

BAIL SLIP

The Accused namely, S.Gnanasekar S/o.Seenuvasan was enlarged on bail vide order dated 13.01.2015 made in MP.NO.1/15 IN Crl.R.C.No.7 of 2015 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.11.2020

Pronounced on : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.7 of 2015

S.Gnanasekar

...Revision Petitioner/Accused

.VS.

State Rep. by its
The Inspector of Police,
Kanchi Taluk Police Station,
Kanchipuram,
Kanchipuram District.

...Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 of of the Code of Criminal Procedure, against the judgment dated 18.12.2014 in C.A.No.2 of 2014 on the file of the District and Sessions Court No.II, Kanchipuram, by reducing the sentence of imprisonment and confirming the rest of the judgment dated 05.02.2014 in C.C.No.34 of 2011 on the file of the Judicial Magistrate No.II, Kanchipuram.

For Revision Petitioner : Mr.K.G.Senthil Kumar

For Respondent : Mr.S.Karthikeyan

Additional Public Prosecutor

O R D E R

The Revision petitioner is the accused in C.C.No.34 of 2011, on the file of the Judicial Magistrate-II, Kancheepuram. The respondent laid final report against him before the said Court alleging that the petitioner had committed an offence under Sections 279 and 304-A of IPC. By judgment dated 05.02.2014, the learned Judicial Magistrate No.II, Kancheepuram, convicted the petitioner under Section 279 of IPC and sentenced him to pay a fine of Rs.500/-, in default to under go simple imprisonment for one week. Further, the petitioner herein was convicted for the offence under Section 304-A of IPC and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for two weeks. Challenging the same, he filed an appeal in CA No.2 of 2014.

2. The learned Sessions Judge, Sessions Court No.II, Kancheepuram, by judgment dated 18.12.2014 had partly allowed the appeal and modified the sentence to simple imprisonment for three months instead of simple imprisonment for six months, which was awarded by the trial Court for the offence under Section 304-A IPC.

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

(i) On 03.05.2010, at about 2.15am, when at the time PW1-Venkatesan was standing near to the Chennaiyan Chathiram, he heard a noise from the bus stop. On seeing the same, he found a car bearing Regn.No.TN09-AZ-3970 has dashed against the bus bearing Regn.No.TN-21-N-0874, which was stationed in the bus stop. Immediately after seeing the same, PW1 rushed to the place of occurrence and made arrangements for sending the injured to the hospital. Further he preferred a complaint before the B3 Kanchi Taluk Police Station, Kancheepuram under Ex.P1. Upon complaint given by the PW1, a case has been registered in Cr.No.369 of 2010 against the accused under Sections 279 and 304-A of IPC. The printed FIR is marked as Ex.P9.

(ii) After the registration of the case, PW9-Mr.Sampath, the then Inspector of Police, Kanchi Taluk Police Station, took up the same for investigation. He arrested the accused and sent him to the judicial custody. Thereafter, since he was transferred from the said post he handed over the case records to his successor, PW9-Sivaveliappan, the Inspector of Police, for investigation, in turn, he visited the scene of occurrence and prepared an observation mahazar under Ex.P10. He drawn the rough sketch under Ex.P11. He conducted the enquiry and prepared the inquest report over the dead body of Ramesh. The Inquest report prepared by him was marked as Ex.P12. He examined the witnesses and recorded their statements. Further, he referred the vehicles which are all involved in the accidents for Motor Vehicle Inspection.

(iii) In this regard, PW7-Mr.Madhavan, Motor Vehicles Inspector, as per the requisition made by the Investigation Officer examined the vehicled and issued a report under Exd.P7 and P8 stating that the alleged accident had not occurred due to the mechanical defect of the vehicles, which are all involved in the accident.

(iv) Further, PW6-Dr.Senkuttuvan, who conducted the postmortem had given an opinion that the death is due to the shock and haemorrhage, as a result of multiple injury sustained by the deceased Ramesh in the road accident. Postmortem report is marked as Ex.P6.

(v) In continuation of the investigation, PW12, Anumanthan,

the Inspector of Police, took up the case for investigation and altered the sections of law as 279 and 304-A IPC under Ex.P13. Subsequently after completion of the investigation, he filed a final report against the accused under Sections 279 and 304-A IPC.

4. Based on the above materials, the trial Court questioned the accused for the offence under Sections 279 and 304-IPC. The accused denied the same. Hence, in order to prove the offence now alleged, the prosecution examined as many as 13 witnesses, as PW1 to PW13. Further, 14 documents were marked as Exs.P1 to P14.

