



BAIL SLIP

Raja, Male, S/o.Shanmugasundaram, aged about 26 years was released on bail vide order dated 28.01.2014 made in MP(MD) No.1/2014 in CRL RC(MD)No.35 of 2014.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CRL.R.C. (MD) .No.35 of 2014

Raja

.. Petitioner/Appellant/Accused

Vs.

State rep by

The Inspector of Police,
Navalpattu Police Station,
Trichy District.

(Crime No.159 of 2010)

.. Respondent/Respondent/Complainant

PRAYER: This Criminal Revision has been filed under Section 397 and 401 of Cr.P.C, to call for the records and set aside the judgment passed by the learned II Additional District and Sessions Judge, Trichy, dated 27.08.2013 in C.A.No.106 of 2012 confirming the judgment dated 01.11.2012 in C.C.No.266 of 2010 on the file of the learned Judicial Magistrate No.III, Trichy and acquit the petitioner.

For Petitioner : Mr.T.Senthil Kumar

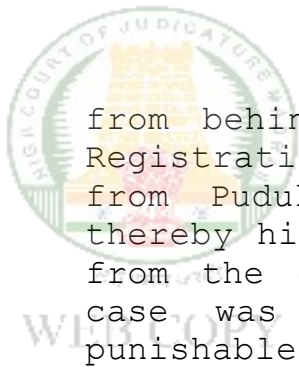
For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

O R D E R

The Criminal Revision Petition has been filed seeking to set aside the judgment passed by the learned II Additional District and Sessions Judge, Trichy, dated 27.08.2013 in C.A.No.106 of 2012 confirming the judgment dated 01.11.2012 in C.C.No.266 of 2010 on the file of the learned Judicial Magistrate No.III, Trichy and acquit the petitioner.

2. The facts of the case, in brief, are as follows:-

On 04.10.2010, the defacto complainant/P.W.1's father did not come back home. Therefore, he went in search of his father with his friend Selvaraj/P.W.2. When they were near Sembattu, Perambalur, the father of P.W.1 came. Thereafter, the father of P.W.1 proceeded



from behind by 50 feet. At that time a Government Bus bearing Registration No.TN 33 N 2433 driven by the petitioner proceeding from Pudukottai towards Trichy, attempted to overtake a Car, thereby hit the cycle, due to which, the father of P.W.1 fell down from the cycle and sustained injuries and later died. Hence, a case was registered against the petitioner for the offence punishable under Section 304(A) of IPC.

3. Before the trial Court, on the side of the prosecution P.W.1 to P.W.11 were examined and Ex.P.1 to Ex.P.9 were marked. No material objects were marked. On the side of the petitioner/accused, no witness was examined nor any document was marked.

4. After completion of trial, the trial Court found the petitioner guilty for an offence under Section 304 (A) IPC., convicted and sentenced to undergo 6 months Simple Imprisonment and to pay a sum of Rs.1,000/-, in default, to undergo one month Simple Imprisonment under Section 255(ii) Cr.P.C.

5. Aggrieved over the conviction and sentence, the petitioner filed appeal in C.A.No.106 of 2012, before the learned II Additional District and Sessions Judge, Trichy and the same was dismissed by the appellate Court, confirming the finding and sentencing of the trial Court. Hence, the petitioner filed this present petition.

6. The learned counsel appearing for the petitioner submitted that on 04.10.2010 at about 08.00p.m in the same scene of occurrence, an Eicher Lorry bearing registration No.TN 48 9977 driven by one R.Thomas had met with an accident with a bike rode by one Mariyam Mickel who sustained injuries and a case came to be registered in Crime No.160 of 2010. The occurrence had taken place earlier and already police were present in the scene of occurrence and were diverting the traffic, the petitioner's vehicle could not have driven in a rash and negligent manner. This fact has been admitted by P.W.10/Sub Inspector of Police, through him Ex.D.1/FIR in Crime No.160 of 2010 has been registered.

7. The learned counsel appearing for the petitioner has submitted that P.W.1 is the son of the deceased and P.Ws.2, 3, 4 and 5 are all his friends. P.W.3 and P.W.4 have stated that they have reached the scene of occurrence after the accident. P.W.5 does not identify the appellant and he is not aware of the earlier accident involving Eicher vehicle. P.W.1 to P.W.6 have not spoken about the earlier accident. The earlier accident involving Eicher vehicle is not a disputed fact.



