

BAIL SLIP

Petitioner/Accused herein Viz R.Kesavakannam, 36 years has directed to be the released on bail as per order of this Court dated 24/04/2015 MP No.1/15 in CrI.R.C.No.249 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.R.C.No.249 of 2015

R.Kesava Kannan,
S/o.Rajakannu

...Petitioner/Accused

versus

State of Tamilnadu,
Rep. by Inspector of Police,
Sirkali Police Station,
Sirkali.Cr.No.418/2006

...Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records relating to the judgment dated 09.06.2014 made in Criminal Appeal No.18 of 2012 on the file of the learned District and Sessions Judge, Nagappattinam, in confirming the judgment dated 18.05.2012 in so far as confirming the conviction of the petitioner under Section 304(A) of IPC made in C.C.No.114 of 2007 on the file of the learned Judicial Magistrate, Sirkali and quash the same and allow the above Criminal Revision Petition.

For Petitioner : Mr.S.Giritharan

For Respondent : Mr.S.Karthikeyan

Additional Public Prosecutor

W E B C O P Y
O R D E R

Aggrieved over the concurrent findings made in C.C.No.114 of 2007 dated 18.05.2012 on the file of the learned Judicial Magistrate, Sirkali and in CrI.A.No.18 of 2012 dated 09.06.2014 on the file of the learned District and Sessions Judge, Nagappattinam, the petitioner, who is the appellant in the above referred appeal is before this Court by filing this Criminal Revision Petition to check the correctness of the judgments rendered by the Courts below.

2. The petitioner / appellant herein is the sole accused in C.C.No.114 of 2007 on the file of the learned Judicial Magistrate, Sirkali. By a judgment dated 18.05.2012, the learned Judicial Magistrate, Sirkali, convicted the revision petitioner for an offence under Section 304(A) of IPC and sentenced to undergo one year Simple Imprisonment.

3. Challenging the same, the petitioner filed an appeal before the learned District and Sessions Judge, Nagappattinam, in CrI.A.No.18 of 2012, wherein the learned District and Sessions Judge, Nagappattinam, affirmed the findings arrived at by the learned Judicial Magistrate, Sirkali and dismissed the appeal. Aggrieved over the same, the petitioner is before this Court with this revision petition.

4. The case of the prosecution, in brief, is as follows;

4.1. P.W.1-Senthil is the de facto complainant and the deceased-Saravanan was his son. On the day of occurrence, at about 09.15a.m., the deceased-Saravanan, who was aged about 3½ years, while he was playing in the mud portion of the road in front of P.W.1's house, the present revision petitioner driven the lorry bearing registration No.TN-28-0558 from west to east in a rash and negligent manner and dashed against the child and as a result, the deceased sustained multiple injuries and succumbed to the same. Immediately, after the occurrence, P.W.1 went to the police station and lodged a complaint under Ex.P.1.

4.2. Upon the complaint given by P.W.1, one Gunasekaran, the then Sub Inspector of Police, Sirkali, registered a case in Crime No.418 of 2006 for an offence punishable under Section 304(A) of IPC. The printed First Information Report was marked as Ex.P.5.

4.3. Immediately after registration of the case, P.W.10-Mathiyas, the then Inspector of Police, Sirkali, took up the investigation and on the same day, at about 11.30a.m., he visited the scene of occurrence and in the presence of witnesses, he prepared the observation mahazar under Ex.P.2. He drawn rough sketch under Ex.P.6. Further, he examined the witnesses and prepared the inquest report under Ex.P.7. After completing the above formalities, he sent a requisition to P.W.7 for conducting post mortem on the dead body of the deceased-Saravanan.

4.4. Upon receipt of the requisition given by P.W.10, P.W.7-Dr.V.Sumathi, attached with Government Hospital, Sirkali, conducted the post mortem on the dead body of the deceased-Saravanan and found the following injuries:

"External Injuries:

1. Abrasion left side of face.
2. Crush injury entire left UL C expert and fractured external joint.
3. Crushed rt hand.
4. Abrasion rt forearm.
5. Lacerated and crushed wound external left thigh.
6. Crush injury involve entire rt side of lower back extending into rt side of abdomen, intestines, liver and the under abdomen.