(i) Out of the said witnesses, PW1-Mr.Venkatesan, claims that he is an eye witness. PW2-Mr.Kumar, is the hear say witness, who has attested in the observation mahazar, which was prepared by the investigation officer. PW3-Mr.Jayaraman, has also heard the news through some other person. PW4-Dr.Nagarajan, attached with Government Hospital, Kancheepuram treated the injured Ramesh and further he only declared the death of the said Ramesh on 03.05.2010 at about 11.00pm. More than that, he gave treatment to the one Gnanasekaran, who is the injured/revision peritioner, sustained injury in the alleged accident.

(ii). PW5-Dr.Kalpana, attached with Government Hospital, Kancheepuram is the Doctor, who treated the accused and issued Accident Register under Ex.P5. Similarly, PW6-Dr. Senkuttuvan, is the Doctor attached with Government Hospital, Kancheepuram, who conducted the autopsy over the dead body of the deceased Ramesh. He gave opinion that the death of the said Ramesh is due to the shock and haemorrhage, as a result of multiple injuries sustained by him in the road accident.

(iii). PW7-Mr.Madhavan, Motor Vehicles Inspector, who examined the vehicles which are all involved in the accident and issued the certificate under Exs.P7 and P8 stating that the accident is not due to the mechanical defect of the vehicles.

(iv). PW8-Mr.Sivaveliappan and PW9-Mr.Sampath are the then Inspectors of Police, Kancheepuram Police Station, who conducted a portion of the investigation.

(v). PW10-Ramesh, is the driver of the bus and he has stated about the rash and negligent act of the accused. PW11-Bhoopathy, is a hear say witness. He has not stated anything about the alleged accident.

(vi). PW12-Anumanthan, is also an Inspector of Police, attached with Kancheepuram Taluk Police Station, who had

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., he denied the same as false. According to the defence taken, none of the witnesses examined on the side of the prosecution had stated about the negligent act of the accused.

6. Without considering the same perspectively, the first Appellate Court confirmed the conviction and sentence awarded by the trial Court, which is erroneous in law and the said finding is perverse. 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 the Doctor, is very clear that only due to the multiple injuries sustained by the deceased due to the present road accident, the deceased has died. Further, evidence given by the Motor Vehicles Inspector and the certificates issued by him, prove the fact that the alleged accident is not due to the mechanical defect of the Motor Vehicles.

9. Therefore, only aspect which is necessary to be decided in this revision is whether the findings arrived at by the trial Court is based on the materials supplied by the prosecution or not. In this regard, to prove the rash and negligent act of the revision petitioner, PW1 and PW10 alone gave evidence claiming that they are the eye witnesses. Both of them have stated before the trial Court that only after hearing the sound from the backside of the bus, they understood that a car has dashed behind the bus. In otherwise, in respect to the participation of the accused and also in respect to the rash and negligent act of the revision petitioner, they have not stated anything in support of the prosecution. So, without any evidence for proving the rash and negligent act of the revision petitioner, this Court cannot come to the conclusion that the prosecution proved the case beyond reasonable doubt. On that score alone, this Court is of the considered opinion that the judgement rendered by the first appellate Court is having a manifest error and also the same is perverse in law.

10. For proving the offence under Section 304-A of IPC, the prosecution must necessarily prove the negligent act of the revision petitioner. But herein it is the case, the evidence examined on the side of the prosecution, is not at all having any trust worthy and also the entire evidence given by PW1 and

PW10 makes it clear that they have not seen the rash and negligent act of the revision petitioner. Accordingly, this Court is of the considered opinion that the prosecution has not proved the case beyond reasonable doubt.

11. Therefore, the Criminal Revision Case is allowed and the conviction and sentence imposed on the revision petitioner by the Courts below is set aside and revision petitioner is acquitted of all charges. Fine amount, if any, paid by him, shall be refunded to him. Bail bond if any shall stand cancelled.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

To

1. The District and Sessions Court No.II,
Kanchipuram.
2. The Judicial Magistrate No.II,
Kanchipuram.
3. The Inspector of Police,
Kanchi Taluk Police Station,
Kanchipuram,
Kanchipuram District.
4. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

Pre-delivery order in
Crl.R.C.No.7 of 2015

cp (co)
rr ii (08/12/2020)

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