

**Bail Slip**

The Petitioner/Accused namely, Nagarajan, S/o.Mariappan, was directed to be released on bail as per order of this Court dated 16.09.2011 in MP(MD).No.1/2011 in CrI.R.C.(MD)No.782/2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.R.C.(MD)No.782 of 2011

Nagarajan

.. Petitioner/Appellant/
Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District
(Crime No.927 of 2004)

.. Respondent/Respondent/
Complainant

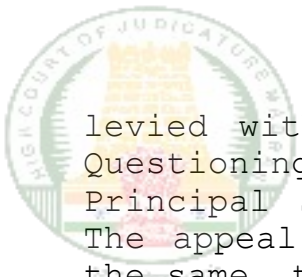
Prayer : This Criminal Revision petition is filed under Sections 397 and 401 of Cr.P.C., against the Judgment and Conviction passed by the learned Judicial Magistrate No.2, Srivilliputhur, Virudhunagar District in C.C.No.79 of 2005, dated 24.03.2006 for the offence under Section 304(A) of I.P.C. and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment and the same was confirmed by the Principal District Sessions Court, Virudhunagar District at Srivilliputhur in C.A.No.53 of 2006 dated 12.07.2011.

For Petitioner : Mr.N.Kamesh,
Legal Aid counsel.

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

ORDER

The petitioner Nagarajan was prosecuted for the offence under Section 304(A) of I.P.C. in C.C.No.79 of 2005 on the file of the learned Judicial Magistrate No.2, Srivilliputhur. He was convicted and sentenced to one year Rigorous Imprisonment and he was also



levied with a fine of Rs.1,000/- vide Judgment dated 24.03.2006. Questioning the same, he filed C.A.No.53 of 2006 before the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur. The appeal was dismissed by Judgment dated 12.07.2011. Questioning the same, this Criminal Revision has been filed.

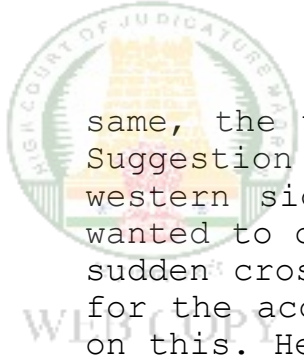
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2. When the matter was taken up for hearing, there was no representation on the petitioner/accused. Therefore, this Court directed the Registry to appoint a Legal Aid counsel. Today when the matter was taken up for hearing, Sri.Kamesh, learned Legal Aid counsel appeared for the Revision petitioner and reiterated the contentions set out in the memorandum of grounds. He wanted this Court to set aside the Judgment passed by the Courts below.

3. Per contra, the learned Government Advocate(Criminal Side) appearing for the respondent wanted this Court to sustain the impugned Judgments.

4. I carefully heard the rival contentions and perused the evidence on record. It is the case of the prosecution that the Revision petitioner was driving T.N.S.T.C. bus bearing Registration No.TN 67-N-0167 on 26.12.2004 at about 11.45 a.m in Srivilliputhur-Madurai road and when the bus was crossing Uzhavar Sandhai in Srivilliputhur, it hit the deceased Ramasamy causing his death. In this regard, Crime No.927 of 2004 was registered on the file of Srivilliputhur Town police station. Final report was filed and cognizance for the offence under Section 304(A) was taken by the learned Judicial Magistrate No.2, Srivilliputhur. The petitioner herein denied the charges framed against him. The prosecution examined 13 witnesses and marked Ex.P.1 to. Ex.P.7. On the side of the accused, no evidence was adduced. The learned trial Magistrate after a perusal of evidence on record, came to the conclusion that the charge against the petitioner was proved beyond reasonable doubt.

5. The learned Legal Aid counsel submitted that the witnesses who were examined as eyewitnesses could not have actually seen the occurrence. They are very close relatives of the deceased. In fact P.W.1 is none other his own brother. P.W.2 is the son-in-law. P.W.1 claimed that he was coming in a cycle behind the deceased when the accident took place. It was he who lodged Ex.P.1 complaint. P.W.1 in his complaint would state that the vehicle in question was driven in a rash and negligent manner and that without sounding horn. The same hit the cyclist Ramasamy. According to P.W.1 in his complaint, Ramasamy suffered injuries on the backside of the head and his left elbow. The complainant also claimed that there was no damage to the cycle. P.W.2 in his deposition also significantly claimed that there was no damage to the cycle. This stand of both the witnesses that arouses the suspicion of this Court. The learned Legal Aid counsel also would submit that if the bus had really hit the cycle from behind, certainly the cycle would have suffered a damage. In this case, the cycle was not recovered. In fact to overcome the



same, the witnesses claimed that there was no damage to the cycle. Suggestion put by the accused is that there is a fish market on the western side and that the deceased after seeing some known person wanted to cross the road and in the process got hit. In other words, sudden crossing of the road by the deceased is said to be the cause for the accident. P.W.13 who filed the final report was questioned on this. He admitted that the roadside fish vending was done on G.H. road. To reach the G.H. road one has to cross east to west. Dhanam @ Krishnasamy stated that he was buying fish during the relevant time. Of course the accused could have got into the witness box and clarified all these aspects. But unfortunately he did not do so. Dhanam @ Krishnasamy was examined as P.W.4. He admitted that during the relevant time, he was purchasing fish. It was suggested to him that in order to speak to him, the deceased Ramasamy made a suddenly darted across the road. Of course P.W.4 denied the suggestion put by the defence.

6. On a overall consideration of the entire evidence on record, I have to come to the conclusion that the accused had more than probabilised his defence. The consistent statements made by P.W.1 in Ex.P.1 complaint and the statement of P.W.1 and P.W.2 in their testimony before this Court that there was no damage to the cycle clearly undermines the entire prosecution case. The prosecution case was that Ramasamy was going in the cycle from North to South in Srivilliputhur-Madurai road and that it was the bus driven by the petitioner that hit him from behind. If that be so, certainly the cycle would have suffered a damage. The fact that even according to P.W.1 and P.W.2, the cycle did not suffer any damage would by itself indicate that at the time of accident Ramasamy was not actually going in his cycle and that he was only a pedestrian.

7. Therefore, it is quite probable that when he made the said crossing of the road from east to west, the accident in question had taken place. The Courts below did not pay due attention to the fact that the cycle was not damaged. Therefore, the Judgments of the Courts below stand vitiated. The impugned Judgments are set aside. The accused is acquitted. The Criminal Revision stands allowed, accordingly. The bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him, is to be repaid to him.

8. This Court places on record its appreciation of the sincere efforts taken by Thiru.Kamesh, learned Legal Aid counsel for securing liberty to the Revision petitioner herein. No costs.

Sd/-

Assistant Registrar

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To

1. The Judicial Magistrate No.2,
Srivilliputhur, Virudhunagar District.
2. The Principal District Sessions Judge,
Virudhunagar District at Srivilliputhur.
3. The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
4. The Superintendent of Police,
Virudhunagar District
5. The District Collector,
Virudhunagar District
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

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

+1 CC to M/s.N.KAMESH, Advocate (SR-72413[F] dated 01/07/2019)

Cr1.R.C. (MD) No.782 of 2011
28.06.2019

pmu
JMN(21.08.2019) 4P : 10C