

**Bail Slip**

Muthupandi S/o Pandi, Aged about 27 years was released on bail vide order made in MP(MD)No.1 of 2011 in CRL RC(MD)No.287 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C. (MD)No.287 of 2011

Muthupandi

.. Revision petitioner/
Appellant/Accused

Vs.

State through,
The Sub Inspector of Police,
Ettayapuram Police Station,
Ettayapuram,
Tuticorin District.
(Crime No.245 of 2007)

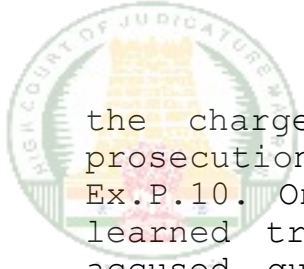
.. Respondent/Respondent/
Complainant

Prayer : This Criminal Revision petition is filed under Section 397 r/w 401 of Cr.P.C., to prefer the above Criminal Revision case against the Judgment dated 29.01.2011 passed in C.A.No.49 of 2010 on the file of the learned Additional Sessions Judge(Fast Track Court-II), Tuticorin, confirming the Judgment dated 20.07.2010 passed in C.C.No.248 of 2007 on the file of the learned Judicial Magistrate No.II, Kovilpatti.

For Petitioner	: Mr.Pon Senthil Kumar
For Respondent	: S.Bharathi, Government Advocate (Crl.Side).

ORDER

The petitioner was driving Maruti Omni van bearing Registration No.TN 39-H-8186 on 13.07.2007 at about 5.00 in Madurai - Thoothukudi road, when the accident in question took place, leading to the death of one Mariappan. In this regard Crime No.245 of 2007 was registered on the file of the Ettayapuram police station. Final report was also filed and cognizance was taken for the offence under Sections 279, 337, 304(A) and Section 3 r/w 181 of the Motor Vehicles Act in C.C.No.248 of 2007 on the file of the learned Judicial Magistrate No.2, Kovilpatti. The petitioner denied

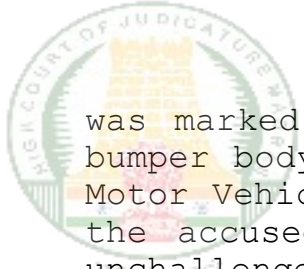


the charges framed against him and claimed to be tried. The prosecution examined as many as 16 witnesses and marked Ex.P.1 to Ex.P.10. On the side of the accused, no evidence was adduced. The learned trial Magistrate by Judgment dated 20.07.2010 found the accused guilty of the offences with which he was charged. The petitioner has not been sentenced separately for the offence under Section 279 of I.P.C. For the offence under Section 337 of I.P.C, the petitioner was levied with a fine of Rs.250/- and in default, he was sentenced to 1 month Simple Imprisonment. For the offence under Section 304(A) of I.P.C, he was sentenced to 6 months Simple Imprisonment and he was levied with a fine of Rs.1,000/- and in default, he was sentenced to two months Simple Imprisonment. For the offence under Section 3 r/w 181 of the Motor Vehicles Act, he was levied with a fine of Rs.250/-, and in default, he was sentenced to 15 days Simple Imprisonment. Questioning the said Judgment of the trial Court, the petitioner filed C.A.No.49 of 2010 before the learned Additional Sessions Judge, Fast Track Court, Tuticorin. By Judgment dated 29.01.2011, the lower appellate Court partly allowed the appeal and reduced the sentence imposed by the trial Court for the offence under Section 304(A) from 6 months Simple Imprisonment to 1 month Simple Imprisonment. The sentence imposed on the petitioner for the offence under Section 3 r/w 181 of the Motor Vehicles Act was set aside. In all other respects, the Judgment of the Court below was confirmed. 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 memorandum of grounds. He took me through the evidence of P.W.1 and contended that he could not have been an eyewitness. Likewise the other witnesses who were examined as eyewitnesses also could have seen the occurrence. The petitioner's counsel argued that the accident had occurred, when the deceased attempted to make a sudden crossing of the road. If the occurrence as claimed by the prosecution, the theory of collision between Omni van and the cycle is true. The cycle would have suffered a damage. In this case no such damage was produced before the Court.

3. He also pointed out that P.W.1 though supported the case of the prosecution in the chief examination, he turned hostile in the cross examination, but he was not declared as hostile witness.

4. I am not persuaded by the submission of the learned counsel appearing for the petitioner. The vehicle in question was travelling from north to south in Ettayapuram- Thoothukudi main road. Rough Sketch was marked as Ex.P.10 through P.W.13. Rough Sketch was marked, The defence has not challenged anything in the Rough Sketch. It is seen from the Rough Sketch that the accident had occurred on the eastern side of the road. It means that the cyclist was going on the correct side and that Maruti Omni van driven by the accused had hit him from behind. What clinches the case of the prosecution is that the Motor Vehicle Inspection Report



was marked as Ex.P.5. This Ex.P.5 states that the front left side bumper body was also damaged. This exhibit was marked through P.W.9 Motor Vehicle Inspector. But P.W.9 was not at all cross examined by the accused. That means the Motor vehicle report Ex.P.5 has been unchallenged. In Ex.P.5, it has been mentioned that the front left side bumper body of the Omni van has been damaged. Thus the particulars set out in Ex.P.10 Rough Sketch are in consonance with Ex.P.5. This Court has therefore no doubt in its mind that it was the petitioner who had hit the deceased cyclist from behind, when he was going from north to south.

5. The Courts below have concurrently found the petitioner guilty of the offence under Sections 337 and 304(A) of I.P.C. This Court is exercising the Revisional jurisdiction. I am not persuaded to take a different view. The appellate Court had reduced the sentence from 6 months Simple Imprisonment to 1 month Simple Imprisonment. No further indulgence can be shown.

6. Therefore, the Criminal Revision stands dismissed and the Judgments of the Courts below are affirmed. The period spent by the petitioner in prison will be set off in terms of Section 428 of Cr.P.C. No costs.

Sd/-

Assistant Registrar

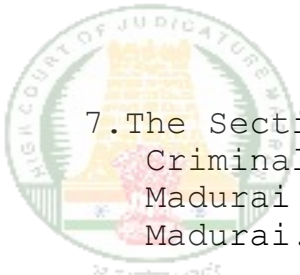
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Sub Assistant Registrar()

To

1. The Additional Sessions Judge
(Fast Track Court-II),
Tuticorin.
2. The Principal Sessions Judge, Tuticorin.
3. The Judicial Magistrate No.II,
Kovilpatti.
4. The Chief Judicial Magistrate,
Tuticorin.
5. The Sub Inspector of Police,
Ettayapuram Police Station,
Ettayapuram, Tuticorin District.

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



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

+1 CC to M/s.S.PON SENTHIL KUMARAN, Advocate (SR-72414[F] dated
01/07/2019)

Crl. R.C.(MD)No.287 of 2011
28.06.2019

pmu
MS/05.09.2019/4P.10C