.No.27 of 2012 on the file of the Principal Sessions Judge, Thanjavur, dated 13.11.2013, confirming the judgment of the District Munsif-cum-Judicial Magistrate, Papanasam, Thanjavur District, made in C.C.No.405 of 2008, dated 29.05.2012.

2.The case of the prosecution is that on 16.11.2007 at 3.15hours, while the deceased Chinnapandi was riding TVS-50 (TN-33-Y-5481) near Pallavarayanpettai Puthur Branch road on Thanjavur-Nagapattinam main road from east towards west direction, the accused drove the TNSTC Bus TN-49-N-1695 from the west towards east direction in a rash and negligent manner and dashed against



TVS-50. In that process, the rider of the motor cycle thrown out and got injuries on several parts of the body and subsequently, he died on the spot. The Inspector of Police attached to Ammapettai Police Station has filed a final report under Section 304(A) IPC against the accused examining the witnesses.

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3. In the trial court, 9 witnesses were examined and 7 Exhibits were marked. When the accused was questioned about the incriminating circumstances, he denied the same. The trial court convicted the revision petitioner for the offence under Section 304(A) IPC and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one month. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A.No.27 of 2012, which was heard by the Principal Sessions Judge, Thanjavur. The first appellate Court also confirmed the findings of the trial court. Hence, this criminal revision.

4. The learned counsel for the revision petitioner/accused submitted that the prosecution has failed to establish the ingredients required for the offence with which he stood charged and convicted him for the said offence 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 offence, 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 record.

7. The main contention raised on the side of the petitioner/accused is that there was no evidence for rash and negligent driving on the part of the accused and there is no corroborative evidence to show that the accused drove the vehicle in a rash and negligent manner and the real fact is that the left side of the bus driven by the accused was damaged due to collusion, which is highly impossible, when the vehicle TVS 50 driven by the deceased



was alleged to have head to head collusion moving on the left side of the road and only due to the negligence on the part of the driver of TVS 50 two wheeler, the accident occurred and prays that the accused is entitled to acquittal.

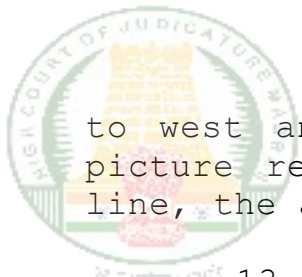
8. PW1 is the complainant and he gave Ex.P1 complaint. PW1 in his complaint and evidence stated that on 16.11.2007 at 3.15 hours, while the deceased Chinnapandi riding in TVS 50 two wheeler bearing Registration No.TN-33-Y-5481 nearer to Pallavarayanpettai Puthur Branch road at Thanjavur to Nagapattinam main road from east to west direction, the accused drove his vehicle in a rash and negligent manner and dashed against the TVS 50 two wheeler along with its rider and thereby the rider of two wheeler got thrown out and caused injuries and thereby he died on the spot and then, he gave Ex.P1 complaint. Hence, the evidence of PW1 is corroborated with the contents found in Ex.P1 complaint.

9. PW2 and PW3 are cited as Observation Mahazar witnesses. PW2 and PW3 stated that they found TNSTC bus dashed against TVS 50 and the driver of the two wheeler died on the spot and the police came and observed the place of occurrence and prepared mahazar and they attested the observation mahazar. Even though, PW2 and PW3 were cited as mahazar witnesses, they spoke that the TNSTC bus dashed against TVS 50 and the driver of the TVS 50 died on the spot. Hence from PW2 and PW3 evidence, it reveals that the TNSTC bus came in a rash and negligent manner and dashed against the two wheeler and due to it, the rider of TVS 50 died on the spot. Hence, the evidence of PW2 and PW3 is corroborated with the evidence of PW1.

10. The conductor of the offending vehicle was examined as PW4. He deposed that he was the conductor of the offending vehicle and the vehicle was taken trip from Thanjavur and when they reached Ammapettai main road, their bus was suddenly stopped and when he got down and saw that one person died in the accident. He is the conductor of the bus and in order to safe guard the accused, he did not support the case of the prosecution.

