



BAIL SLIP

The Petitioner/Accused namely, Manikandan, S/o.Elumalai, was directed to be released on bail as per the Order of this Court dated 09.10.2015 in CrI.M.P.No.1 of 2015 in CrI.R.C.No.1086 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 12.08.2021)

(Pronounced on : 06.10.2021)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.1086 of 2015

Manikandan

....Petitioner

.. Vs ..

State By:

The Inspector of Police,
VEERANAM Police Station,
Salem District
(Crime No.253 of 2011)

... Respondent

PRAYER: Criminal Revision Case filed under Section 397(1) r/w. 401(1) of Cr.P.C., to call for the records by setting aside the judgment dated 3.7.2015 passed by the Principal District and Sessions Judge, Salem in C.A.No.93 of 2012 confirming the judgment passed by the Judicial Magistrate No.4, Salem in C.C.No.147 of 2011 by judgment dated 17.08.2014 against the revision petitioner.

For petitioner : Mr.B.Vasudevan

For Respondent : Mr.R.Vinoth Raja,
Government Advocate (CrI.Side)

O R D E R

The convicted sole accused is the revision petitioner herein.

2. The petitioner was convicted by the learned Judicial



Magistrate No.4, Salem in C.C.No.147 of 2011 by judgment dated 17.08.2012 under Sections 279 and 304-A I.P.C was imposed a fine of Rs.750/- in default to undergo 1 month Simple Imprisonment under Section 279 I.P.C and imposed sentence to undergo Rigorous Imprisonment for a period of one year and a fine of Rs.2,000/- in default to undergo Rigorous Imprisonment for a period of 1 month for offence under Section 304-A I.P.C confirmed by the Principal District and Sessions Judge, Salem District in C.A.No.93 of 2012 as per judgment dated 03.07.2015.

3. The case of the prosecution is that on 27.03.2011 at about 20.20 hours, near Sukkampatty Sunnambu Soolai, on Harur to Salem Main Road at Sukkampatty, the revision petitioner drove the vehicle (TVS XL Super bearing No.TN 38 PF 3654) in a rash and negligent manner came behind the pedestrain deceased Theerthammal (mother of P.W.1 Murugan), dashed against her, the said Theertahmmal was brought to hospital, thereafter she died.

4. A complaint Ex.P1 was lodged by P.W.1 Murugan to P.W.10 Venkatachalam Sub-Inspector of Police, Veeranam Police Station, Ex.P5 FIR was registered by P.W.10, P.W.11 Sureshkumar, Inspector of Police took up investigation and filed final report under Sections 279 and 304 A I.P.C.

5. To prove the charges, the son of the deceased was examined as P.W.1; P.W.2 is the brother of P.W.1; P.W.3 is the son of P.W.2; P.W.4 is the Daughter. P.W.5 is the occurrence witness. P.W.6 Gowtham Attestor of the Observation Mahazar as well as projected as occurrence witness; P.W.7 is the Constable and took the deceased for the postmortem and P.W.8 Ranganathan is Motor Vehicle Inspector who had issued Ex.P3 Motor Vehicle Report. P.W.9 Doctor who had conducted of the deceased Dheerthammal issued Ex.P4 Postmortem certificate and P.W.10 and P.W.11 are the Police witnesses deposed regarding receipt of Ex.P1 complaint and registration of Ex.P5 F.I.R and preparation of the Observation Mahazar Ex.P2 and Rough Sketch Ex.P6 and thereafter filing of the investigation.

6. The trial Court in one portion of the judgment has held that the presence of P.W.2 and scene of the occurrence is doubtful and has relied on the evidence of P.W.3 and P.W.6 and laid the conviction under Section 279 and 304 A IPC. The learned Session Judge has confirmed the conviction and sentence.

7. This revision is filed by the accused convicted for the offence under Section 279 and 304-A I.P.C. The revision petitioner is 19 years old at the time of the accident. The respondent police registered the case in Crime No.253 of 2011 for the alleged offence as stated supra.



8. The learned counsel for the revision petitioner contended that the alleged occurrence witness P.W.1 and P.W.3 their presence was not spoken to by P.W.6 chance witness. So also, the presence of P.W.6 was not spoken to by P.W.1 and P.W.2.

