



Bail Slip

The Petitioner/Accused namely S.Velumayilu Murugan S/o.Subbiah was released on bail as per order of this Court dated 05.01.2016 made in Crl.MP(MD)No.38 of 2016 in Crl.RC(MD)No.5 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.R.C.(MD)No.5 of 2016
and Crl.M.P.(MD)No.7501 of 2017

S.Velumayilu Murugan

... Revision Petitioner/Accused

versus

The Inspector of Police,
Navalpattu,
Manikandam Police Station,
Tiruchirappalli District.
(Crime No.2/2011)

... Respondent/Respondent

Criminal Revision filed under Section 397 r/w. 401 of the Cr.P.C. against the Judgment dated 20.08.2015 made in Crl.A.No.50 of 2015 on the file of the I Additional District Judge (PCR), Tiruchirappalli, confirming the judgement dated 06.07.2015 made in C.C.No.28 of 2013 on the file of the Chief Judicial Magistrate, Tiruchirappalli.

For Revision Petitioner

: Mr.S.R.Anbarasu

For Respondent

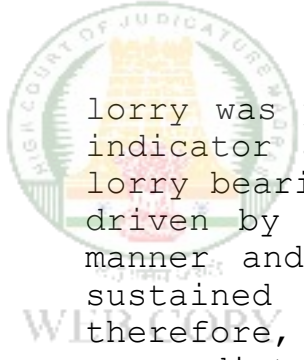
: Mr.A.Robinson,

Government Advocate (Crl.Side)

ORDER

The Criminal Revision Case is filed by the revision petitioner against the Judgment dated 20.08.2015 made in Crl.A.No.50 of 2015 on the file of the learned I Additional District Judge (PCR), Tiruchirappalli, confirming the conviction and sentence imposed by the learned Chief Judicial Magistrate, Tiruchirappalli, on 06.07.2015, in C.C.No.28 of 2012.

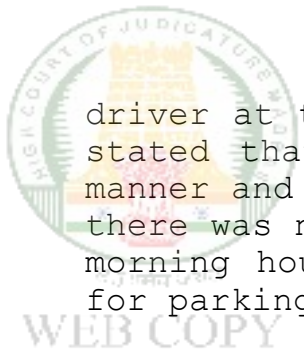
2. The case of the prosecution is that one Selvam, cleaner of the (Tores) lorry bearing Reg.No.TN04 Q 0671, lodged a complaint stating that on 03.01.2011, he along with one Murugadass, driver of the lorry, transported shells from Pennadam Ramco Cement Company to R.R.Nagar Cement Company, Virudhunagar and on 04.01.2011 at 3.45 a.m., since the backside of the lorry tyre got punctured, the



lorry was parked on the left side of the road and switched on the indicator and removed the tyre, at that time, a cement container lorry bearing Reg. No.TN52Y 5161, coming from Trichy to Madurai, was driven by the accused/revision petitioner in a rash and negligent manner and dashed against their lorry, due to which, the driver sustained injury on his head and leg and died on the spot and therefore, the lorry, which was caused for the accident, moved to some distance and dashed against a electric post and damaged intensively. Based on the complaint, a case has been registered as against the accused for the offence under Section 304A (2 counts) IPC. After the investigation, the respondent police filed a charge sheet for the offence under Section 304A (2 counts) IPC and the same was taken on file in C.C.No.28 of 2012 by the learned Chief Judicial Magistrate, Tiruchirappalli. Before the trial Court, on the side of the prosecution, 10 witnesses were examined as P.W.1 to P.W.10 and 11 documents were marked as Exs.P1 to P11. On the side of the accused, neither any witness was examined nor document was marked. In conclusion of trial, on 06.07.2015, the trial Court found the accused/revision petitioner guilty for the offences under Section 304(A) (2 counts) IPC, convicted and sentenced him to undergo one year rigorous imprisonment for each count and to pay a sum of Rs.2,500/-, in default, to undergo one month simple imprisonment and also ordered the sentence to run concurrently. Aggrieved over the conviction and sentence, the accused/revision petitioner preferred Criminal Appeal in C.A.No.50 of 2015 before the learned I Additional District Judge (PCR), Tiruchirapalli, wherein, the Appellate Court also, vide Judgment Dated 20.08.2015, dismissed the appeal, confirming the conviction and sentence imposed by the trial Court. Challenging the same, the accused/revision petitioner filed this Criminal Revision Case before this Court.

3. Mr.S.R.Anbarasu, learned counsel for the accused/revision petitioner submitted that the Courts below failed to consider that there was no rash and negligent driving on the part of the revision petitioner and there was a mistake on the part of the deceased, who parked the vehicle in a highway during early morning hours, without any indicator light. However, the Courts below, without considering the same, have erroneously found the accused/revision petitioner guilty, convicted and sentenced as stated supra.

