

Bail Slip

This Petitioner herein/Accused Viz. K.Sivakumar, (M/33), Son Of Kasiyannan was released on bail as per order of this court dated 19/11/2014 in Mp.1/14 in Crl Rc.1155/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.1155 of 2014

K.Sivakumar,
S/o.Kasiyannan

...Petitioner/Accused

versus

The Inspector of Police,
Kolathur, Mettur Taluk,
Salem District.

...Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the judgment dated 14.08.2014 made in Criminal Appeal No.117 of 2012 on the file of the learned I Additional District and Sessions Judge, Salem, in confirming the judgment dated 15.10.2012 in so far as confirming the conviction of the petitioner under Sections 279, 337, 338 and 304-A of IPC made in C.C.No.10 of 2008 on the file of the learned Judicial Magistrate No.I, Mettur and quash the same and allow the above Criminal Revision Petition.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.S.Karthikeyan

Additional Public Prosecutor

O R D E R

Aggrieved over the concurrent findings made in C.C.No.10 of 2008 dated 15.10.2012 on the file of the learned Judicial Magistrate No.1, Mettur and in Crl.A.No.117 of 2012 dated 14.08.2014 on the file of the learned I Additional District and Sessions Judge, Salem, 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.10 of 2008 on the file of the learned Judicial Magistrate No.1, Mettur. By a judgment dated 15.10.2012, the learned Judicial Magistrate No.1, Mettur, convicted the revision petitioner for an offence under Section 279 of IPC and to pay a fine of Rs.500/-, in default to undergo one week Simple Imprisonment. Further, he was convicted for the offence under Section 337 of IPC and to pay a fine of Rs.500/- on each count (9 counts), in default to undergo Simple Imprisonment for one month and sentenced to pay a fine of Rs.750/- on each count (2 counts), in default to undergo one month Simple Imprisonment for the offence under Section 338 of IPC. The learned Judicial Magistrate further convicted the revision petitioner under Section 304-A of IPC and sentenced to undergo six months Rigorous Imprisonment (2 counts).

3. Challenging the same, the petitioner filed an appeal before the learned I Additional District and Sessions Judge, Salem, in CrI.A.No.117 of 2012, wherein the learned I Additional District and Sessions Judge, Salem, affirmed the findings arrived at by the learned Judicial Magistrate No.1, Mettur 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 to P.W.9 are the residents of Lakkampatty Village. On 26.08.2007, P.W.1 to P.W.9, the deceased Malarkodi, Thambi @ Chinnathambi and others who are all injured, were travelled in a Minidor Auto bearing Registration No.TN-36-H-1744, which was driven by the accused towards Kolathur, Salem District. While the vehicle approaching Neethipuram, due to the negligent driving of the accused, the vehicle capsized and resulted in causing death to the deceased Malarkodi on the spot and causing injuries to others.

4.2. Immediately, the injured persons were taken to the Government Hospital, Mettur. P.W.23-Dr.Nirmala, examined P.W.1-Dhanam, at about 4.20p.m. and issued Accident Register Copy under Ex.P.11 and sent intimation to the Kolathur Police Station. Thereafter, P.W.30-Krishnan, Inspector of Police, at about 6.30p.m., reached Mettur Government Hospital and recorded the statement from P.W.1-Dhanam under Ex.P.1 and registered the First Information Report under Ex.P.20 in Crime No.234 of 2007 for the offences under Sections 279, 337, 338 and 304-A of IPC.

4.3. On the same day, P.W.30 examined P.W.1-Dhanam, P.W.6-Rani, P.W.4-Malayammal, P.W.5-Vijayakumar, P.W.7-Rajkumar, P.W.8-Vijaya and recorded their statements. On the next day, at

about 6.00p.m., he inspected the scene of occurrence and in the presence of P.W.10-Kandasamy, P.W.18-Perumal, he prepared observation mahazar under Ex.P.21. He drawn rough sketch under Ex.P.22. He held inquest on the dead body of the deceased Malarkodi and prepared inquest report under Ex.P.23 and sent the dead body of the deceased Malarkodi to post mortem through P.W.27-Subramanian, the then Head Constable.

4.4. P.W.24-Dr.Rameshkumar, conducted post mortem on the dead body of the deceased Malarkodi, on 27.08.2007, at about 9.55a.m. and found 9 external injuries all over the body and after examination issued post mortem certificate under Ex.P.14. He gave opinion as the deceased would appear to have died of shock and haemorrhage due to injury on the vital organs.

4.5. Thereafter, P.W.30 enquired P.W.10-Kandasamy, P.W.18-Perumal, P.W.16-Subbu @ Subramani, P.W.11-Thangaraj, P.W.12-Selvi, P.W.13-Palanisamy, P.W.14-Gopal, P.W.17-Kandasamy and recorded their statements. On 28.08.2007, at about 8.30a.m. he arrested the accused and produced him before the learned Judicial Magistrate and remanded to judicial custody and the vehicle TN-36-H-1744 was seized and sent for Motor Vehicles Inspector for examination.

