

**Bail Slip**

S.Karthikeyan, S/o.Selvaraj, aged about 26/2010. Sole Accused was released on bail vide order of this Court dated 25.02.2011 in MP(MD)2 of 2011 in CrI.RC(MD)No.153 of 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.153 of 2011**

S.Karthikeyan

... Petitioner

Vs

The Inspector of Police,
Mandapam Police Station,
Crime No.39 of 2008,
Ramnad District.

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 16.04.2010 made in CrI.A.No.17 of 2009 on the file of the Additional District and Sessions Judge cum Fast Track Court, Ramanathapuram, confirming the Judgment dated 05.10.2009 made in C.C.No.52 of 2008 on the file of the District Munsif cum Judicial Magistrate, Rameshwarama and set aside the same.

For Petitioner

: Mr.J.Lawrance

For Respondent

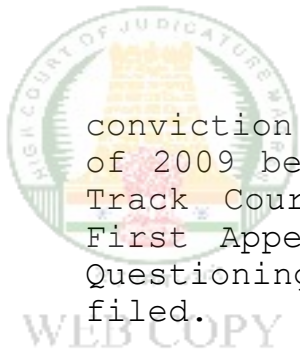
: Mr.A.Robinson

Government Advocate (CrI.side)

ORDER

Heard the learned counsel on either side.

2.The revision petitioner was driving a Tata 407 Van bearing Registration No.TN 39 AQ 5825 on 09.03.2008 at about 05.00 a.m, in Rameshwaram-Ramanathapuram National Highway (NH49). When the Van was nearing Vedhalai bus stop, it hit the bicycle which was ridden by one Pitchai whose wife Poornavalli was on the pillion. In the resulting accident, Poornavalli died on the spot and Pitchai died later. But before his demise, the Pitchai had given complaint-Ex.P1, dated 09.03.2008. Based on the same, Ex.P6-FIR was registered in Crime No.39 of 2008 on the file of the Inspector of Police, Mandapam Police Station. Investigation was undertaken and final report was filed. The learned Judicial Magistrate took cognizance of the offence under Section 304(A) on two counts. Since the petitioner pleaded not guilty to the charge and claimed to be tried, the case went to trial. The prosecution examined as many as 13 witnesses and marked Ex.P1 to Ex.P8. The learned trial Magistrate, vide Judgment dated 05.10.2009 found the petitioner guilty of the offence under Section 304(A) on two counts and imposed the sentence of one year rigorous imprisonment on each count and directed to pay a fine amount of Rs.1,000/-. The sentences were ordered to run concurrently. Questioning the said Judgment of



conviction and sentence, the petitioner filed Criminal Appeal No.17 of 2009 before the Additional District and Sessions Judge cum Fast Track Court, Ramanathapuram. By Judgment dated 16.04.2010, the First Appellate Court confirmed the Judgment of the trial Court. Questioning the same, this criminal revision petition came to be filed.

2.The learned counsel appearing for the revision petitioner submitted that the cyclists were coming from north and took a turn towards east and in that junction point, the accident had occurred.

3.The petitioner's counsel would claim that the petitioner was not at fault. He also pointed out that the complaint given by the Pitchai is not believable. The person who had suffered injury at accident, died later, and he could not have given such minute particulars and description in his complaint. He would also submit that the other witnesses P.W.1 and P.W.2 had come to the spot later and that, P.W.1 and P.W.2 were not an eye witness to the occurrence and therefore, his complaint deserves to be ignored.

4.The learned Government Advocate(Crl.side) wanted this Court to sustain the Judgment passed by the Courts below.

5.After hearing the rival contentions carefully and going through the evidence on record, I hold that the finding of conviction given by the Courts below deserves to be confirmed. The deceased admittedly hailed from Idaiyarvalasal. They were engaged in the business of milk vending. In fact, only for that purpose, Poornavalli was to go to the Vedhalai bus stop. Pitchai was taking her on his bicycle. This Court wanted to know where Idaiyarvalasal was. It is stated that Idaiyarvalasal was situated at a distance of about 2 kilometers on the western side from the occurrence spot. That is why, the evidence of the prosecution is that the cyclists were going from west to east. The petitioner's van was also going from west to east. It is the Van that hit the cycle from behind and caused the accident in question. This is clearly spoken by both P.W.1 and P.W.2. Both the witnesses have deposed that the petitioner over took them in a rash and negligent manner and hit the ill-fated cycle from behind. This Court had a look at Ex.P7-Rough Sketch. The occurrence had taken place on the extreme northern side in the Rameshwaram - Ramanathapuram National Highway. It means that had taken place on the left side, when viewed from west to east. This means that the cyclists were going only on the correct side. It was the petitioner who hit the cycle from behind and caused the accident. The ingredients set out in Section 304 (A) IPC have been more than satisfied in this case.

6.The Courts below have concurrently found the petitioner guilty of the offence under Sections 304(A) IPC. It is pertinent to note that the accident had taken place in the early hours in the morning. The petitioner who admittedly was involved in the accident, did not choose to enter the witness box and present his version.



7. I am only exercising my revisional jurisdiction. I cannot re-appreciate the evidence. I therefore, hold that the finding of guilt rendered by the Courts below deserves to be confirmed and it is accordingly confirmed. Now comes the question of sentence. The petitioner was aged about 24 years, when the occurrence had taken place. More than 13 years have lapsed. I therefore, deem it fit and appropriate to show some leniency in the matter of punishment. Therefore, the punishment of one year rigorous imprisonment imposed on him on both counts is reduced to six months rigorous imprisonment. The petitioner appears to have spent 45 days in jail. The period of imprisonment already undergone by him will be set off in terms of Section 428 of Cr.P.C. The trial Magistrate shall take steps to enforce this order.

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

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Additional District and Sessions Judge
cum Fast Track Court, Ramanathapuram.
2. The Principal District Judge, Ramanathapuram.
3. The District Munsif cum Judicial Magistrate, Rameshwaram.
4. The Chief Judicial Magistrate, Ramanathapuram.
5. The Inspector of Police, Mandapam Police Station,
Ramanathapuram District.
6. The Superintendent, Central Prison, Madurai.
7. 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.

+1 CC to M/s. J. LAWRENCE, Advocate SR-70748.

Cr1.R.C(MD) No.153 of 2011
21.06.2019