4. Mr.S.R.Anbarasu, the learned counsel for the revision petitioner further submitted that the negligent and rashes are essential elements for invoking Section 304A IPC, but, both the Courts below have failed to consider the principles of 'reasonable care' and the concept of 'culpable rashness' and 'culpable negligence' on the part of the accused/revision petitioner. Moreover, the prosecution has failed to establish that the vehicle was parked with parking indicator or any sign for parking and in the absence of the same, the Courts below have erred in convicting the revision petitioner. Further, the Motor Vehicle Inspector has not stated about the indicator of Tores lorry parked by the deceased



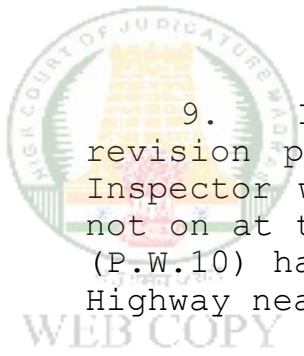
driver at the time of occurrence and none of the witnesses have not stated that the revision petitioner came in a rash and negligent manner and admittedly, the occurrence took place in a Highway, where there was no source for light and the occurrence took place at early morning hours and the Tores lorry was parked without any indicator for parking.

5. Mr.A.Robinson, learned Government Advocate(Crl. Side) for the State submitted that there are sufficient eye witnesses to prove the accident and also the rash and negligent driving of the revision petitioner. Further, due to the rash and negligent driving, the revision petitioner/accused dashed against the lorry and since there was no control, he also dashed the electric post and damaged the vehicle. After careful consideration of the oral and documentary evidence, the Courts below correctly found the revision petitioner/accused guilty for the offence. Therefore, no interference is warranted.

6. Heard Mr.S.R.Anbarasu, learned counsel for the revision petitioner and Mr.A.Robinson, learned Government Advocate (Crl. Side) for the State and also perused the available records.

7. The respondent Police filed the final report as against the revision petitioner that on 03.01.2011, in the lorry bearing Reg.No.TN04Q 6071, the defacto complainant, Selvam, was a cleaner and the deceased Murugadass was a driver and they were proceeding towards R.R.Nagar Cement Company, Virudhunagar from Ramco Cement Company and on 04.01.2011 at around 3.45 p.m., since the backside of the lorry tyre got punctured, they parked the vehicle on the left edge of the road and they removed the tyre, at that time, a container lorry bearing Reg.No.TN52Y 5161, coming from Trichy to Madurai, came with a high speed, dashed against the parked lorry and in that incident, the driver Murugadass sustained injury on his head and leg and died on the spot. The lorry, which caused the accident, was driven by the revision petitioner/accused and even after the accident, it moved to some distance, dashed against a electric post, capsized, due to which, the cabin of the container lorry got damaged and in that incident, the cleaner of the container lorry got capsized inside the lorry and also died on the spot.

8. On a complaint given by P.W.1-Selvam, cleaner of the lorry bearing Reg.No.TN04Q 6071, P.W.9-Sub Inspector of Police, Manikandam Police Station, registered a case in Crime No.2/2011 as against the revision petitioner/accused. P.W.10-Inspector of Police, Navalpattu Police Station, conducted the investigation, examined the witnesses and filed the final report as against this revision petitioner/accused. The trial Court as well as the Appellate Court, after considering the evidence of P.W.1-Cleaner and other two witnesses, namely, P.W.2 and P.W.3 and Motor Vehicle Inspector, found the revision petitioner/accused guilty, convicted and



9. It is the contention of the learned counsel for the revision petitioner submitted that the evidence of Motor Vehicle Inspector would disclose that the indicator of the Tores lorry was not on at the time of occurrence. Further, the Investigation Officer (P.W.10) has also not known any sign for parking of the vehicle in a Highway nearing the Tores vehicle.

10. P.W.1 has also admitted in his evidence that the Tores lorry bearing Reg.No.TN04Q 6071 got punctured and therefore, they have parked the lorry near the place of occurrence on 04.01.2011 at about 3.45 a.m. and they tried to remove the punctured tyre, at that time, the accident had occurred. Though the claim made by the defacto complainant (P.W.1) that the indicator light was on at the time of occurrence, it is not supported with the evidence of other witnesses, P.W.7-Motor Vehicle Inspector and P.W.10-Investigating Officer, who examined the occurrence place immediately to the occurrence, prepared observation mahazar and rough sketch in this case. Therefore, we have to bear in mind that the vehicle driven by the revision petitioner/accused was a container lorry and the occurrence time was also early morning hours, i.e. around 3.45 a.m. P.W.2, who was examined as a eye-witness, has also not supported the case of the prosecution that the parking light was on in the parked lorry bearing Reg.No.TN04Q 6071. In the absence of any specific evidence that the parking light was on at the time of occurrence, considering the time of occurrence and the vehicle driven by the revision petitioner/accused was a container lorry, which could not be controlled easily like that of another vehicle and the occurrence took place in a Highway and in the absence of any evidence that the vehicle was driven by the revision petitioner/accused in a rash and negligent manner, this Court is of the view that the prosecution has not proved its case beyond all reasonable doubt and therefore, the accused is entitled to the benefit of doubt.

11. In view of the above, the Criminal Revision Case is allowed and the conviction and sentence imposed by the trial Court on the revision petitioner are set aside. The bail bond, if any, executed by him, shall stand cancelled. Fine amount, if any, paid by the petitioner shall be refunded. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1. The I Additional District Judge (PCR),
Tiruchirappalli.
2. The Principal District Judge,
Tiruchirappalli.
3. The Chief Judicial Magistrate,
Tiruchirappalli.
4. The Superintendent of Central Prison,
Tiruchirappalli.
5. The Inspector of Police,
Navalpattu,
Manikandam Police Station,
Tiruchirappalli District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.R.C. (MD) No.5 of 2016
20.08.2020

CS (11.09.2020) 5P 7C