8. In view of the same, the presence of these witnesses (P.W.1 to P.W.6) in the scene of occurrence are highly doubtful. Further P.W.8, who is the Conductor of the vehicle, had clearly stated about the occurrence and that petitioner was not the reason for the accident. P.W.11/Investigating Officer feigned ignorance about the earlier accident, the topography of the place would go to show that he has not conducted any proper investigation. He had conducted only the desktop investigation. Hence, he prayed for acquittal.

9. The learned Government Advocate (Crl.side) appearing for the respondent would submit that in this case, P.W.1 to P.W.11 have been examined and Ex.P.1 to Ex.P.7 have been marked.

(i) P.W.1, who is the son of the deceased, speaks about the occurrence.

(ii) P.W.2/friend of P.W.1 went in search of the deceased with his friend (P.W.1).

(iii) P.W.3, P.W.4 and P.W.5 are residing at Gundoor. They also speak about the accident, admit that they reached the scene of occurrence after the accident.

(iv) P.W.6 and P.W.7 deposed that about the preparation of the observation mahazar/Ex.P.2 and rough sketch/Ex.P.5.

(v) P.W.8 is the conductor of the bus driven by the petitioner, who had spoken about the case of the prosecution and it was raining at that time. Hence the water was spread over the road making the place slippery, the cyclist suddenly turned lost balance and dashed on the bus. He called the ambulance and the injured was taken to hospital.

(vi) P.W.9/ Dr. Premalatha attached to the Government Hospital, Trichy had attended the injured and issued Accident Register Certificate/Ex.P.3.

(vii) P.W.10/ Sub Inspector of Police received the complaint from P.W.1 and registered the case in Crime No. 159 of 2010.

(viii) P.W.11/ Inspector of Police, on receipt of FIR, had visited the place of occurrence and prepared observation mahazar/Ex.P.2 and conducted inquest/Ex.P.6. Thereafter, he arrested the accused and on completion of investigation, he filed a charge sheet.

10. The learned Government Advocate (Criminal Side) further submitted that the trial Court as well as the appellate Court on observation of the evidences and materials, rightly convicted the appellant and two concurrent findings has been entered against the petitioner, which need not be interfered with.

11. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) and perused the materials available on records.



12. It is seen that P.W.1 is the son of the deceased, P.W.2 to 5 are friends of P.W.1. Though P.W.1 to P.W.5 stated that they are eye witnesses of the accident, P.W.3 to P.W.5 does not mention about the presence of each other. The admitted fact is that they had reached the scene of occurrence after the accident, hence they are in the nature of hearsay witnesses. P.W.1 and P.W.2 are contrary to each other. The admitted fact of earlier accident which had taken place at about 08.00 p.m in the same spot involving the Eicher Lorry, presence of police, registration of a case, none of the witnesses have spoken about that accident (Ex.D.1). Hence their presence and witnessing the accident is highly doubtful.

13. It is seen that there was a diversion of traffic due to earlier accident in the same spot, the vehicles were moving at a slow speed and hence, there could not be any rashness. Further, it was a rainy day and the road was slippery. Hence, the deceased could have slipped and sustained injuries. In this case, the Motor Vehicle Inspector has not been examined and Motor Vehicle Report (Ex.P.9) has been marked through the Investigation Officer. Hence, this document has not been marked in the manner known to law.

14. In view of the above, this Court is inclined to allow this Criminal Revision. Accordingly, the judgment passed by the learned II Additional District and Sessions Judge, Trichy, dated 27.08.2013 in C.A.No.106 of 2012, confirming the judgment dated 01.11.2012 in C.C.No.266 of 2010 on the file of the learned Judicial Magistrate No.III, Trichy, is set aside.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

To

1.The II Additional District and Sessions Judge,
Trichy.

2.The Judicial Magistrate No.III, Trichy.



3.The Inspector of Police,
Navalpattu Police Station,
Trichy District.

4.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-2508[F] dated
23/01/2020)

CRL.R.C. (MD) .No.35 of 2014
21.01.2020

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TR(14.02.2020)5P 8C