

**BAIL SLIP**

Durai, Male, aged 38/2011, S/o.Rengan,
Petitioner/Appellant/Accused was released on bail of this Court
order dated 18.07.2011 made in MP(MD)No.1 of 2011 in Cr1 RC(MD)
No.519 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 25.06.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1.R.C. (MD)No.519 of 2011**

Durai

... Petitioner/Appellant/Accused

Vs.

State through by
The Inspector of Police,
Traffic Investigation Wing (North),
Trichy.
(Crime No.204 of 2009)

... Respondent/Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records in C.A.No.4 of 2011, dated 13.06.2011, on the file of Additional District Judge, Fast Track Court No.II, Trichy, which is confirmed judgment passed in S.T.C.No.425 of 2009, dated 09.12.2010 on the file of the learned Judicial Magistrate No.I, Trichy, set aside the same and allow this revision.

For Petitioner : Mr.M.Subash Babu

For Respondent : Mr.A.Robinson

Government Advocate (Cr1. Side)

ORDER

The petitioner/Durai was riding a two wheeler on 06.08.2009 at about 08.04 a.m in Mainguard Gate Road, Thiruchirappalli, when the accident in question occurred. A 12 year old boy namely., Nithiyanatham died. Crime No.204 of 2009 was registered on the file of the North Traffic Investigation Wing, Tiruchy. Investigation was undertaken and final report was filed before the learned Judicial Magistrate No.I, Trichy. Cognizance of the offence under Section 304(A) was taken. The learned Trial Magistrate by judgment dated 09.12.2010 found the petitioner guilty of the offence and sentenced him to undergo two years rigorous imprisonment. In respect of the offence under Section 181 of Motor Vehicles Act, the petitioner was given one month simple imprisonment. He was found guilty of the offence under Section 196 of Motor Vehicles Act and sentenced to undergo one month simple imprisonment. Questioning the said judgment dated 09.12.2010, the petitioner filed C.A.No.4 of 2011 before the learned Additional District Court, Fast Court No.II, Tiruchy. The Appellate Court by judgment dated 13.06.2011 dismissed



the appeal and confirmed judgment passed by the learned Trial Magistrate. Challenging the same, this criminal revision case has been filed.

2. Heard the learned counsel on either side.

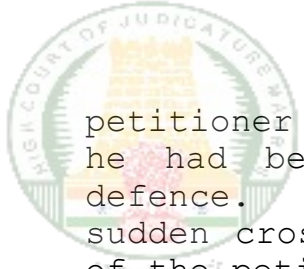
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3. The case of the prosecution is that the boy was waiting in the bus-stop when the petitioner herein on account of rash and negligent driving caused the accident. The defacto complainant/P.W.1, is none other than the father of the deceased. He lodged Ex.P.1/complaint, which led to registration of Ex.P.4/FIR.

4. In support of the prosecution, prosecution had examined as many as 5 witnesses.

5. This Court carefully went through the testimony of all the five witnesses. This Court also perused Ex.P.5/rough sketch. It is seen therefrom that the accident had occurred somewhere near the middle of the road. Therefore, this Court is of the view that the accident could not have occurred in the manner suggested by the prosecution. It is quite possible that the boy after getting down in the bus crossed over from west to east, the revision petitioner who was coming from south to north had hit the deceased. But then this Court will have to necessarily fasten penal liability on the petitioner for more reasons than one. It is admitted that the petitioner was not having any license to drive the two wheeler bearing Registration No. TN 48 H 4992. Admittedly it was not having insurance also. That is why the Courts below rightly found the petitioner guilty of the offence under Sections 181 and 196 of the Motor Vehicles Act. It was a school zone. Therefore, the petitioner ought to have anticipated that children by their nature are likely to make sudden crossing. The petitioner could not have been obvious of these aspects. It is further seen that from the place of accident, the boy had been dragged for a quite a few feet. The school bag of the boy was hung on his shoulder on the backside. It is quite possible it got entangled with the vehicle driven by the petitioner herein and that is why he was dragged for quite a distance. The dragging theory projected by the prosecution is confirmed by the medical evidence. P.W.6, who conducted postmortem had categorically submitted about the injuries caused to the deceased boy/Nithiyanatham. They clearly corroborate the case projected by the prosecution.

6. It is further seen that D.W.1/Pathamanathan was examined in support of the defence. The said Pathamanathan claimed that he was riding an auto and was coming from behind and he saw the boy get off from the bus and fell down. Pathamanathan would claim that the vehicle of the petitioner never came in contact with the deceased. The Courts below rightly disbelieved said defence witness. The petitioner herein pleaded before the Courts below that the boy jumped out of the moving bus and fell down and died and that the



petitioner as a good samaritan admitted him in the hospital and that he had been falsely implicated. It is an outrageously false defence. May be the boy had contributed to the accident by his sudden crossing. But then the negligence and rashness on the part of the petitioner are evident. Therefore, I confirm the findings of guilt arrived by the Courts below in respect of the three charges framed against him. In fact, the petitioner's counsel on instruction at this stage would submit that he would not question the finding of guilt and that he would only plead for leniency in the matter of sentence.

7. The petitioner's counsel on instruction submitted that the petitioner would deposit a sum of Rs.1,50,000/- to the credit of S.T.C.No.425 of 2009, on the file of the learned Judicial Magistrate No.I, Trichy within a period of eight weeks from the date of receipt of a copy of this order. The said amount shall be disbursed to the mother of the deceased as compensation. The legal services authority would ensure that the victim's family is paid the compensation amount. The sentence of imprisonment imposed on the petitioner is reduced to the period already undergone. If the petitioner fails to deposit the compensation amount, he will undergo default sentence of six months rigorous imprisonment. The judgments of the Courts below are modified accordingly. The criminal revision case is partly allowed.

Sd/-

Assistant Registrar (Crl Side)

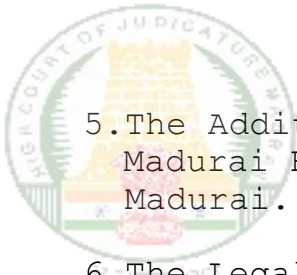
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Sub Assistant Registrar(CS)

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To:

1. The Additional District Judge,
Fast Track Court No.II, Trichy.
2. The Judicial Magistrate No.I, Trichy.
3. The Inspector of Police,
Traffic Investigation Wing (North),
Trichy.
4. The Superintendent,
Central Prison,
Trichy.



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

6.The Legal Services Authority,
District Court, Trichy.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-71633[F] dated
26/06/2019)

Cr1.R.C. (MD) No.519 of 2011
25.06.2019

KK/SAR/04.09.2019/4P-10C/