



Bail Slip

The Appellant/Accused viz., K.Saravanan was directed to the released on bail by the Order of this Court dated 21.11.2019 made in Crl MP(MD)10162 & 10163 of 2019 in Crl.RC(MD)No.859 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC(MD)No.859 of 2019

K.Saravanan : Petitioner/Appellant/
Sole Accused

Vs.

State represented by the
Inspector of Police,
Musiri, Trichy District.
(In Crime No.509 of 2013) : Respondent/Complainant

Prayer: Criminal Revision filed under section 397 r/w 401 of the Criminal Procedure Code against the judgment passed by the 1st Additional District and Sessions Judge (PCR), Tiruchirapalli, in C.A.No.139 of 2018, dated 08.08.2019, confirming the judgment of the Judicial Magistrate, Musiri, passed in C.C.No.149 of 2014, dated 30.10.2018.

For Petitioner : Mr.V.S.Kishok Kumar

For Respondent : Mr.A.P.G Omh Chairma Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Revision is directed against the judgment passed by the 1st Additional District and Sessions Judge (PCR), Tiruchirapalli, in C.A.No.139 of 2018, dated 08.08.2019, confirming the judgment of the Judicial Magistrate, Musiri, passed in C.C.No.149 of 2014, dated 30.10.2018.

2.According to the prosecution, on 24.12.2013 at 6.45 am, on the way to Kulithalai by-pass road, PW1/Jaisankar and his



father Veerappan were proceeding in separate bicycles, Veerappan was going ahead on the left side of the road and PW1 followed and at that time, on the east of Regional Transport Office, the accused drove the Tipper Lorry TN-28-AK-3090 in a rash and negligent manner and hit against Veerappan, thereby caused his death. The Inspector of Police attached to Musiri Police Station has filed a final report against the accused examining the witnesses.

3.The trial court, on proper appreciation of the evidence, both oral and documentary convicted the petitioner for the offence under section 304(A) IPC and sentenced him to undergo 6 months of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month. On appeal, the first appellate court had also confirmed the findings of the trial court. Against which, the petitioner is before this court.

4.The learned counsel for the petitioner/accused submitted that the prosecution has failed to establish the ingredients required for the offence with which he stood charged and convicted him for the said offence and none of the witnesses have spoken that the accused has driven the vehicle either rashly or negligently and the accident took place solely due to rash and negligent driving on the part of the deceased and PW1 being the son of the deceased is an interested witness, created for the purpose of the prosecution and there is no independent witness in this case and the prosecution has failed to prove the case beyond reasonable doubt and the accused is entitled to acquittal and prays that the criminal revision has to be allowed.

5.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that both the courts below appreciated the evidence in a proper manner and believed the evidence of the sole eye witness and having regard to the nature of the offence, convicted the petitioner/accused for rash and negligent driving of the vehicle and passed proper sentence, which do not require any interference by this court and the accused is not entitled for acquittal and prays that the criminal revision has to be dismissed.

6.Heard both sides and perused the materials available on record.

7.In this case, PW1 is the sole eye witness to the accident. According to PW1, on 24.12.2013 at around 6.45 am, when his father was proceeding to Kulithalai in a bicycle, he followed him in another bicycle and near the Regional Transport Office, the



accused drove the Tipper Lorry in a rash and negligent manner and hit against his father and due to which, the wheel of the Lorry climbed over the head and right leg of his father and subsequently, he died in the Musiri Government Hospital.

8. In this case, PW2, PW3 and PW4 are the wife, son and daughter-in-law of the deceased. They have stated in their evidence that they heard the news, on 24.12.2013 when the deceased Veerappan was proceeding in the bicycle, he met with the accident and subsequently, he died in the hospital. PW5 is the Mahazar witness. He deposed in his evidence that before four years back before Musiri RTO office at about 12.00 noon, the police on seeing the accident, prepared the observation mahazar and he signed in the observation mahazar as one of the witnesses.

9. It is settled position that the statement of a witness shall not be read by adopting pick and choose method but it has to be read as a whole to understand the real utterance of the witness. If such approach is given to the oral testimony of PW1, one can come to a conclusion that PW1 comes with a clear statement that the accused drove the vehicle in a rash and negligent manner.

10. In the case of **Lallu Manjhi and Anr. vs. State of Jharkhand (2003) 2 SCC 401**, the Hon'ble Apex Court had classified the oral testimony of the witnesses into three categories:-

"a. Wholly reliable; b. Wholly unreliable; and c. Neither wholly reliable nor wholly unreliable.

12. In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it



may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty.....

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11. In view of the settled position of law, this court finds that the statement of PW1 inspires confidence and is truthful and reliable. His statement does not suffer from any material contradictions. On the other hand, it gives a correct eye-version of what this witness saw. If PW1 intended to lie, nothing prevented him from saying that he was also an eye-witness to the scene. Where a sole witness has stated exactly what he had actually seen and the said statement otherwise fits into the case of the prosecution and is trustworthy, the Court normally would not be inclined to reject the statement of such sole witness.

12. Further, it will be useful to make reference to a decision in the case of **Balraje @ Trimbak v. State of Maharashtra [(2010) 6 SCC 673]**, wherein the Hon'ble Apex Court stated that:-

"..when the eye-witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same."

13. Keeping in view of the above, this court could not find any error or mistake of findings of facts and law. Hence, this court need not interfere with the findings of the courts below. However, considering the fact that the petitioner is the sole breadwinner of the family, the punishment imposed on the petitioner requires modification.

14. In the result, the criminal revision is **partly allowed**. The punishment imposed on the petitioner for the offence under section 304(A) IPC is reduced to **four months RI**. The period of sentence, if any already undergone by the petitioner shall be



given set off under Section 428 of Cr.P.C. The petitioner/accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To,

- 1.The 1st Additional District and Sessions Judge (PCR),
Tiruchirapalli.
- 2.The Judicial Magistrate,
Musiri.
- 3.The Inspector of Police,
Musiri, Trichy District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer
Criminal Section(Record)
Madurai Bench of Madras High Court, Madurai-2 copies
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+1 CC to Mr.V.S.KISHOK KUMAR, Advocate (SR-12208[F] dated
18/03/2020)

Crl.RC(MD)No.859 of 2019
17.03.2020

KM (26.05.2020) 5P 8C