Internal injuries:

Abdomen : Exposed in the right side and the left side, liver pale, crushed. Intestines crushed pace, stomach crushed, contain no fluids, kidneys pale, spleen pale and crushed.

Thorax : # rt lower 2 ribs

Heart pale, clots blocks, Lungs pale

Skull : intact, Brain intact, no blood intact # of N hip joint."

4.5. According to P.W.7, the deceased would appear to have died of haemorrhage or block due to crush injury. In this regard, she issued a post mortem certificate under Ex.P.4.

4.6. In continuation of investigation, P.W.10 made arrangements for sending the vehicle, which caused the accident for inspection.

4.7. P.W.6-Sivakumar, the then Motor Vehicles Inspector, Mayavaram, on 07.06.2006, inspected the vehicle bearing Registration No.TN-28-0558 and issued a certificate under Ex.P.3 stating that the alleged accident had not occurred due to the mechanical defect found in the vehicle.

4.8. After receipt of the post mortem certificate and motor vehicles report, P.W.10 examined the Doctor and the Motor Vehicles Inspector and thereafter, he completed the investigation and came to the conclusion that the revision petitioner herein committed an offence under Section 304(A) of IPC and filed a final report accordingly.

5. Based on the above materials, the trial Court examined the accused under Section 304(A) of IPC and the accused denied the same and opted for trial. Therefore, in order to prove their case, on the side of the prosecution, as many as 11 witnesses were examined as P.W.1 to P.W.11 and 7 documents were exhibited as Ex.P.1 to Ex.P.7.

6. Out of the said witnesses, P.W.1-Senthil is the father of the deceased-Saravanan. He speaks about the occurrence as during the time of occurrence without blowing the horn, the deceased driven the lorry in a high speed and dashed against the deceased.

7. P.W.2-Ayyappan and P.W.3-Panneer Selvam, are the relatives of the P.W.1, they have stated as during the time of occurrence, the revision petitioner herein driven his vehicle in a high speed and dashed against the deceased.

8. P.W.4-Gurumurthy, is the resident of the same locality, he speaks about the preparation of observation mahazar and the rough sketch by the Investigating Officer.

9. P.W.5-Marimuthu, is also an occurrence witness, who attested in the observation mahazar.

10. P.W.6-A.Sivakumar, the Motor Vehicles Inspector deposed the details of examination made on the Lorry and issued a certificate as the accident had not happened due to mechanical defect in the vehicle.

11. P.W.7-Dr.V.Sumathi, speaks about the details of the post mortem conducted on the dead body of the deceased-Saravanan and about the nature of injuries sustained by him.

12. P.W.8-Veerapandian, the then Head Constable, speaks about the entrustment of the dead body to the Doctor for conducting post mortem.

13. P.W.9-Natarajan, is the owner of the vehicle, wherein the revision petitioner herein was employed as driver.

14. P.W.10-Mathiyas and P.W.11-A.Murughan, are the police officers, speaks about the registration of the case, examination of the witnesses, sending dead body for conducting post mortem, sending lorry for conducting inspection and about filing of the final report.

15. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any documents on his side.

16. Having considered the materials placed before him and upon the arguments advanced by either side counsel, by a judgment dated 18.05.2012, the learned Judicial Magistrate, Sirkali found the accused guilty for an offence under Section

304(A) of IPC and sentenced him as stated in the second paragraph of this order.

17. Challenging the same, the petitioner filed a Criminal Appeal before the learned District and Sessions Judge, Nagappattinam. By a judgment dated 09.06.2014 in CrI.A.No.18 of 2012, the learned District and Sessions Judge, Nagappattinam, affirmed the findings arrived at by the learned Judicial Magistrate, Sirkali and dismissed the appeal. Aggrieved over the said judgment, the petitioner is before this Court with this petition.