11. The learned counsel for the petitioner/accused further contended that since the left side of the bus got damaged, the accident had occurred only due to the negligence of the driver of TVS 50 and if the bus dashed against the TVS 50 directly, the right side of the bus alone could have got damaged and in that circumstance, if the bus had directly dashed against the TVS 50, there could not have been any damage on the left side and so, it contradicts the case of the prosecution.

12. In this case, Ex.P5 the Motor Vehicles Inspector's report, Ex.P6 the sketch of the bus and Ex.P7 Rough Sketch, it clearly revealed that the bus was having damages on its left side head light and left side bumper. On perusal of Ex.P7 Rough Sketch, it clearly revealed that the TVS 50 was coming from east



to west and bus was coming from west to east. Even though the picture revealed that the bus was standing ahead of the middle line, the accident had occurred in the middle line of the road.

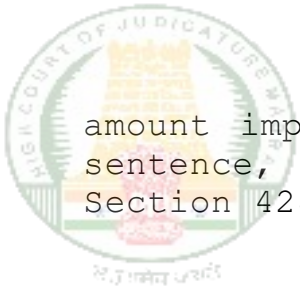
13.PW1, the de-facto complainant had also deposed that while the deceased was proceeding from east to west, the bus coming from west to east dashed against the victim's two wheeler and thereby he died. It is to be noted that no suggestion was put to PW1 that because of the damage caused on the left side of the bus, the driver of TVS 50 alone was responsible for the accident. A suggestion was made to PW1 that the deceased was having drinking habit, but it was denied. On that basis, the learned counsel for the petitioner/accused had developed that because of uncontrolled driving by the drunkard victim, the accident had occurred, but no such fact was elicited either during the cross examination or by letting evidence by the accused before the trial Court.

14.In this case, the learned counsel for the petitioner/accused submitted that only due to the negligence on the part of the rider of the two wheeler, the accident occurred and not due to the negligent on the part of the accused the accident occurred. But no contra evidence was let in on the side of the petitioner/accused to prove that only due to the negligence on the part of the rider of the two wheeler, the accident occurred.

15.PW1 to PW4 have categorically deposed that only due to the rash and negligent driving of the offending vehicle, the accident occurred. On careful perusal of the evidence of PW1 to PW4, Rough Sketch, Observation Mahazar, Motor Vehicle's Report, it reveal that the accident occurred only due to the rash and negligent driving of the accused.

16.The trial court on appreciation of evidence and the first appellate court on re-appreciation of evidence rendered a concurrent finding assigning reasons in support of the conclusion arrived at by the said Courts that the offence with which the revision petitioner stood charged was proved beyond reasonable doubt. This court, after going through the records, is of the considered view that the Courts below have not committed any mistake or error in rendering a finding hold the revision petitioner/accused guilty of the offence with which he stood charged. However, considering the fact that the revision petitioner/accused is the breadwinner of the family, this court finds that the conviction and sentence imposed on the revision petitioner/accused require modification.

17.In the result, this Criminal Revision is **partly allowed**. ~~Services provided by the court is in the service of the public.~~ imposed on the petitioner/accused for the offence under Section 304(A) IPC is reduced to **6 months RI**. The fine



amount imposed by the courts below is confirmed. The period of sentence, if any already undergone by the accused is set off under Section 428 of Cr.P.C.

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Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar (CS)

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To,

1.The Principal Sessions Judge, Thanjavur.

2.The District Munsif cum Judicial Magistrate,
Papanasam, Thanjavur

3.The Chief Judicial Magistrate, Thanjavur @ Kumbakonam

4.The Sub Inspector of Police,
Ammapettai Police Station,
Ammapettai, Thanjavur

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.S.POORNACHANDRAN, Advocate (SR-80481[F] dated
08/08/2019)

order made in
Crl.RC.(MD)No.60 of 2014
06.08.2019

KM/(13.09.2019) 5P 7C