

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.8236 of 2020

in Crl.R.C.No.1182 of 2020

Saravanan

... Petitioner

Versus

State represented by
Inspector of Police,
Velgoundampatti Police Station
Namakkal District

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(3) and 439 of the Code of Criminal Procedure, to suspend the sentence passed by the learned Principal Sessions Judge, Namakkal in C.A.No.34 of 2019 vide judgment dated 13.01.2020 confirming the judgment dated 29.07.2019 passed in C.C.No.339 of 2014 on the file of the learned Judicial Magistrate No.I, Namakkal pending disposal.

For Petitioner : Mr.Om Sairam

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Judicial Magistrate No.I, Namakkal in C.C.No.339 of 2014, dated 29.07.2019, confirmed by the learned District and Sessions Judge, Namakkal in C.A.No.34 of 2019, dated 13.01.2020.

2..The petitioner who is an accused in C.C.No. 339 of 2014 for the offence under Sections 279, 337, 338 and 304(A) of IPC was convicted for offence under Section 304(A) of IPC and sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.5000/- by the learned Judicial Magistrate No.I, Namakkal by a judgment dated 29.07.2019. Aggrieved against the same, he had preferred an appeal before the learned Principal Sessions Judge, Namakkal in C.A. No. 34 of 2019. The learned Sessions Judgment by an judgment dated 13.01.2020 dismissed the appeal and confirmed the conviction and sentence of the trial Court, against which the petitioner has preferred this present revision.

3. The gist of the case is that on 04.03.2012 at about 13.30 hrs the Maxi cab driven by the petitioner TN 47 R 4730 was proceeding towards Namakkal in a rash and negligent manner and dashed against the police escort vehicle driven by PW.2, who was coming in the opposite direction. Due to which the passengers who were travelling in the maxi cab vehicle namely PW 4 to PW 6 sustained injuries and the occupants of the Bolero Jeep vehicle PW.1 to PW 3 sustained injuries. The occupant of the jeep Veersamy was rushed to the hospital, where he was declared dead. On the same day at about 4.00 p.m., PW1 had lodged complaint to PW.17 who visited the scene of occurrence, prepared observation mahazhar and rough sketch in the presence of witnesses. Thereafter PW 18 took up the investigation and also filed alteration report Ex.P.9. PW.19 subsequently took up the investigation and received the Post Mortem report and wound certificate of PW 4 and after completion of investigation filed charge sheet. The trial Court had examined PW. 1 to Pw.19 and marked Exhibits Ex.P.1 to Ex.P.14.

4. On the side of the defence no witnesses were examined and no documents were marked. On completion of trial the trial Court convicted the petitioner as stated above.

5. The contention of the petitioner is that in this case the escort vehicle of the Minister driven by PW2, Periyasamy was driven in a rash and negligent manner during that time the right tyre of the bolero jeep busted and the driver lost his control and dashed against the vehicle driven by the petitioner/ accused and caused damage to the his vehicle and caused injuries to the passengers as well as the persons travelling in the jeep. Since the jeep belongs to the police department the respondent police in a partition manner had conducted investigation and projected as though the petitioner is the cause and reason for the accident. PW.3 and PW.4 who are the occupants in the maxi cab vehicle had clearly stated that burst of the right side tyre of the jeep, treadled the jeep towards the opposite side dashed against Maxi Cab. PW. 14, the Motor Vehicle Inspector confirms the same and from the report Ex.P.4 it is seen that the right tyre of the bolero jeep was found burst and that is the reason for the accident. The petitioner is the victim of the accident and facing prosecution. The lower court placed reliance on the evidence of PW.1 to PW. 3 who are none other than the police persons travelling in the jeep, who stated that the accident had taken place due to the petitioner's rash and negligent driving which is not proper. The evidence of PW. 4 and 5 as well as the Motor Vehicle Inspector is clear that the accident has been caused due to the tyre burst. It is to be seen that in this case the Doctor who was examined as PW. 16/ Doctor attached to Gokulam hospital had examined PW. 1 and PW. 3 and issued Ex.P.6 and issued wound certificate. Another doctor who treated PW. 4 to PW 6 has not been examined. Likewise Post Mortem Doctor who issued Post Mortem Certificate Ex.P.11 was not examined. Post Mortem Certificate and wound Certificate of PW. 4, 5 and 6 Ex.P.12 to Ex.P.14, were marked through the investigating officer and the witnesses to the documents had not been examined. Thus PW.1

clearly stated that he was sitting behind the driver of the jeep and it is not possible for him to have clear vision of the accident. The trial Court failed to take note of the fact in head on collusion, there is no discussion with regard to the contributory factors on the part of the driver of the Bolero jeep. The trial Court failed to consider all these factors and had convicted the petitioner. The appellate Court failed to independently assess the evidence and materials and had mechanically dismissed the appeal.

6. The learned Additional Public Prosecutor would submit that in this case the police patrol vehicle escorting the labour Minister while proceeding towards Namakkal at the time the maxi cab vehicle that came in the opposite direction moved completely to the right side of the road and dashed against the escort vehicle caused head on collusion. Due to the accident a occupant of the bolero jeep died and three persons in the maxi cab vehicle sustained injuries and they were immediately taken to the hospital and thereafter complaint was lodged by PW.1 to P.W.17, who had registered the First Information Report, visited the scene of occurrence, prepared observation mahazhar, and rough sketch. Thereafter PW. 18 conducted inquest filed alteration report and send the vehicle for motor vehicle inspection. PW.14 Motor Vehicle Inspector inspected the vehicle and issued Certificate/Ex.P.3 and P.4. Thereafter on his transfer PW.19 took up the investigation and examined the doctor and and the witnessed the person present in the scene of occurrence and other witnesses and filed charge sheet before the concerned Court.

7. The trial Court after considering the evidence and materials convicted the petitioner. The lower appellate Court dismissed the appeal and confirmed the trial Court judgment. All the points raised by the petitioner before the trial Court as well as the Session Court were negatived.

8. Considered the rival submissions and perused the materials available on record.

9. It is seen that the accident had taken place in the highways, when the bolero jeep driven by PW2, escorting the Labour Minister, the right side tyre of the jeep got burst and dashed against the Maxi cab which was coming in the opposite direction, driven by the petitioner. Three persons in the maxi cab got seriously injured and got admitted in the hospital. The evidence of PW4 and PW 5 is that due to tyre burst the accident had occurred, which is confirmed by PW.14. From the motor Vehicle Inspector report/Ex.P.3 and P.4 it is clear that the right side tyre was burst which is the crucial point in this case. Further the Post Mortem doctor is not examined as well the doctor who treated the injured travelling in the Maxi Cab.

10. In view of the above, finding infirmities in the prosecution case and arguable points involved in the revision, further the revision is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

11. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No. I, Namakkal within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court once in three months i.e., from February 2021 on first working day of English Calendar Month at 10.30 a.m., till the disposal of the revision. The petition is ordered.

-sd/-
16/12/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE,
NAMAKKAL.

2 THE JUDICIAL MAGISTRATE NO. I,
NAMAKKAL.

3 THE CHIEF JUDICIAL MAGISTRATE,
NAMAKKAL [FOR INFORMATION]

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
VELGOUNDAMPATTI POLICE STATION,
NAMAKKAL DISTRICT

+1C.C. to M/S.OM SAI RAM Advocate on payment of necessary charges SR NO.8258

Order

in
CRL.MP.NO.8236/2020
in
CRL.RC.NO.1182/2020

Date :16/12/2020

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MK:04/02/2021



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