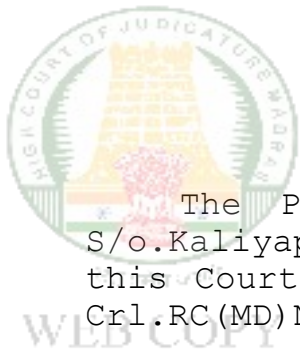




BAIL SLIP

The Petitioner/Accused namely Velusamy aged about 42 years S/o.Kaliyappan was directed to be released on bail as per order of this Court dated 31.03.2016 made in Crl.M.P(MD).No.2618 of 2016 in Crl.RC(MD)NO.185 of 2016 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.185 of 2016

Velusamy

...Petitioner/Appellant
/Accused

Vs

The State,
Represented by
the Sub Inspector of Police,
Velayuthampalayam Police Station

...Respondent/Respondent
/Complainant

PRAYER: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and to set aside the judgment of conviction and sentence imposed upon the revision petitioner/accused by the learned Judicial Magistrate No.2, Karur in C.C.No.107 of 2012 dated 26.09.2014 and confirmed by the Mahalir Neethi Mandram (Fast Track Mahila Court), Karur in C.A.No.42 of 2014, dated 12.01.2016 and acquit the revision petitioner/accused giving benefit of doubt.

For petitioner : Mr.K.Suresh
for Mr.E.K.Kumaresan
For Respondent : Mr.A.Robinson,
Government Advocate (Crl.Side)



ORDER

This revision petitioner was found guilty by the trial Court as well as by the appellate Court for the offence under Section 304(A) IPC and aggrieved over same, the present revision petition has been filed.

2.The petitioner has been prosecuted for the offence under Section 304(A) IPC before the learned Judicial Magistrate No.II, Karur in C.C.No.107 of 2012 and the trial Court by order dated 26.09.2014 found this petitioner guilty for the offence under Section 304(A) IPC convicted and sentenced him to undergo simple imprisonment for six months.

3.Aggrieved over the conviction and sentence, the petitioner has also preferred an appeal before the Court of Sessions, Karur and the same was dismissed by the learned Sessions Judge, Fast Track Mahila Court, Karur in C.A.No.42 of 2014 dated 12.01.2016 and therefore, the present revision petition has been filed.

4.The case of the prosecution is that on 21.02.2012 at about 8.30 am, the deceased Periyasamy was riding his two wheeler [Hero Honda plus] bearing Registration No.TN 47 V 4942, from Punnamchathiram - Karudayampalyam Division towards Karur - Erode road and the deceased rode his two wheeler towards east on the Karur - Erode road main. At that time the petitioner was driving his Mahindra Van bearing Registration No.TN 49 AA 0848 and he was proceeding to Erode from Karur on the Karur - Erode, i.e, he was driving his vehicle from East to West, in a rash and negligent manner and dashed against the deceased Periyasamy and as such in the accident, the deceased sustained grievous injuries on his head and leg. Immediately, he was taken to the nearby hospital, provided with first aid treatment and died, while he was on the way for further treatment.

5.Thangaraj [PW1] an eye witness to the accident, who has acquaintance with the deceased lodged a complaint before the Inspector of Police [PW7], Velayudhampalayam Police Station and a case was registered on 12.02.2012 in Crime No.71 of 2012 for the offence under Section 304A IPC against this revision petitioner and the Investigation Officer [PW7] went to the hospital and conducted inquest in the presence of the Panchayatars and sent the body for postmortem. Then around 4.00pm on the same day, he went to the place of occurrence, prepared an observation mahazar [Exp2] and rough sketch [Exp5] in the presence of witness, Periysamay [PW4] and one another Periyasamy. PW7 has also collected the reports from the Motor Vehicle Inspector examined, other witnesses and filed the final report as against this petitioner.



6.The trial Court framed a charge against this petitioner for the offence under Section 304 A IPC and in conclusion of the trial, the trial Court found this petitioner guilty, convicted and sentenced.

7.Heard Mr.K.Suresh, learned Counsel for the revision petitioner and Mr.A.Robinson, learned Government Advocate (Crl Side) appearing for the State.

8.This revision case has been filed on the ground that both the courts have failed to consider that the occurrence has taken place on the middle of the Karur - Erode main road, near the Punnamchathiram road and the deceased, who entered from a connecting road into the main road in the wrong direction and in order to avoid any accident, the revision petitioner, who was proceeding on the Karur - Erode Road from East to West, averted his vehicle. But even then the accident occurred and due to which, the rider of the two wheeler succumbed to injuries.

