

**BAIL SLIP**

That the Revision Petitioner/ Accused was directed to be released on Bail vide order dated 15/02/2011 in MP(MD)No.3 of 2011 in CRL.RC(MD)No.92 of 2011 on the file of the Madurai Bench of Madras High Court, Madurai.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 20.06.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1. R.C.(MD)No.92 of 2011**

Sivashankara Shamuga Perumal

.. Petitioner/
Appellant/Accused

Vs.

State represented by its,
Inspector of Police,
Munnir Pallam Police Station,
Tirunelveli... Respondent/Respondent/
Complainant

Prayer : This Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.5, Tirunelveli in C.C.No.66 of 2002 dated 19.10.2009 and the same was confirmed by the Additional District cum Sessions Judge/Fast Track Court No.2, Tirunelveli, in C.A.No.94 of 2009, dated 02.08.2010.

For Petitioner : Mr.D.Saravanan

For Respondent : Mr.A.Robinson,
Government Advocate(Cr1. Side).**ORDER**

The Revision petitioner was a driver in Tirunelveli Transport Corporation. He was driving the Corporation bus bearing Registration No.TN 07-N-9342 in Nagercoil-Tirunelveli Road on 17.10.2001 at about 9.30 p.m. The petitioner was driving the bus from south to north. At that time the deceased Rajendran and Kattayanperumal were coming in their two wheeler, namely M.80 bearing Registration No.TN 72-E-8376. They were coming from the opposite direction, namely, north to south. There was an accident involving the two vehicles leading to the deaths of both of them. Therefore, Crime No.267 of 2001 was registered on file of the



Munnir Pallam police station, Tirunelveli, for the offence under Section 304(A)(2 counts) of I.P.C. The police undertook investigation and filed a final report and the same was taken on file in C.C.No.66 of 2002 on the file of the learned Judicial Magistrate No.5, Tirunelveli. The petitioner denied the charge framed against him under Section 304(A)(2counts) of I.P.C. He claimed to be tried. The trial was conducted. On the side of the prosecution as many as 10 witnesses were examined. Ex.P.1 to Ex.P.12 were marked. M.O.1 to M.O.13 were also marked. The learned trial Magistrate by Judgment dated 19.10.2009 found the petitioner guilty of the said offence on both counts and convicted him to 2 years Simple Imprisonment on each count and levied with a fine of Rs.1,000/- and directed that the sentences were to run concurrently. Challenging the same, the Revision petitioner filed C.A.No.94 of 2009 before the learned Additional Sessions Judge, Fast Track Court No.2, Tirunelveli. By Judgment dated 02.08.2010, the Criminal appeal was dismissed and the Judgment of the trial Court was confirmed. Questioning the same, this Criminal Revision has been filed.

2. Heard the learned counsel on either side.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds. He submitted that the evidence of P.W.6 Conductor would clearly indicate that the petitioner was not at fault. He also drew my attention to the discrepancies in the testimony of the prosecution witnesses. While the prosecution case is that the petitioner was attempting to overtake the Tractor which arrived at the front and that is how he collided with the two wheeler, the prosecution witnesses stated that the tractor was actually coming from behind. His further contention is there was a junction point and that the two wheeler riders attempted to suddenly cross the road and that is how the accident took place.

4. Even though the submissions of the petitioner's counsel are persuasive, I am unable to agree with him. This is for more reasons than one. A mere look at Ex.R.11 Rough Sketch would indicate that the accident had taken place on the western portion of the road. That means the two wheeler was coming in the correct direction. It was the bus driven by the petitioner that had come on the eastern side, while going south to north and coming to face to face with the two wheeler. Ex.P.1 complaint which was lodged by an eyewitness would give an indication that after the occurrence of the accident, the bus had dragged the two wheeler for about 40 feet. In fact the two wheeler riders had met with a rather gruesome end.



5. This Court perused the Inspection Report of the Motor Vehicle Inspector, namely, Ex.P.7. Ex.P.7 would indicate that the front end of the two wheeler had suffered damage. This again confirms the prosecution case. The two wheeler was coming on the correct side of the road. The occurrence spot by itself indicates that the petitioner had been negligent. If he had not overtaken the Tractor that was going in front, the accident would not have happened at all. The fact that the bus was driven in a rash manner can be inferred from the fact that after the collision, the bus has dragged the two wheeler for more than 40 feet. Thus the prosecution had clearly established all the ingredients under Section 304 of I.P.C. beyond reasonable doubt.

6. In the very nature of things, the petitioner was the best person to speak about the occurrence. According to the petitioner, he has not caused the accident and it was the rider of the two wheeler who was the cause for the accident. The petitioner has not got into the witness box. The petitioner did not give any explanation at the time of answering the questions under Section 313 of Cr.P.C.. Of course this Court is not drawing any adverse inference against the accused for not examining himself as a witness. But then, the materials on record placed by the prosecution could not have been dislodged unless the petitioner got into the witness box. The cross examination of the prosecution witnesses has not elicited anything to stake the prosecution case.

7. The learned trial Magistrate after elaborate consideration of the evidence of record arrived at a conclusion against the petitioner. The same has been confirmed by the first appellate Court. I am now exercising the revisional jurisdiction. Therefore, I cannot re-appreciate the evidence. The Judgments of the Courts below are not incorrect or perverse. I am of the view that the findings arrived at by the Courts below does not warrant any interference.

8. At this juncture, the petitioner's counsel submitted that the petitioner is now aged about 62 years. He also pleaded certain family circumstances before this Court to take a lenient view. Since two persons have died, I cannot show lenience beyond a point by considering the age of the petitioner. The sentence of imprisonment imposed by the Courts below is reduced from 2 years Simple Imprisonment to 1 year Simple Imprisonment.

9. With these modifications, the Criminal Revision stands partly allowed. It is made clear that since the petitioner has been found guilty on 2 counts, the sentence of imprisonment of 1 year Simple Imprisonment imposed by this Court will run



concurrently. The learned trial Magistrate is directed to secure the petitioner to undergo the remaining period of sentence. Bail bond if any executed shall stand cancelled. No costs.

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Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Judicial Magistrate No.5,
Tirunelveli.
2. The Chief Judicial Magistrate, Tirunelveli.
3. The Additional District cum Sessions Judge/
Fast Track Court No.2, Tirunelveli.
4. The Inspector of police,
Munirpallam Police Station, Tirunelveli.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
6. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.D.Saravanan Advocate SR.No.70429

Cr1. R.C. (MD) No.92 of 2011

20.06.2019

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