4.6. P.W.22-Kaliappan, the Motor Vehicles Inspector inspected that Minidor Auto, on 28.08.2007 and issued certificate under Ex.P.6 stating that the alleged accident has not occurred due to the mechanical defect found in the vehicle.

4.7. On 01.09.2007, P.W.30 received intimation that Thambi @ Chinnathambi, who was undergoing treatment at Salem Government Hospital was succumbed to injuries. On 02.09.2007, at about 6.30a.m., P.W.30, conducted the inquest on the dead body of the deceased Thambi @ Chinnathambi at Salem Government Hospital in the presence of Panchayators. Thereafter, the dead body was sent to post mortem with a requisition through P.W.27-Subramanian, the then Head Constable.

4.8. P.W.28-Dr.Kesavalingam conducted the post mortem of the deceased Thambi @ Chinnathambi, on 02.09.2007 and found 5 external injuries all over the body and gave opinion that the deceased would appear to have died due to effects of head injury. He issued post mortem certificate under Ex.P.18.

4.9. P.W.30 enquired P.W.15-Chinnappan, P.W.19-Aandiappan, P.W.20-Chinnathambi, P.W.21-Theivam and recorded their statements. On 21.10.2007, P.W.30 received the Motor Vehicles Inspection Report under Ex.P.6. On the same day, he enquired P.W.23-Dr.Nirmala, P.W.24-Rameshkumar and recorded their statements. Thereafter, he went to the Salem Government

Hospital and recorded the statements of Dr.Ravi, P.W.29-Dr.Divya, P.W.28-Dr.Kesavalingam. Thereafter, he examined P.W.25-Dr.Selvaraj, P.W.26-Dr.Loganathan and completed the investigation, filed a final report against the accused on 31.10.2007 under Sections 279, 337, 338 and 304-A of IPC.

5. Based on the above materials, the trial Court examined the accused under Sections 279, 337, 338 and 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 30 witnesses were examined as P.W.1 to P.W.30 and 25 documents were exhibited as Ex.P.1 to Ex.P.25.

6. Out of the said witnesses, P.W.1-Dhanam, has stated the occurrence before the trial Court as on 26.08.2007, while at the time she was travelling along with 17 others in a Minidor Auto, the same was driven by the accused, when the Minidor Auto nearing to Neethipuram, the revision petitioner herein driven the same in a rash and negligent manner, resultantly the vehicle capsized and thereby, the persons, who are travelled in the said Minidor Auto sustained multiple injuries, further, 2 persons were died. In this regard, P.W.1 lodged a complaint under Ex.P.1.

7. P.W.2 to P.W.8 are the occurrence witnesses, were stated in their evidences as during the time of occurrence, the revision petitioner driven the Minidor Auto in a negligent manner, which resulted in capsized of the vehicle.

8. P.W.9 to P.W.21 are the residents of the same locality, they are related to the deceased as well as to the injured. According to them, all of them heard the news and went to the scene of occurrence and made arrangements for getting treatment to the injured.

9. P.W.22-Kaliappan, the Motor Vehicles Inspector deposed the details of examination made on the Minodor Auto and issued a certificate as the accident had not happened due to mechanical defect in the vehicle.

10. P.W.23-Dr.Nirmala, P.W.25-Dr.Selvaraj, P.W.26-Dr.Loganathan and P.W.29-Dr.Divya, had stated about the treatment given to the injured and about the nature of injuries sustained by them.

11. P.W.24-Dr.Rameshkumar, speaks about the details of the post mortem conducted over the dead body of the deceased Malarkodi.

12. P.W.27-Subramanian, the then Head Constable, speaks about the details of requisition given to P.W.30.

13. P.W.28-Dr.Kesavalingham, speaks about the details of the post mortem conducted over the dead body of the deceased Thambi @ Chinnathambi.

14. P.W.30-Krishnan, is the police officer stated about the receipt of complaint, examination of the witnesses, preparation of inquest, details of requisition given to the Doctors for post mortem, receiving of wound certificates, obtaining the Motor Vehicles Inspector report 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. After perusing all the above materials placed, by a judgment dated 15.10.2012, the learned Judicial Magistrate No.I, Mettur, found the accused guilty for the offences under Sections 279, 337, 338 and 304-A of IPC and sentenced him as stated in the second paragraph of this order.

17. By a judgment dated 14.08.2014 in CrI.A.No.117 of 2012, the learned I Additional District and Sessions Judge, Salem, affirmed the findings arrived at by the learned Judicial Magistrate No.I, Mettur and dismissed the appeal. Aggrieved over the said judgment, the petitioner is before this Court with this petition.

