

**BAIL SLIP**

Revision Petitioner, namely D.Paramasivam, S/o.Duraipandi was directed to be released on bail in and by the order of this Court dated 31.01.2012 made in MP(MD)No.1 of 2011 in CRL RC(MD)No.978 of 2011

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 27.06.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1.R.C. (MD)No.978 of 2011**

D.Paramasivam

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.
(Crime No.15 of 2009)

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records pertaining to the judgment and order dated 09.11.2011 passed in Cr1.A.No.16 of 2011 by the learned Principal Sessions Judge, Ramanathapuram, confirming after modifying the judgment and sentence dated 15.07.2011 passed in C.C.No.6 of 2010, by the learned Chief Judicial Magistrate, Ramanathapuram and set aside the same and allow the revision.

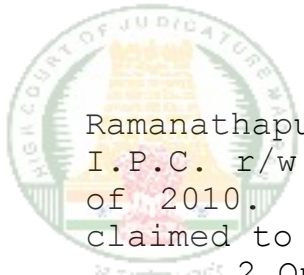
For Petitioner : Mr.A.Jayaramachandran

For Respondent : Mr.A.Robinson

Government Advocate (Cr1. Side)

O R D E R

The case of the prosecution is that the petitioner was driving a car bearing Registration No.TN 65 H 1531 Toyato on 17.01.2009 at about 06.00 a.m. in Devipattinam National Highway and when he was crossing Arunthathiyar colony he hit one Chandran from behind and caused him injuries leading to his death on the next day that is 18.01.2009 at about 07.15 hours. Therefore Crime No.15 of 2009 was registered on the file of Kenikarai Police Station, originally under Sections 279 and 377 of I.P.C. r/w. Section 185 of Motor Vehicles Act. After Chandran passed away, the FIR was altered and the offence under Section 304(A) of I.P.C. was incorporated. Investigation was undertaken and final report was filed before the learned Chief Judicial Magistrate/Assistant Sessions Judge,



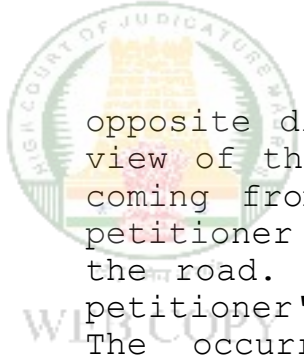
Ramanathapuram. Cognizance of the offence under Section 304(A) of I.P.C. r/w Section 185 of Motor Vehicles Act was taken in C.C.No.6 of 2010. The petitioner pleaded not guilty to the charges and claimed to be tried.

2. On the side of the prosecution as many as 10 witnesses were examined. Ex.P.1 to Ex.P.10 were marked. The accused did not adduce any evidence.

3. The learned Trial Magistrate by judgment dated 15.07.2011 convicted the petitioner for the offence under Section 304(A) of I.P.C. and sentenced him to six months imprisonment and levied fine of Rs.5,000/-. The learned Trial Magistrate also convicted the petitioner under Section 185 of Motor Vehicles Act and directed him to pay a fine of Rs.1,000/-. Default sentences were also imposed. Challenging the same, the petitioner filed C.A.No.16 of 2011 before the learned Principal District and Sessions Judge, Ramanathapuram. By judgment dated 09.11.2011, the learned Appellate Judge acquitted the petitioner in respect of Section 185 of Motor Vehicles Act but sustained the conviction and sentence imposed on the petitioner under Section 304(A) of I.P.C. Challenging the same, this criminal revision case has been filed.

4. When the matter was taken up for hearing, the learned counsel appearing for the revision petitioner strongly contended that the judgments of the Courts below deserve to be reversed. He pointed out that the road in question is a "S" type curved road. He also drew the attention of this Court to the deposition of P.W.1 and P.W.2, who are said to be eye witnesses to the occurrence. Even they have fairly admitted that in the view of the curved nature of the road, it is not possible for the driver to see the vehicle which is coming from the opposite direction. He would further contend that admittedly the accident took place right in front of the school. Since it was a school zone, barricade had been erected and there was also a speed-breaker. Hence, the petitioner could not have driven the vehicle in a rash and negligent manner. Therefore, the essential ingredient of Section 304(A) of I.P.C. has not been fulfilled in this case. He also highlighted the fact that the deceased did not suffer serious injury. In fact he died only on the next day in the hospital. No major injuries were seen on the person of the deceased. He also lays importance on the suggestion made to the prosecution witnesses that another vehicle had actually hit the petitioner's vehicle from behind and it was that vehicle which was actually the offending vehicle. The petitioner's counsel also reiterated all the other contentions set out in the memorandum of grounds.