9.According to the learned Counsel for the revision petitioner, this petitioner was proceeding from Karur to Erode from East to West in a proper manner on the extreme left side of the road, whereas, the deceased, who rode the two wheeler entered into the National Highway in a rash and negligent manner and dashed against the petitioner's vehicle, due to that the accident had occurred and subsequently, the rider died.

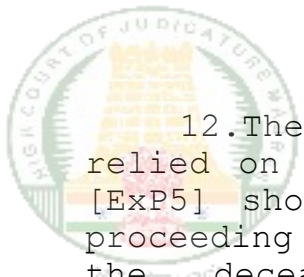
10.By referring the rough sketch [ExP5], the learned Counsel submitted that the respondent Police though noted down place of occurrence on the middle of the road, filed the final report in a mechanical manner, as if, the petitioner has driven the vehicle in a rash and negligent manner and is responsible for the commission of offence. In support of his contention, the learned Counsel also replied upon the following judgments

1.**Mahadeo Hari Lokre Vs The State of Maharashtra**, reported in [1972] 4 SCC 758;

2.**Kulandaisamy Vs Inspector of Police, Aravakuruchi Police Station, Karur District**, reported in [2013] 2 LW (cri) 208; and

3.**Peter Anthony Durairaj Vs The Inspector of Police (traffic), North Police Station, Trichy**, reported in [2013] SCC Online Mad 962.

11.Per contra learned Government Advocate [Crl Side] appearing for the State submitted that the trial Court as well as the appellate Court rightly appreciated the evidence and found this petitioner guilty and therefore, there is no need for this Court to interfere with the orders of the Courts below.



12.The learned Counsel for the revision petitioner mainly relied on the rough sketch [Ex5]. A perusal of the rough sketch [ExP5] shows that the Mahindra Van driven by the petitioner was proceeding on the left side of the road, from East to West, but the deceased, who came from a connecting/linking road Punnamchathiram - Karudayampalayam entered on the National Highway. The occurrence place is on the middle of the road. Further, the van driven by the revision petitioner went crossing the road at right side after the accident. Therefore, it shows that the revision petitioner, in order to prevent any accident, averted his vehicle. Despite, unfortunately the accident occurred. When someone enters into the National Highway should be cautious enough and only after ensuring there is no vehicle approaching on either side, he should enter the road by observing the rules. The place of accident is on the middle of the road, particularly, on the right side on the Punnamchathiram - Karudayampalayam Road. Therefore, it appears the rider of the two wheeler entered into the National Highway in a wrong direction, i.e., proceeded towards East on the National Highway. But, he should have proceeded towards West on the National Highway and it would be right one as per the Traffic Rules. In the Rough Sketch, there is no speed breaker on the Punnamchathiram - Karudayampalayam road.

13. In the case of **Peter Anthony Durairaj Vs The Inspector of Police**, reported in **2013 SCC Online Mad 962**, the Hon'ble Supreme Court has held that in the criminal jurisprudence, if the victim has also contributed to the casuation of the accident by contributory negligence and in the absence of any material to show that only on account of rash and negligent driving of the accused driver that the accident occurred, it would not be permissible under such circumstances to hold the accused driver guilty of committing an offence under Section 304A of IPC, since contributory negligence of the victim affords as intervening circumstances, i.e., without the intervening circumstances, the accident could not have happened.

14.The rough sketch [ExP5] shows that the deceased came in the two wheeler in a wrong direction, hit against the petitioner's vehicle and met with an accident. This petitioner was driving the van on the extreme left side of the road, whereas, the deceased, who came in the wrong direction, came on the right side and hit the van. Therefore, the petitioner cannot be found fault with that the petitioner was driving the van in a rash and negligent manner and caused the death of the deceased.

15.In view of the discussion held above,

- This revision case is allowed;
- The judgment in C.A.No.42 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, Karur dated 12.01.2016 and



the order in C.C.No.107 of 2012 by the Judicial Magistrate No.II, Karur, dated 20.09.2014 are set aside;

- The petitioner is acquitted of the charge framed against him. Fine amount, if any, paid by the petitioner shall be refunded;
- Bail bonds, if any executed by the accused, shall stand terminated;

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Sessions Judge,
Fast Track Mahilar Court, Karur.
2. The Judicial Magistrate No.II, Karur.
3. The Chief Judicial Magistrate, Karur.
4. The Sub Inspector of Police,
Velayuthampalayam Police Station, Karur.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

Cr1.R.C(MD)No.185 of 2016
17.08.2020

CS(10.09.2020) 5P 8C