

Bail Slip

The Petitioner / Accused Viz, Senthilrasu, S/o.Subramaniyan he and he was directed to be released on bail as per order of this Court, dated 09.07.2015 and made in M.P.No.1 of 2015 in CrI.R.C.No.682 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.11.2020

Pronounced on : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.R.C.No.682 of 2015

Senthilrasu ... Revision Petitioner/
Accused

VS.

State Rep. by its
The Inspector of Police,
Nagoor Police Station,
Nagapattinam District. ... Respondent /
(Crime No.121 of 2007) Complainant

Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the judgment dated 28.03.2014 in C.A.No.105 of 2010 on the file of the Fast Track Mahila Court, Nagapattinam, modifying the judgment dated 06.09.2010 in C.C.No.343 of 2007 on the file of the Judicial Magistrate No.II, Nagapattinam.

For Revision Petitioner: Mrs. Greetha Senthilkumar

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

The Revision Petitioner is the accused in C.C.No.343 of 2007 on the file of the learned Judicial Magistrate No.II, Nagapattinam. The respondent laid final report against him alleging that the petitioner had committed an offence punishable under Sections 279, 337 and 304-A of IPC. By judgment dated 06.09.2010, the learned Judicial Magistrate No.II, Nagapattinam, convicted the petitioner for the offence under Section 279 IPC and sentenced him to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one month. He has convicted the revision petitioner for the

offence punishable under Section 337 of IPC (2 counts) and sentenced him to pay a fine of Rs.500/- and in default to undergo simple imprisonment for one month for each count. Further, the revision petitioner was convicted for the offence punishable under Section 304-A of IPC and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for two months. Challenging the same, he filed an appeal in C.A.No.105 of 2010.

2. The learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, by judgment dated 28.03.2014, has dismissed the appeal. However, he modified the sentence of simple imprisonment for one year, which was awarded for the offence under Section 304-A IPC into that of simple imprisonment for six months. In respect to other offences, he confirmed the sentence awarded by the trial Court.

3. The case of the prosecution, in brief, is as follows:

(i) The deceased Megala is the daughter of PW1-Gunasekaran. On 03.03.2007 at about 2.30pm, PW1 along with the deceased and with his grand child born to the deceased travelled in a Bajaj M-80 motorcycle. When at the time, the motorcycle reached the South Paalpannaicherri Mariamman Temple, PW1, drove the same at the extreme left side of the road. At that time, a bus bearing Regn.No.PY02-C-3535, driven by the revision petitioner, rashly and negligently, came behind the two wheeler without any horn and hit against the Bajaj M-80 Vehicle. Resultantly, the deceased Megala was thrown out from the two wheeler and the bus ran over on her. In the Government Hospital, Nagapattinam, on the same day at about 3.00pm, the doctors declared the death of the deceased Megala. In the said accident, both the PW1 and his grandson sustained simple injury. For the said accident, PW10-Mr.Mookan, Head Constable, Nagoor Police Station, after receipt of the statement given by the PW1, registered the case in Cr. No.121/07 for offence under Sections 279, 337 and 304-A of IPC and thereafter, he handed over the case records to PW13-Kurnanithi, the then Inspector of Police, Nagoor Police Station for investigation.

(ii) During the time of investigation, PW13, examined the witnesses who are all present at the time of occurrence and recorded the statements. Further, he recovered the bus and produced the same before the Motor Vehicles Inspector and obtained a report that the alleged accident is not due to the mechanical fault of the bus.

(iii) PW11-Dr.Ananthakrishnan, attached with Government Hospital, Nagapattinam, conducted the post-mortem over the dead body of the deceased Megala and gave opinion that the death would have been occurred due to the shock and haemorrhage of multiple injuries sustained in the road accident. Further, the same Doctor examined the PW1 and his

grandson and issued the wound certificates that he and his grandson sustained simple injury.

(iv) After completing the said formalities, the PW13 completed the investigation and filed a final report, before the learned Judicial Magistrate No.-II Nagapattinam. The First Information Report prepared by PW10, two inspection reports given by the Motor Vehicle Inspectors, post-mortem certificate and wound certificates are marked as Exs.P1, P3, P4, P6, P7 and P8, respectively. More than that, the Inquest Report prepared by PW13 in respect to the cause for death is marked as Ex.P10.