5. I am unable to agree with the submission of the petitioner's counsel. Ex.P.8/rough sketch was prepared by P.W.10. No suggestion has been put to the said witness that the preparation of the rough sketch was erroneous. The petitioner admittedly was driving his vehicle from north to west in the road in question. If the petitioner had hit the vehicle coming from the

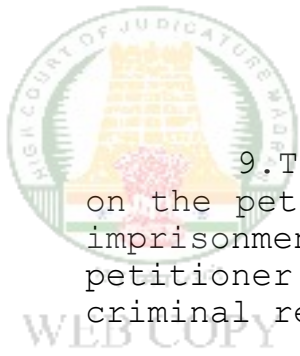


opposite direction then probably, he can have the defense that in view of the curved nature of the road, he did not see the vehicle coming from the opposite direction. But then, in this case the petitioner had hit a pedestrian, who was walking on the same side of the road. After hitting the pedestrian, who was thrown away, the petitioner's vehicle hit the school compound causing damage to it. The occurrence had taken place on the extreme eastern end. Therefore, I can come to the safe conclusion that because of the rash and negligent driving of the petitioner, the accident in question had occurred.

6.It is true that the petitioner was charged with the offence under Section 185 of Motor Vehicles Act and that he was acquitted on this score by the Appellate Court. The acquittal of the Appellate Court was on a technical ground because the petitioner's blood sample was not taken, the Court below chose to acquit him on that score. I am of the view that notwithstanding the acquittal of the petitioner for the offence under Section 185 of Motor Vehicles Act, this Court can still come to the conclusion that the petitioner was under the influence of alcohol during the relevant time. P.W.1 and P.W.2, who are eye witnesses have categorically deposed that when the accident occurred, the petitioner herein was in a drunken condition. They had deposed that the smell of alcohol was coming from him. In fact that is the version of the police also. In fact the Doctor/P.W.9, who examined the petitioner had also stated that the petitioner reeked of alcohol smell. After examining the petitioner, she issued Ex.P.9 certificate. When she was cross-examined, suggestion put to her was that if cough syrup was taken in excess quantum, one would walk in an unsteady manner. From this suggestion put by the petitioner's defence counsel during cross examination of P.W.9 / Doctor, one can come to the conclusion that the accused had admitted that his gait was unsteady.

7.Both the Courts below have concurrently found that it was the petitioner who was guilt of rash and negligent driving and who was responsible for the accident in question. It is true that the accident in question took place near a school zone. Even though the drivers are cautioned not to be rash and negligent when passing through the school zone, the caution is not always heeded to. Therefore this Court cannot assume that merely because it was a school zone, the petitioner would have been a little more careful. Since the petitioner consumed alcohol, he was not aware of the school zone. The fact that the petitioner had hit the deceased from behind and that thereafter hit the school compound is enough to prove the rash and negligent driving of the petitioner.

8.The Doctor, who conducted postmortem on the deceased has deposed that the deceased/Chandran had suffered internal injury and on account of the injury suffered in the accident, he died. Therefore, the prosecution had proved its case against the petitioner beyond reasonable doubt. The Courts below had come to a correct finding after proper appreciation of the evidence on record.



9. Taking note of the petitioner's age, the sentence imposed on the petitioner is reduced from six months to three months simple imprisonment. The period of imprisonment already undergone by the petitioner will be adjusted in terms of Section 428 of Cr.P.C. The criminal revision case is partly allowed accordingly.

Sd/-

Assistant Registrar (Crl Side)

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Sub Assistant Registrar (CS)

To:

1. The Principal Sessions Judge, Ramanathapuram.
2. The Chief Judicial Magistrate,
Ramanathapuram.
3. The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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

Cr1.R.C. (MD) No. 978 of 2011
27.06.2019

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KK/SAR/18.07.2019/4P-7C