



## Bail Slip

Amalraj, Male, S/o.Anthonisamy, aged about 33/2011, sole accused was released on bail vide order of this Court dated 25.02.2011 in MP(MD)No.1/2011 in CrI.R.C(MD)No.152/2011.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2019

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CrI.R.C(MD)No.152 of 2011

Amalraj

... Petitioner

Vs

State by  
The Inspector of Police,  
Traffic Investigation Wing,  
Thanjavur,  
Thanjavur District.  
(Cr.No.243 of 2006)

... Respondent

**PRAYER:** Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the conviction and sentence imposed on the petitioner in CrI.A.No.38/2010 on the file of the Additional District Sessions Judge (EC Act) Thanjavur confirming the Judgment in C.C.No.169 of 2007 on the file of the Judicial Magistrate No.3, Thanjavur acquit the petitioner.

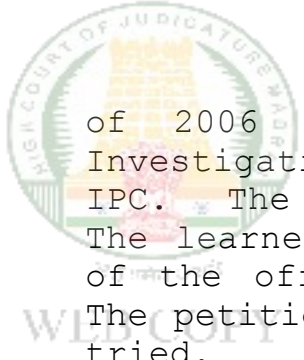
For Petitioner : Mr.A.Arun Prasad

For Respondent : Mr.A.Robinson  
Government Advocate (CrI.side)

**ORDER**

Heard the learned counsel on either side.

2.The revision petitioner was riding a two wheeler bearing Registration No.TN22AJ5271 at Gandhiji Road in Thanjur Town on 02.11.2006 at about 05.00 p.m. He was going from south to north. The petitioner's vehicle collided with another two wheeler coming from the opposite direction. One Ganesan husband of P.W.1 was riding his two wheeler bearing Registration No.TN49B2175 and was coming from north to south. In the ensuing collision, the said Ganesan suffered serious injuries and died on the spot. This accident was witnessed by P.W.2 and P.W.3. On being informed, the wife of the deceased came to the spot and thereafter, she lodged Ex.P1-complaint. It was registered as Ex.P4-FIR in Crime No.243



of 2006 on the file of the Inspector of Police, Traffic Investigation Wing, Thanjavur, for the offence under Section 304A IPC. The case was investigated and the final report was filed. The learned Judicial Magistrate No.III, Thanjavur took cognizance of the offence under Section 304(A) IPC in C.C.No.169 of 2007. The petitioner pleaded not guilty to the charge and claimed to be tried.

3.The prosecution examined as many as 11 witnesses and marked Ex.P1 to Ex.P8. The learned trial Magistrate, after a detailed consideration of the evidence on records, found the petitioner guilty of the said offence under Section 304A of IPC and sentenced him to one year rigorous imprisonment and also levied with a fine of Rs.1000/-. Questioning the said Judgment dated 13.04.2010, the petitioner herein filed Criminal Appeal No.38 of 2010 before the learned Additional District and Sessions Judge (EC Act) Thanjavur. By Judgment dated 22.12.2010, the criminal appeal was dismissed and the conviction and sentence imposed by the trial Court was confirmed. Challenging the same, this criminal revision petition has been filed.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memo of grounds. He specifically pointed out that P.W.1 was not an eye witness to the occurrence and therefore, her complaint deserves to be ignored. P.W.2 and P.W.3 claimed to be the eye witnesses and a careful perusal of the respective testimony would indicate that there are clear discrepancies between the two with regard to the actual place of occurrence. The petitioner's counsel therefore, pleaded that this Court should go the benefit of doubt to the accused and reverse the decisions of the Courts below and acquit him.

5.I am unable to agree with the aforesaid submission of the learned counsel appearing for the revision petitioner. This Court had a look at Ex.P5-Rough Sketch. The petitioner admittedly was going from south to north. The deceased was coming from north to south. Both were riding two wheelers. From a perusal of the rough sketch, it is seen that the occurrence had taken place on the eastern side of the road in question. That means the deceased Ganesan was coming in the correct direction. It was only the revision petitioner who had hit the two wheeler ridden by Ganesan face to face. The eye witnesses would state that the petitioner herein was attempting to overtake a Van and that is how, he had hit the two wheeler face to face, when he was riding his two wheeler. As regards the discrepancies with regard to the place of occurrence, the learned trial Magistrate had rightly observed that Valanadu Silk House and Kannappan Cycle Mart are adjacent shops and therefore, this cannot be really be considered as a

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6.More than anything else, the case projected by the



prosecution was not rebutted or challenged by the petitioner herein by entering into the witness box. This is the case of the accident involving two two wheelers. The petitioner has ridden one two wheeler. The deceased had ridden the other two wheeler. Therefore, the best person to give his version of the occurrence can only be the petitioner. He had chosen not to enter the witness box. Of-course, an accused in a criminal case is not obliged to enter the witness box and no adverse inference can be taken against him for not deposing. But then, he is the best person to speak about the occurrence and if the best evidence from him is not forthcoming, the Courts cannot be blamed for going by the unshaken case of the prosecution. The Court below rightly went through the case projected by the prosecution. The prosecution had examined not only the witnesses but also the motor vehicle inspector as P.W.7. Ex.P8 is the inspection report in respect of the damage caused to the Ganesan's Vehicle. It is seen that the right side portion of foot lever has been damaged and twisted. Like wise, the right side rear indicator was broken and right side front footrest was damaged. The fact that the right side of the vehicle of Ganesan was damaged would itself indicate that he was coming on the correct side and it was only on the petitioner who was at fault. The extent of damage caused to Ganesan's vehicle would itself show that the petitioner was driving his vehicle in a rash and negligent manner. The Courts below have taken note of the rough sketch, the testimony of eye witnesses and the testimony of the motor vehicle inspector. Both the Courts below have concurrently found the petitioner guilty of the offence under Section 304 A of IPC.

7.I find no ground to interfere. The conviction imposed on the petitioner for the aforesaid offence is confirmed. The Courts below have sentenced the petitioner to one year rigorous imprisonment and also levied fine. The occurrence had taken place way back in the year 2006. More than thirteen years have gone by. Therefore, I am of the view that some indulgence can show in the matter of sentence. Therefore, sentence of one year rigorous imprisonment is reduced to six months rigorous imprisonment. The trial Magistrate shall take steps to enforce this order.

8.With this modification, this criminal revision petition is partly allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Additional District Sessions Judge (EC Act) Thanjavur.

2.The Principal District Sessions Judge, Thanjavur.

3.The Judicial Magistrate No.3, Thanjavur.

4.The Judicial Magistrate No.1, Thanjavur

5.The Chief Judicial Magistrate, Thanjavur at Kumbakonam.

6.The The Inspector of Police,  
Traffic Investigation Wing,  
Thanjavur,  
Thanjavur District.

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

copy to

The Record Keeper,  
Criminal Section (Record)  
Madurai Bench of Madras High Court,  
Madurai-2 copies

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Cr1.R.C (MD) No.152 of 2011  
21.06.2019

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