

**Bail Slip**

The Petitioner/Accused Shanmugasundaram, S/o.Sadhanandam was released on Bail as per the Order of this Court passed in MP(MD)No.1 of 2011 in CrI.RC(MD)No.94 of 2011, dated:09.02.2011 on the file of this Court.

WEB COPY

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.94 of 2011

Shanmugasundaram

...Petitioner/Accused/Appellant

Vs

State by
Inspector of Police,
Ayyampettai Police Station,
Thanjavur District.
(Crime No.103/2009)

...Respondent/Respondent
Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the conviction and sentence imposed on the petitioner in C.A.No.59 of 2010 on the file of the District and Additional Sessions Judge (EC Court), Thanjavur dated 24.12.2010 and confirming in C.C.No.103 of 2009 on the file of Judicial Magistrate No.3, Thanjavur, dated 11.06.2010 acquit the petitioner.

For Petitioner : Mr..M.Mariavinola
(Legal Aid Counsel)

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

ORDER

The revision petitioner was driving a private bus bearing Registration No.TN 49 AC 4042 on 22.04.2009 at about 11.15 a.m., in Kumbakonam-Thanjavur Main Road. When he was nearing Managkorai Tharga, the bus driven by the petitioner hit the cyclist who was also going in the same south to north direction. In the resulting accident, the cyclist Dhanapal suffered injuries and was rushed to the Hospital. But he died enroute. One Senthil Kumar lodged Ex.P1-Complaint. Ex.P7-Crime No.135 of 2009 was registered on the file of the Inspector of Police, Iyyampettai Police Station. Investigation



was undertaken and final report was filed before the Judicial Magistrate No.III, Thanjavur. The learned trial Magistrate, took cognizance of the offence under Section 304 (A) of IPC in C.C.No.103 of 2009. The petitioner herein was questioned and he pleaded not guilty. The prosecution in support of its case examined as may as 13 witnesses and marked Ex.P1 to P.10. On the side of the accused, no evidence was adduced. The learned trial Magistrate, by Judgment dated 11.06.2010, came to the conclusion that the petitioner herein was guilty of the offence under Section 304 A of IPC. The accused was sentenced to one year rigorous imprisonment and also levied with fine of Rs.1000/-. Questioning the same, the convicted accused filed Criminal Appeal No.59 of 2010 before the Additional District and Sessions Judge (EC Act), Thanjavur. The learned Appellate Judge, by Judgement dated 24.12.2010, dismissed the appeal filed by the petitioner herein and confirmed the Judgements of the Trial Court in toto. Aggrieved by the same, this criminal revision case has been filed.

2.When the matter was taken up for hearing, there is no representation on the side of the petitioner. Therefore, this Court directed the Registry to appoint a legal Aid Counsel. Today, when the matter was taken up for hearing, the learned Legal Aid Counsel apart from reiterating the contentions set out in the memorandum of grounds, contended that since the deceased cyclist attempted to suddenly over take the vehicle going in front and that is how, the accident had taken place. In view of the topography of the area, the bus in question could not have been driven in a rash manner. She wanted this Court to reverse the Judgments of the Courts below and acquit the revision petitioner.

3.Per contra, the learned Government Advocate(Crl.side) contended that the Judgments of the Courts below do not warrant any interference.

4.I carefully considered the rival contentions and perused the evidence on record. It cannot be in dispute that the revision petitioner was the person who was driving the bus which caused the accident. P.W.12-Lakshmi Narayanan was the Manager of the Private Bus through whom Ex.P8 was marked. He had categorically deposed that the bus in question was driven by the petitioner herein. Therefore, there cannot be any doubt on that score. The question is whether the petitioner had negligently driven the bus, so as to cause the accident. A mere look at Ex.P9-Rough Sketch would show that the Bus was going from south to north. The Cyclist was also going in the very same direction. The accident had taken place on the western side of the road that is left side of the road. The Bus had hit the cycle only from behind. These circumstances clearly establish that it was the petitioner who was at fault. The Cyclist cannot be blamed. As many as three persons who had witnessed to the occurrence, had deposed before the Court in support of the prosecution. There is no reason as to why their testimony should be disbelieved. More than anything else, when both the Courts below



have concurrently held that the petitioner was guilty of the offence under Section 304 A of IPC, in exercise of my revisional jurisdiction, I see no ground to interfere. The Judgments of the Courts below are well founded and proper reasoning and credible evidence. There is no merit in the revision case. This criminal revision case stands dismissed. The trial Magistrate shall take steps to enforce this order.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Additional Sessions Judge (EC Court), Thanjavur.
- 2.The Judicial Magistrate No.3, Thanjavur.
- 3.The Principal Sessions Judge, Thanjavur.
- 4.The Chief Judicial Magistrate, Thanjavur at Kumbakonam.
- 5.The Inspector of Police, Ayyampettai Police Station, Thanjavur District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.MARIA VINOLA, Advocate SR-72117.

Cr1.R.C(MD)No. 94 of 2011
28.06.2019

CS: 17/07/2019 3P 8C