18. I have heard Mr.S.Giritharan, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State. I have also perused the records carefully.

19. Initially, upon the report issued by P.W.6-A.Sivakumar, the prosecution established the fact that the alleged accident has not occurred due to the mechanical defect of the vehicle, which involved in the accident. Further, the evidence given by P.W.7-Dr.V.Sumathi, is clear in respect to the death of the deceased as only due to multiple injuries sustained by the deceased, he succumbed to the same. In respect to the evidences given by P.W.6 and P.W.7, there was no denial on the side of the accused.

20. Secondly, in order to prove the occurrence, 3 witnesses have been examined on the side of the prosecution as P.W.1 to P.W.3. In respect to the evidences given by P.W.1 to P.W.3, the learned counsel appearing for the revision petitioner would contend that the evidences given by the occurrence witnesses did not reveal the fact that during the time of occurrence, the revision petitioner driven the lorry in a rash and negligent manner. All the witnesses have stated before the trial Court as during the time of occurrence, the revision petitioner drove the lorry in a high speed and therefore, it cannot be said that the act committed by the revision petitioner constituted the offence of Section 304(A) of IPC.

21. Per contra, the learned Additional Public Prosecutor appearing for the respondent police would contend that in the evidence given by P.W.1, he has narrated that during the time of occurrence, without blowing the horn, the revision petitioner driven the lorry, which amounts to negligence on his part. In this regard, the Courts below came to the same conclusion that during the time of occurrence, the revision petitioner herein drove the lorry in a rash and negligent manner and ultimately, convicted the revision petitioner.

22. Now, on considering the relevant records with the submissions made by the learned counsels appearing on either side, it is true while at the time of evidence given by P.W.1, the de facto complainant has stated that during the time of occurrence, the petitioner driven his lorry without blowing the horn. On the other hand, in respect to the place of occurrence, it was stated by P.W.1 to P.W.3 as the alleged occurrence had happened in front of the house of P.W.1.

23. On the other hand, the sketch prepared in the scene of occurrence shows that the occurrence had happened in the opposite side of the road. In this regard, during the time of trial, nothing was suggested before the Investigating Officer as the alleged occurrence had not happened in a place which was narrated by the prosecution. Therefore, mentioning different place in the rough sketch is not sufficient to hold that the entire occurrence is a false one.

24. However, all the occurrence witnesses are stated before the trial Court as the alleged occurrence had happened in a mud area. Further, it was stated by P.W.1 himself as during the time of occurrence, he went to the grocery shop for purchasing groceries, which is situated opposite to his house. In this regard, during the time of cross-examination, P.W.1 has stated as he did not expect that his son has followed him. The said evidence shows that during the time of occurrence, the deceased had followed his father and attempted to catch his father, for which, it is necessary to cross the road, which is situated in front of the house of P.W.1.

25. Therefore, it is probable during the time of occurrence, the child, who was the deceased had attempted to cross the road. If such occurrence had happened, the revision petitioner alone is not responsible for the said occurrence. Hence, the said evidence given by P.W.1 is corresponding to the entries made in the rough sketch prepared by the Investigating Officer. So, it is made clear that the Courts below has not considered the same in perspective manner and convicted the accused, which is nothing but manifest error found in the judgments rendered by the Courts below.

26. In the light of the above discussions, I am of the considered opinion that the conviction and sentence awarded by the Courts below is liable to be set aside. Accordingly, it is set aside. The fine amount, if any paid, shall be refunded to him.

27. In the result, the Criminal Revision Petition is allowed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sri

To

- 1.The District and Sessions Judge,
Nagappattinam.
- 2.The Judicial Magistrate,
Sirkali.
- 3.The Chief Judicial Magistrate,
Nagapattinam.
- 4.The Inspector of Police, Sirkali Police Station,
Sirkali'.
- 5.The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.249 of 2015

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KKV/07/01/2021



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