

Bail Slip

The Appellant/Accused namely K.Veeramuthu, aged about 41 years, S/o.Kalimuthu was directed to be released on bail as per order of this Court dated 16.06.2015 made in M.P.(MD).No.1 of 2015 in Crl.RC (MD).No.220 of 2015 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.(MD)No.220 of 2015

K.Veeramuthu : Petitioner/Appellant/Sole Accused

Vs.

The Inspector of Police,
Aranthangi Police Station,
Pudukkottai District
(In crime No.325/2007)

: Respondent/Respondent/Complainant

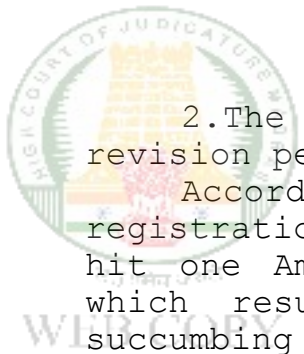
PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records of the impugned Judgment dated 25.03.2015 in C.A.No.34 of 2014 passed by the learned Principal District and Sessions Judge, Pudukkottai confirming the order dated 20.06.2014 passed in C.C.No.482 of 2007 on the file of the learned Judicial Magistrate, Aranthangi and set aside the same by allowing the Revision Petition and acquit the revision petitioner.

For Petitioner : Mr.C.Arul Vadivel @ Sekar

For Respondent : Ms.M.Anantha Devi
Govt. Advocate (crl.side)

O R D E R

This criminal revision case is filed against the Judgment dated 25.03.2015 in C.A.No.34 of 2015 passed by the learned Principal District and Sessions Judge, Pudukkottai confirming the order dated 20.06.2014 passed in C.C.No.482 of 2007 on the file of the learned Judicial Magistrate, Aranthangi convicting the petitioner to undergo 6 months Rigorous Imprisonment for the offence under Section 304 (A) IPC and pay a fine amount of Rs.500/- in default, to undergo one month Simple Imprisonment.



2.The facts, which gave rise to the filing of the present revision petition, are briefly stated herein.

According to the case of the prosecution, a truck bearing registration No.TDM 7477 heading towards Aranthangi from Pudukkottai hit one Amarnath S/o Sundarraaj at about 3.20 p.m on 10.09.2007, which resulted in the injured sustaining bodily injuries and succumbing to death. Initially, the deceased was admitted in the Government Hospital, Aranthangi and later on, he was sent to the Thanjavur Medical College Hospital, where he succumbed to injuries at 05.15 p.m on the same day. Thereafter, a complaint was preferred by the elder brother of the deceased on 10.09.2007, based on which the respondent police registered an FIR in Crime No.325/2007 under Section 304(A) IPC initially against an unnamed person, which was due to the fact that after the accident, the driver of the vehicle fled from the scene of occurrence. However, later, the accused was apprehended based on information and investigation was taken up. On completion of the investigation, the respondent filed charge sheet dated 27.10.2007 against the accused/the petitioner herein. The case was taken on file in C.C.No.482 of 2007 and on behalf of the prosecution, P.W.1 to P.W.14 were examined and Exs.P1 to P9 were marked. On completion of trial, the learned Judicial Magistrate, Aranthangi passed an order on 20.06.2014 convicting the revision petitioner for the offence under Section 304(A) IPC and sentenced him to undergo 6 months rigorous imprisonment and pay a fine of Rs.500/- in default, to undergo one month simple imprisonment. Thereafter, an appeal was filed in C.A.No.34 of 2014 on the file of the Principal District and Sessions Judge, Pudukkottai and the said appeal was dismissed confirming the judgment passed by the learned Magistrate vide order dated 25.03.2015. Hence, the present revision has been filed by the accused.