18. I have heard Mr.S.Doraisamy, 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. The learned counsel for the petitioner / accused would contend that when at the time the deceased and others were travelled in a Minidor Auto for attending the marriage, due to the act of the God, the auto which was driven by the accused was capsized and thereby, some of the persons got injured and 2 persons were died. Since the offence is due to the act of the God, the petitioner is no way liable for the said offence. Accordingly, he prayed to set aside the conviction and sentence awarded by the Courts below.

20. Per contra, the learned Additional Public Prosecutor appearing for the respondent police on instructions would submit that in order to show the occurrence, number of persons gave evidences before the trial Court. All of them stated as during the time of occurrence, the accused herein driven the Minidor Auto in a rash and negligent manner and only

by the said reason, the alleged incident had occurred. Hence, he prayed to dismiss this petition.

21. I have considered the rival submissions made on either side and perused the records carefully.

22. Before the trial Court, initially, the Motor Vehicles Inspection Report issued by the Motor Vehicles Inspector was marked as ExP.6. In the said certificate, he gave opinion as the alleged accident had not occurred due to mechanical defect of the Auto. In this regard, there was no denial on the side of the accused and accordingly, the prosecution proved that the accident had not occurred due to the mechanical defect of the vehicle.

23. Secondly, it is the case of the prosecution that due to the result of accident, the deceased Malarkodi and Thambi @ Chinnathambi, were got multiple injuries and resultantly died. In this regard, the Doctors, who conducted post mortem have stated that the death would have been occurred only due to the multiple injuries sustained in the road accident. Herein also, in respect to the said evidence, and in respect to the validity of the post mortem certificates, there was no denial on the side of the accused. Accordingly, the prosecution proves only due to the petition mentioned accident, 2 persons have been died.

24. In respect to the injury sustained by the witnesses, the persons, who are all sustained injuries, were appeared before the trial Court and stated about the occurrence. Further, in order to prove the rash and negligent act of the accused, the persons, who sustained injuries have stated the occurrence before the trial Court without any contradictions. Moreover, on going through the entire evidences given by them, to impeach the said evidence, nothing was suggested on the side of the accused. The evidences given by the injured witnesses are clear that at the time of occurrence, the accused herein drove the vehicle with a high speed in negligent manner.

25. Further, here, it is a case, the accused herein knowing fully well about the capacity of the vehicle, has allowed 13 persons for travelling in a Minidor Auto, in fact, the said act is nothing but negligent act of the accused. In otherwise, on behalf of the accused, nothing was indicated from the evidences of occurrence witnesses as the entire occurrence had happened due to the act of God. Only in the said circumstances and after considering all the relevant factors, both the Courts below came to the correct conclusion that the accused found guilty for the offences under Sections 279, 337 (9 counts), 338 (2 counts) and 304-A (2 counts) of IPC.

26. In respect to the quantum of sentence, the learned counsel appearing for the petitioner would contend that the petitioner is a poor coolie and he is the only bread winner to his family. Due to the said accident, particularly, due to the damage of the Auto, he lost the auto and as of now, he is struggling like anything. Accordingly, he prayed to show some leniency in the matter of sentence.

27. Now considering the said submission with the relevant records, the evidences given by the occurrence witnesses show that they are residing in a remote villages, only for attending the marriage, they utilized the service of the accused. More than that, the revision petitioner facing this case for the past 13 years. Therefore, considering the said mitigating circumstances, I am of the considered opinion that the sentence of Rigorous Imprisonment of 6 months for the offence under Section 304-A of IPC awarded by the learned I Additional District and Sessions Judge, Salem in Crl.A.No.117 of 2012 dated 14.08.2014 to the petitioner is modified to the extent of 5 months instead of 6 months (2 counts) and the same was ordered to set off under Section 428 Cr.P.C. The sentences are ordered to run concurrently. The sentence awarded by the Courts below in respect to the offences under Sections 279, 337 and 338 of IPC shall remain unaltered. Since the appellant/accused is in bail, he shall undergo the remaining period of sentence, if any. Fine amount, if any paid is directed to be adjusted.

28. In the result, the Criminal Revision Petition is partly allowed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

sri

To

1.The I Additional District and Sessions Judge,
Salem.

2.The Judicial Magistrate No.I,
Mettur.

WEB COPY

3.The Chief Judicial Magistrate,
Salem District.

4.The Inspector of Police,
Kolathur, Mettur Taluk,
Salem District.

5.The Superintendent,
Central Prison, Salem.

6.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.s.Dorasamy, Advocate, sr no. 3903

Cr1.R.C.No.1155 of 2014

CA(CO)
RMP(12/03/2021)



WEB COPY