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9. On perusal of the evidence of P.W.1, P.W.3 and P.W.6, I find that P.W.1 and P.W.3 have not stated anything regarding the registration of the number of the vehicle on the contrary, it is a specific version is that the vehicle involved in the accident is a new vehicle without any Registration Number. The Investigation Officer have categorically admitted in the cross, the Registration Number of the offending vehicle is TN 38 PF 3654 however, for, how the involvement of the vehicle was identified by the prosecution, there is no material placed before this Court and same assumes significance, in view of the specific cross examination made on this ground with P.W.1 and P.W.3.

10. Yet another point is that though the trial Court has given a specific finding that neither P.W.1 (defacto complainant) nor P.W.3 alleged occurrence witness or P.W.6 alleged (chance witness) never deposed about the alleged factum that the accused drove the vehicle in a rash and negligent manner. The trial Court has also observed that neither of those prosecution witnesses have not deposed in the evidence and rendered a finding at Paragraph 22 of the judgment however chosen to convict the accused for the said offence.

11. After perusal of the evidence of P.W.1 and P.W.3 I find that there is no whisper regarding the presence of P.W.6. Ex.P6 is the Rough Sketch does not indicate the house of P.W.3. P.W.3 is projected as a occurrence witness said to have seen the accident namely said to have witnessed the accident by standing in front of his house. Absolutely, Ex.P6 does not indicate the presence of the house of P.W.3. P.W.10 Investigation Officer had admitted he has not shown the house of P.W.3. So also P.W.3 description of the house does not match with the sketch and hence, I find that the version of P.W.3 as if he is the occurrence witness does not pass the test of natural and reliability. In view of the material contradiction as to the presence of the house of P.W.3 and non indication of the house of P.W.3 in Ex.P6 Rough Sketch has admitted by the Investigation Officer caused serious doubt as to presence of P.W.3 and hence, I find that the version of P.W.3 is unsafe to rely upon, consequently held to be unbelievable does not pass a test of reliability.

12. P.W.6 is projected as a chance witness. Initially, he is the attester of Ex.P2 Observation Mahazar. During the examination, he also saw the accident. He described the manner



of the accident as spoken to by P.W.1. According to his version, he was standing in front of the Maternity and Child Health Care (தாய் சேய் நலம்) and from there he claims to have seen the accident. As per Ex.P6 it is about more than 50 feet on the North East of SOC. Furthermore, in between the said Maternity and Child Health Care and the scene of the crime some building has also been situated on the East of the road and hence from the alleged position as spoken to by P.W.6, it could not be visibly possible to witness the occurrence and hence from the answer elicited in the cross examination of P.W.6 and P.W.8 Investigation Officer coupled with Ex.P6 Rough Sketch I find, that the presence of P.W.6 in the alleged scene of the occurrence as if he said to have seen the occurrence could not be possible and hence, I find that the version of P.W.6 is also caused doubt as to his presence.

13. Admittedly, P.W.1 and P.W.3 has not spoken about the presence of P.W.6. So also P.W.6 has not spoken about the presence of P.W.1 and P.W.3 and hence, I find the presence of P.W.1, P.W.3 and P.W.6 has spoken to in the chief examination was found to be materially contradicted with the answer elicited from the cross examination P.W.11 Investigation Officer coupled with Ex.P6 and hence, I find that both the grounds raised by the revision petitioner found to be more probable and caused serious doubt has to be theory of the prosecution and hence, in the absence of any specific version of the prosecution witnesses regarding rash and negligence in their evidence and presence of P.W.3 and P.W.6 appears to be doubtful and consequently held to be unreliable and hence, this Court is of the considered view that the prosecution has not proved the charge beyond reasonable doubt and consequently benefit of doubt goes to the accused and hence giving benefit of doubt, the accused is entitled for acquittal and thus, the conviction and sentence passed by both the Courts below is hereby set aside.

14. In the result, this Criminal Revision Petition is allowed. The conviction and sentence passed by the Courts below is set aside and the revision petitioner is set at liberty and bail bond if any shall stand cancelled.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Salem.
2. The Judicial Magistrate No.4,
Salem.
3. The Chief Judicial Magistrate,
Salem.
4. The Inspector of Police,
VEERANAM Police Station,
Salem District.
5. The Public Prosecutor,
High Court of Madras,
Madras.
6. The Section Officer,
Criminal Section Records,
High Court, Madras.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.52368

order in
Crl.R.C.No.1086 of 2015

BR(CO)
SU(17/11/2021)