3.The learned counsel appearing for the revision petitioner would extensively submit that there are several material contradictions in the prosecution case, but despite the contradictions, the trial Court has convicted the revision petitioner under Section 304(A) of IPC. The appellate Court mechanically confirmed the judgment of the trial Court without due appreciation of the material contradictions. Moreover, the learned counsel would submit that no material object has been produced by the investigating police before the trial Court and the accident report was not also produced which is fatal to the case of the prosecution.

4.The learned counsel would submit that the independent witnesses, who deposed before the trial Court, contradicted each other with regard to the presence of the deceased person at the scene of accident. He would draw the attention of this Court to the evidence of P.W.1 in chief examination, who is the brother of the deceased, who had deposed that the deceased was standing near the laundry shop, which is opposite to the tea shop, where P.W.1 was while in cross, he had deposed that the deceased was



travelling by cycle, as had been deposed by P.Ws.2 and 3. It is the submission of the learned counsel for the petitioner that though it is admitted that the deceased was travelling by cycle, yet the prosecution has not produced the cycle, which was involved in the accident. Though the Sub-Inspector of Police, who investigated the case, originally had deposed that the cycle in which the deceased was riding was handed over to the trial Court, however, the same was not marked as material object. He would referred to the contradictions in the evidence among the other prosecution witnesses that some of them were saying that he was standing near the laundry shop and other witnesses were saying about the deceased riding the cycle. Moreover, the learned counsel would also point out the fact that P.W.7, who was the tea shop owner which was located in close proximity to the scene of occurrence, admittedly has stated in his deposition that the accused was driving the truck very slowly and was not driving it in a rash and negligent manner. In fact, this was also referred to by the trial Court, where the trial Court has observed that there was no evidence to show that the vehicle was driven rashly or negligently. Yet the trial Court held the accused was responsible for the accident and convicted for the offence under Section 304(A) IPC.

5.The learned counsel would also draw the attention of this Court to para 14 of the appellate Court observation stating that the prosecution witnesses have deposed that the accused was driving the vehicle negligently and rashly which was factually incorrect since P.W.7 has specifically deposed that the accused was driving the vehicle slowly, which has also been observed by the trial court.

6.The learned counsel would submit that in any event, in the absence of production of accident report as also the cycle, which was said to have been used by the deceased, the entire case of the prosecution fails since the accident report would have indicated the exact place of occurrence and width of the road and how the accident would have happened and who was negligent and contributed to the accident. Therefore, he would submit that in the absence of accident report, the entire prosecution case fails and therefore, the conviction on the basis of defective evidence by the trial Court which was confirmed by the appellate Court is unsustainable both in law and on facts. He would consequently reiterate there were material contradictions in regard to facts as to whether the deceased was riding the cycle at the time or he was standing in the road near the laundry shop opposite to the tea shop. Moreover, the learned counsel would also point out that the Motor vehicle Inspector, P.W.12, had clearly deposed that there was no damage to the vehicle and that the condition of the vehicle was good. Therefore, the material contradictions and absence of the production of accident report and the evidence of P.W.7 and other evidences are in favour of the accused and, therefore, the conviction recorded by the trial Court as confirmed by the appellate court is liable to be



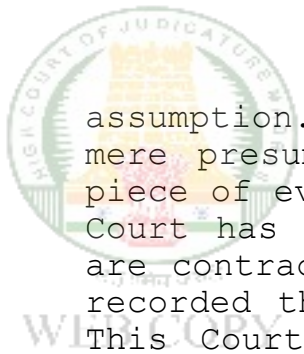
7.At this, the learned Government Advocate (Crl. side) would submit that there is enough and sufficient materials to record conviction against the accused herein, since the witnesses P.Ws.1 to 3 have uniformly deposed about the rash and negligent driving by the accused which led to the accident. According to her, the contradictions which were pointed out by the learned counsel appearing for the petitioner/accused are minor in nature and need to be ignored and rightly the trial Court ignored such contradictions and the same was totally appreciated by the appellate Court, which confirmed the order passed by the trial Court. Therefore, taking into consideration the overall circumstances, the Trial Court convicted the accused and sentenced him 6 months rigorous imprisonment and a meagre fine of Rs.500/- which does not call for any interference.

