



BAIL SLIP

M.Manikandan, Male/aged 30 years, S/o.Mohan, Petitioner/Appellant/Accused was directed to be released on bail, by the order of this Court, dated 31.08.2016 made in CrI MP(MD)No.7970 of 2016 in CrI RC(MD)No.606 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.R.C(MD)No.606 of 2016

M.Manikandan ...Petitioner/Appellant/Accused

Vs

State,

Represented by the Inspector of Police,

Pappanadu Police Station,

Thanjavur District.

[Crime No.203 of 2008]

...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 pertaining to the judgment passed by the learned Principal District and Sessions Judge, Thanjavur in C.A.No.80 of 2013 dated 07.06.2016 in confirming the judgment and sentence imposed by the learned District Munsif cum Judicial Magistrate, Orathanadu in C.C.No.97 of 2009, dated 21.10.2013 and set aside the same and acquit the petitioner.

For petitioner : Mr.M.C.Swamy

For Respondent : Mr.A.Robinson,

Government Advocate [CrI Side]

ORDER

This revision petitioner is the sole accused in C.C.No.97 of 2009 on the file of the respondent Police, charged for the offence under Section 304 A IPC before the learned District Munsif cum Judicial Magistrate, Orathanadu and he was found guilty for the offence charged, convicted and sentenced to undergo one year rigorous imprisonment. As against the order dated 21.10.2013, the petitioner has preferred an appeal before the Principal District and



Sessions Judge, Thanjavur in C.A.No.80 of 2013 and the same was dismissed by the learned Principal Sessions Judge by judgment dated 07.06.2016.

2. Aggrieved over the conviction and sentence imposed by the trial Court and the appellate Court, the petitioner/sole accused preferred this revision case on the grounds that there is a delay in reporting the incident, contradictions among the witnesses PW1 to PW3, the witnesses nearby the place of occurrence were not examined and there are no independent witnesses to substantiate the prosecution case.

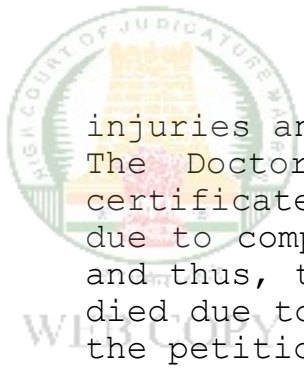
3. Heard Mr.M.C.Swamy, learned Counsel for the revision petitioner and Mr.A.Robinson, learned Government Advocate, appearing for the State.

4. Mr.M.C.Swamy, learned Counsel for the petitioner, in addition to the grounds raised, contended that the deceased is said to have travelled in a bicycle at the time of occurrence and this bicycle hit on the petitioner's Omni van bearing Registration No.TN 22 F 2297, resulting in fatal. But the prosecution has not recovered the bicycle said to have been used by the deceased at the time of occurrence. He further submitted that the occurrence has taken place in front of a Milk Society and according to the witnesses, a tea shop was also in existence in front of the milk society. But neither any person from the milk society nor anybody from the tea shop was examined to establish the case of the prosecution.

5. The learned Counsel further submitted that the Doctor [PW10], who admitted the victim in the hospital has not noted down any injury and it is only during the treatment in the hospital due to the medical negligence, the deceased died. However, without appreciating the evidence properly and without considering these material defects, the trial Court found this petitioner guilty. The learned Counsel therefore, prayed for allowing this revision case.

6. Per contra, Mr.A.Robinson, learned Government Advocate [Cr1 Side] submitted that the occurrence was witnessed by PW1 to PW3, they have narrated the occurrence in a cogent and clear manner, the victim deceased was also taken to the hospital immediately after the occurrence and the Doctor [PW10] has admitted the deceased in the hospital and issued the accident register in Exp.2.

7. The learned Government Advocate further submitted that the evidence of PW1 to PW3, the Doctor [PW10] clearly establish the guilt of the accused and the petitioner has driven the vehicle maruti Omni van bearing registration No. TN 22 F2297, on the date of occurrence in a rash and negligent manner and hit the deceased, who came in a bicycle at the time of occurrence. The deceased sustained



injuries and was admitted in the hospital and succumbed to injuries. The Doctor [PW16], who conducted the postmortem, has issued a certificate [Exp9] and opined that the deceased appear to have died due to complications of multiple injuries sustained by the deceased and thus, the prosecution has established the case that the deceased died due to the injuries caused by the rash and negligent driving of the petitioner herein.

8.He further submitted that the trial Court as well as the appellate Court have discussed the evidence in a proper manner and there is no reason to interfere with the findings of the trial Court as well as appellate Court.

9.This Court paid its anxious consideration to the rival submission and also perused the material on record.

