



BAIL SLIP

The Appellants / Sole Accused namely, Manikaraja, S/o.Thangavel, was directed to be released on bail as per the order of this Court dated 25/02/2011 in MP 1 of 2011 in CrI RC(MD)164/2011 on the file of this Court.

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.164 of 2011

Manikaraja

... Petitioner/Appellant/Accused

Vs

State through Sub Inspector of Police,
Vempakottai Police Station,
Virudhunagar District,
(Crime No.96/05)

... Respondent/Respondent/Complainant

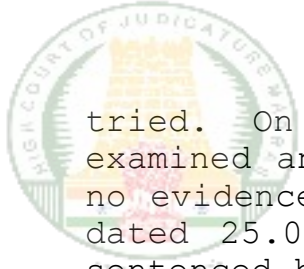
PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in C.A.No.211 of 2007, dated 22.02.2011 on the file of the Principal and District Sessions Judge, Virudhunagar District, situate at Srivilliputhur in which the learned District Judge dismissed the appeal filed by the petitioner and confirmed the conviction and sentence passed by the Judicial Magistrate No.II, Sattur in C.C.No.117 of 2005, dated 25.09.2007 and set aside the same by allowing this criminal revision petition.

For Petitioner : Mr.R.Murugappan

For Respondent : Mrs.S.Bharathi
Government Advocate (CrI.side)

ORDER

The petitioner was driving his lorry bearing registration No.TN 63 3304 on 03.05.2005 at about 10.00 a.m., in Madathupatti Vempakottai Main Road. The lorry was going from north to south. The lorry had capsized on account of the application of sudden brake by the petitioner. The lorry went to the western side and capsized and fell on a five year female child namely Nagajothi who was answering the call of nature on the western side of the road. Her father Mariappan filed Ex.P1-Complaint. Based on the same, Ex.P6-FIR in Crime No.96 of 2005 was registered on the file of the Sub Inspector of Police, Vempakottai Police Station, for the offence under Section 304(A) of IPC. The case was investigated and final report was filed. The learned trial Magistrate took cognizance of the offence under Section 304 IPC in C.C.No.117 of 2005. When the charge was framed, the petitioner denied the same and claimed to be

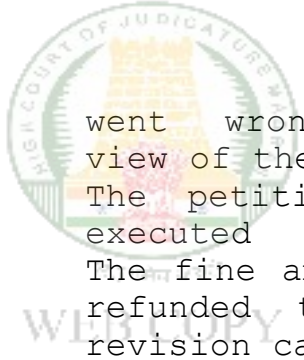


tried. On the side of the prosecution, as many as 10 witnesses were examined and Ex.P1 to P8 were marked. On the side of the accused, no evidence was adduced. The learned trial Magistrate, by judgment dated 25.09.2007, found the petitioner guilty of the offence and sentenced him to 24 months simple imprisonment and also levied fine. Questioning the same, the petitioner filed criminal Appeal No.211 of 2007 before the Principal and District Sessions Judge, Virudhunagar, Srivilliputhur. The learned First Appellate Court, by Judgment dated 22.02.2011, confirmed the Judgment passed by the trial Court. Challenging the same, this criminal revision has been filed.

2.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memo of grounds and wanted this Court to reverse the Judgments of the Courts below.

3.Per contra, the learned Government Advocate(Crl.side) wanted this Court to sustain the finding of conviction as well as the sentence passed by the Courts below.

4.I carefully considered the rival contentions and perused the evidence on record. A mere look at Ex.P7-Rough Sketch indicates that the lorry was going from north to south in the correct direction. The child Nagajothi was answering the call of nature on the western side of the road. The lorry had actually crossed the child and the reason for applying sudden brake was not fortified through evidence. The petitioner's counsel would claim that a cow was crossing the road and in order to avoid hitting the cow, the petitioner had applied sudden brake. Unfortunately, the petitioner did not enter into the witness box to present his version. Be that as it may, P.W.1 father of the deceased child himself in his EX.P1-compliant admitted that in view of the application of sudden brake, the lorry rotated and then capsized. Now the only question is whether the petitioner can be held guilty of the offence under Section 304 (A) IPC for this unfortunate tragedy. The spot where the little child was present and answering the call of nature had already been crossed by the petitioner. Even the father of child admits that since the sudden brake was applied, the lorry capsized. The lorry was coming on the correct side. He was keeping to the left side of the road. In order to avert some other accident, he had obviously applied sudden brake. It is not known as to how mere application of brake would cause a rotation and subsequent capsize. Therefore, the accident will have to be attributed to some mechanical phenomena. The petitioner obviously cannot be fastened with guilt for this. The Courts below did not appreciate the issue from a proper perspective. The admitted case of the prosecution as projected by P.W.1, was not considered. The Courts below had concurrently gone by the fact that since the accident was caused by the lorry which was driven by the petitioner, that was sufficient to fasten penal liability on the petitioner. It is not so. Unless, it can be demonstrated that the petitioner was rash and negligent, he could not have been found guilty of the offence under Section 304(A) of IPC. The Courts below



went wrong in finding the petitioner guilty. In this view of the matter, the Judgments of the Courts below are set aside. The petitioner/accused is acquitted. The bail bond, if any, executed by the petitioner/accused shall stand cancelled. The fine amount, if any, paid by the petitioner/appellant shall be refunded to the petitioner/accused forthwith. This criminal revision case is allowed accordingly.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Sub Inspector of Police,
Vempakottai Police Station,
Virudhunagar District,
- 2.The Judicial Magistrate No.II, Sattur.
- 3.The Principal and District Sessions Judge, Virudhunagar District,
Srivilliputhur.
- 4.The Judicial Magistrate No.II,
Sattur thro The Chief Judicial Magistrate, Virudhunagar at
Srivilliputhur.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Superintendent,
Central Prison, Madurai

+1 cc Mr.R.MURUGAPPAN ,Advocate, SR.No. 70533

Cr1.R.C (MD) No.164 of 2011
21.06.2019

KK/SAR/10.09.2019/3P-8C/