8.This Court considered the submissions of the learned counsel for the petitioner/accused and the learned Government Advocate (crl.side) appearing for the respondent and perused the materials and pleadings placed on record.

9.As rightly contended by the learned counsel for the revision petitioner, there are too many contradictions in the evidence given by the prosecution witnesses in the matter, particularly, with regard to the fact that whether the deceased was standing or was found riding the cycle at the time of accident. Moreover, the Sub-Inspector, who investigated the case, initially had given statement that the cycle was recovered and produced before the trial Court, but however, the same was not ultimately marked or produced. Therefore, the theory of prosecution appears to be having gaping holes in regard to the factum of whether the deceased was standing at the spot where the accident took place or he was cycling down the place.

10.Moreover, the most crucial document in the case, viz., the accident report, admittedly has not been produced. As rightly contended by the learned counsel for the petitioner the non-production of the accident report is fatal to the prosecution. This Court is in agreement with the submission of the learned counsel for the petitioner and on this ground alone the revision is liable to be allowed.

11.Moreover, this Court finds that P.W.7 has categorically stated that the accused had driven the vehicle slowly at the spot where the alleged accident took place and P.W.7 being an independent witness, the owner of the tea shop, his evidence has to be given much credence. Even the other witnesses were not very clear as to whether the accused drove the vehicle rashly and negligently. In fact, as pointed by the learned counsel for the petitioner, the trial Court has referred to this fact but yet it ultimately slapped



assumption. No Court would record the conviction on the basis of mere presumption and assumption unless there is concrete material piece of evidence to record such conviction. In this case, the trial Court has overlooked several materials, which are inconsistent and are contradictory to the prosecution theory and however, ultimately recorded the conviction on the basis of the very sketchy evidence. This Court is unable to appreciate how such conviction could be countenanced either in law or on facts.

12.Further, the appellate Court which dealt with the appeal, has unfortunately over looked the same material contradictions and inconsistencies in the deposition of the prosecution witnesses and confirmed the conviction recorded by the trial Court. In fact, the appellate Court has committed a grave factual error in observing in its judgment that the witnesses have clearly deposed about the rash and negligent driving of the accused when factually it was not a correct observation. Therefore, this Court is of the firm view that the appellate Court has been wrongly guided and misdirected itself with the evidence on record and hence, the confirmation by the appellate Court once again cannot be countenanced both in law and on facts.

13.On the whole, this Court is of the view that the prosecution has failed to prove the case against the revision petitioner/accused in respect of the offence under Section 304(A) IPC and in such view of the matter, the conviction of the revision petitioner by the trial Court and the confirmation of the same by the appellate Court are liable to be interfered with as being illegal. Therefore, the judgment and conviction dated 20.06.2014 passed in C.C.No.482 of 2007 on the file of the learned Judicial Magistrate, Aranthangi and confirmation of the same in C.A.No.34 of 2014 dated 25.03.2015 passed by the learned Principal District and Sessions Judge, Pudukkottai are hereby set aside and the revision petitioner is acquitted of the charge framed against him. The fine amount, if any, paid by the revision petitioner/accused, shall be refunded.

14.In the result, the Criminal Revision Case stands allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

skn

To

1.The Principal District and Sessions Judge, Pudukkottai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Judicial Magistrate, Aranthangi.

3.Do through the Chief Judicial Magistrate, Pudukkottai.

4.The Inspector of Police, Aranthangi Police Station,
Pudukkottai.

5.The District Collector, Pudukkottai.

6.The Director General of Police, Mylapore, Chennai.

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

Copy to:

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

+1 CC to M/s.C.ARUL VADIVEL, Advocate (SR-87015[F] dated 17/09/2019

ORDER MADE IN
CrI.R.C.(MD)No.220 of 2015
Dated:- 16.09.2019

JMN(30.10.2019) 6P : 11C