10.The occurrence has taken place on 23.07.2008 at about 6.00am on Thanjavur to Pattukottai main road near a milk society at Pulavankadu village. The deceased Selvaraj, a milk vendor was getting milk in the milk society. The petitioner/accused was driving the Maruti Omni van bearing Registration No.TN 22 F 2297 in a rash and negligent manner and hit the bicycle of the deceased and in that incident, the deceased sustained injuries.

11.PW1 brother of the deceased was also coming behind the deceased in another bicycle and he took the victim immediately to the Thanjavur Medical College. PW2 and PW3, who were in a nearby tea shop also witnessed the occurrence. The Doctor [PW10] at the Thanjavur Medical College admitted the deceased as inpatient on 23.07.2008 at about 7.50am and noted the injuries in the accident register Exp.2.

12.On a medical intimation from the hospital, PW12 the Head Constable from the respondent Police Station went to the hospital, recorded the statement of PW1 and registered a case in Crime No.203 of 2008 for the offence under Sections 279 and 337 IPC.

13.The victim while undergoing the treatment succumbed to injuries in the hospital on 25.07.2008 and therefore, the offence was altered vide alteration report [Exp7] and a request was also made for conducting autopsy. Dr.Padmanaban [PW16] conducted the postmortem and noted down the following injuries:

- "i.Second and third ribs broken;*
- ii.a lacerated wound found in the liver;*
- iii.a diffuse contusion was found over left frontal parietal and left temporal lobe of brain and over cerebellum.*
- iv. a contusion in the left kidney."*

and he opined that the death would have caused due to multiple



injuries in the vital organs. The Sub Inspector of Police [PW13] arrested the accused and recovered a maruti van, which was also subjected for examination by the Motor Vehicle Inspector [PW11].

14.PW11 stated that the accident was not due to mechanical defect and he has also noted down certain damages on the Maruti van. The investigation was carried out by the Inspectors of Police PW17 and PW18 and the final report was filed as against this petitioner/accused.

15.PW9 is the owner of the maruti van, bearing registration No.TN 22 F 2297 and he has clearly stated that on the date of occurrence, this petitioner has driven the said maruti car. PW1 to PW3 have witnessed the maruti van coming in a rash and negligent manner and hitting the bicycle of the deceased Selvaraj on 23.07.2008 at about 6.00am. The victim was taken to the hospital immediately and admitted in the hospital at about 7.50am by PW1.

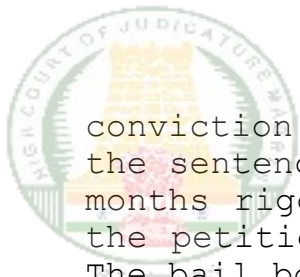
16.Though medical intimation was given to the respondent Police on the same day, the respondent Police visited the hospital only on the next day, recorded the statement on 24.07.2008 at 5.00am and thereafter registered this complaint. Though there is a delay in registering the complaint, the victim was admitted in the hospital at 7.50am by PW1 within an hour after the accident had occurred.

17.The trial Court as well as the appellate Court considered the evidence of PW1 to PW3 and the evidence of the Doctor and found this appellant guilty for the offence under Section 304 A IPC. According to the eye witnesses, the offending vehicle stopped after 20 feet from the place of occurrence. PW2 and PW3 are independent witnesses and the petitioners cannot point out any infirmity in the evidence of PW1 to PW3. The Motor Vehicle Inspector [PW11] has also inspected the maruti omni van and gave his opinion that the accident would have occurred not due to any mechanical defect in the vehicle.

18.The victim was admitted in the hospital, died after two days on 25.07.2008, the postmortem certificate refers the nature of the injuries sustained by the deceased in the accident and the cause of death, thus the prosecution has established the case beyond reasonable doubt and the courts below have also appreciated the evidence properly, found this petitioner guilty, convicted and sentenced as stated supra.

19.The grounds raised by the petitioner are not sufficient to interfere with the orders of the courts below. At this juncture, the learned Counsel for the petitioner pleaded for mercy on the ground that the petitioner is having three children and he is the only bread winner of his family.

20.Considering the plea of the petitioner that he is having three children, he is the only bread winner of his family and the mitigating circumstances, the revision case is partly allowed. The



conviction imposed on the revision petitioner is confirmed. However, the sentence is modified from one year rigorous imprisonment to six months rigorous imprisonment. The trial Court is directed to secure the petitioner/accused to undergo the remaining period of sentence. The bail bonds, if any, shall stand cancelled.

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Sd/-

Assistant Registrar

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

dsk

To

- 1.The Principal District and Sessions Judge,
Thanjavur.
- 2.The District Munsif cum Judicial Magistrate,
Orathanadu.
- 3.The Inspector of Police,
Pappanadu Police Station,
Thanjavur District.

Copy to

- 1.The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. RAJARAMAN, Advocate (SR-17935[F] dated 24/09/2020)

Cr1.R.C(MD)No.606 of 2016
24.09.2020

srk(CO)

KK(03.11.2020) 5P 9C