4. Based on the above materials, the trial Court tried the accused for the offence under Section 304-A of IPC. The accused denied the same. In order to prove the charges, the prosecution examined as many as 13 witnesses, of whom, PW1 and PW2 are the eye witnesses. PW11, is the Doctor, attached with Government Hospital, Nagapattinam, who conducted post mortem and issued post-mortem certificate. Similarly, PW12, is the Doctor, attached with the same hospital, who examined the injured and issued the wound certificates. PW10 and PW13 are the then Head Constable and the Inspector of Police, Nagoor Police Station, respectively, who registered the case, completed the investigation and filed the final report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the Revision Petitioner herein denied the same as false. According to the defence taken, PW1 has rashly driven his two wheeler and without seeing the bus, which came behind his vehicle, has dashed against the left side of the bus. Thus, according to the revision petitioner, he has not committed any offence under Sections 279, 337 and 304-A of IPC.

6. Having considered all the above materials, the trial Court found the accused/revision petitioner guilty under Sections 229, 337 and 304-A IPC and the lower Appellate Court confirmed the same. That is how, the accused is before this Court with this revision.

7. I have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent State and also perused the records carefully.

8. The evidence given by PW7-Mr.Senthilvelan, the Motor Vehicles Inspector, Nagapattinam, is sufficient to hold that the alleged accident had not happened due to the mechanical defect of both the vehicles. In this regard, the certificates issued under Exs.P3 and P4, are not disputed on the side of the revision petitioner. Further, in respect to the death of deceased Megala and in respect to the injuries sustained by PW1 and his grandson, the evidence given by PW1 and PW2, is very clear. In that regard the post mortem certificate issued

by the PW11 was marked as Ex.P6 and the wound certificates issued by the PW12 are marked as Exs.P7 and P8, respectively. Herein also in respect to those documents there was no denial on the side of the revision petitioner. In the said circumstances, both the Courts below came to the conclusion that the evidence given by the PW1 to PW4 are clear and cogent, for proving the offence that only due to the negligent act of the revision petitioner, the alleged accident had happened.

9. It is true the evidence given by the PW1 and PW2 is very clear that at the time when the occurrence had happened, the revision petitioner alone drove the offending vehicle. Further, their evidence and the rough sketch which had been prepared by PW13 reveal the fact that just in front of the occurrence place, a bus stop is situated. Only at the time when the revision petitioner attempted to stop his vehicle at the bus stop, he drove his vehicle on the extreme left side and dashed against the two wheeler, which was driven by the PW1. It is the duty vested upon the revision petitioner that before parking the vehicle, in the bus stop, he should see the vehicle which are all found near to the bus stop. But here it is a case, the left side of the front foot board of the bus alone hit against the two wheeler. Resultantly, PW1 and his daughter fell down and thereafter, the bus ran over the deceased Megala.

10. Only observing as above, both the Courts below came to the conclusion that the revision petitioner alone is responsible for the accident. In the said circumstance, it cannot be said that the findings arrived at by the lower appellate Court is a perverse one.

11. It is the settled position that the revisional jurisdiction could be exercised only in exceptional cases when there is a gross defect in the procedure or there is a manifest error in law or miscarriage of justice. But, here it is a case, the judgment rendered by the Courts below is not having any defect or error.

12. Coming to the point of the punishment, the first appellate Court has modified the sentence of simple imprisonment for one year into that of simple imprisonment for six months for the offence under Section 304 - A of IPC. Nowadays, considering the number of accidents happening, it cannot be said that the punishment awarded by the first appellate Court is disproportionate to law. Therefore, this Court is of the considered opinion that the proportionate punishment alone is given to the revision petitioner and accordingly, the Criminal Revision Case is dismissed and is ordered as follows:

- (i) The conviction and sentence imposed upon the revision petitioner / accused, by the judgment

dated 28.03.2014 in C.A.No.105 of 2010 on the file of the Fast Track Mahila Court, Nagapattinam, modifying the judgment dated 06.09.2010 in C.C.No.343 of 2007 on the file of the Judicial Magistrate No.II, Nagapattinam, is confirmed.

(ii) Since the revision petitioner/accused is on bail, the trial Court shall take steps to secure the revision petitioner/Accused to commit him in prison to serve out the remaining period of sentence.

(iii) The period of sentence already undergone by the appellant/accused, shall be set off under Section 428 of the Code of Criminal Procedure.

sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Fast Track Mahila Court,
Nagapattinam.
2. The Judicial Magistrate No.II,
Nagapattinam.
3. -do- thro The Chief Judicial Magistrate,
Nagapattinam.
4. The Inspector of Police,
Nagoor Police Station,
Nagapattinam District.
5. The Public Prosecutor,
High Court, Madras.
- 6 . The Superintendent,
Central Prison,
Cuddalore.

Pre-delivery order in
Crl.R.C.No.682 of 2015

PA CO
SDR 17/12/2020