



WEB COPY

Bail Slip

The Petitioner/Accused namely Sivanathan S/o Veerasingam was directed to be released on bail vide order dated 14/07/2015 made in CrI.M.P. No.1/2015 in CrI.R.C.No.605 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 10.08.2021	Date of Pronouncing Order 20.10.2021
---------------------------------------	---

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.605 of 2015

Sivanathan

S/o.Veerasingam

... Petitioner/Accused

Vs.

State by

The Inspector of Police,
Velangani Police Station.

(Crime No.436 of 2006)

... Respondent/Complainant

PRAYER : Petition filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the judgment dated 17.06.2014 passed in criminal appeal No.40 of 2012 on the file of District and Sessions Judge, Nagapattinam confirming the judgment dated 28.08.2012 passed in C.C.No.1 of 2007 on the file of the Judicial Magistrate No.1, Nagapattinam.

For Petitioner : Mrs. S.R. Sumathy

For Respondent : Mr. R. Vinoth Raja,
Government Advocate

O R D E R

The matter is heard through "Video Conference".

2.Convicted sole accused is the revision petitioner herein.
He is convicted for the offence under Section 304(A) of IPC.



3.This criminal revision is filed against the order passed in Crl.A.No.40 of 2012 dated 17.06.2014 by the learned District and Session Judge, Nagapattinam.

WEB COPY

4.The respondent-police filed a final report that on 10.09.2006 at about 02.40 p.m, in Nagapattinam to Thiruthuraipoondi High Road at Velangannai Vellaru bridge near Nagaraj Tea Shop, the accused drove "Usharaman" private passenger bus bearing Registration No.TN 51B 9909 heading from north to south rashly and negligently and hit pedestrian Rajendran and caused injuries on his left elbow, wrist, chin, right eye and left ear resulting in his death on 11.09.2006 morning 12.55 a.m., at Thanjavur Hospital. Hence, the accused has committed offence punishable under Section 304(A) IPC.

5.Before the trial Court, P.W.1, P.W.2 and P.W.3 are occurrence witnesses, P.W.4 is the Tea shop owner where the deceased lastly had Tea and P.W.5 has categorically deposed regarding the occurrence who would also identified the accused as the bus driver on the said day on the said duty caused the accident. P.W.6 to P.W.9 are relatives of the deceased and P.W.10 and P.W.11 are the attestor of Ex.P4 observation mahazar, turned hostile. P.W.13 to P.W.16 are the police witnesses, deposed regarding receipt of Ex.P1/complaint and registration of Ex.P2/FIR and preparation of Exs.P3 to P5 and collection of Exs.P6 and P7 and finding of the final report.

6.After trial, both the Courts below have concurrently held that the conviction and sentence as stated supra.

7.The learned counsel for the revision petitioner would contend that Ex.P6 is the postmortem report and Ex.P7 is the Motor Vehicle Inspector report which have been marked through P.W.16/Inspector of Police, to prove the execution of the documents and hence, in the absence of any positive evidence, Exs.P6 and P7 would not come to aid the prosecution to convict the accused for the alleged offence under Section 304(A) of IPC. Not raising any objection for marking of the document will not come into admission.

8.The learned Government Advocate(Crl.side) for the respondent would contend that the evidence of P.W.1 to P.W.4 are to the effect that on that day the private bus was driven by the accused in a rash and negligent manner and he is the sole cause for the accident and the deceased died due to the injuries sustained in the accident.



9. Heard both sides and perused the records.

10. The case of the prosecution is that the accused drove private bus bearing Registration No. TN 51 B 9909 in a rash and negligent manner near Nagaraj Tea Shop at Nagapattinam, Thiruthuraipoondi Highways on 10.09.2006 at 2.45 pm, from north to south and thereby hit deceased Rajendran and caused him injuries on his left hand and on face, resulting in his death on the early morning of 11.09.2006.

11. He would state that he along with P.W.2 and one Varadarajan took the injured to the hospital in a car which came to the place of occurrence and from there he was sent to Thanjavur and only thereafter, he went to lodge complaint. He stated that his complaint was given in the form of statement and he wrote the same and signed it. P.W.2 and P.W.5 the order eye witnesses to the occurrence would also narrate about the occurrence in corroboration with the evidence of P.W.1.

12. P.W.2 is a fisherman said to have been standing near P.W.4 Nagarajan's tea shop along with P.W.3 Raja and P.W.1 Ravichandran. P.W.2 would state that deceased Rajendran after having tea was standing on the western side of the road and the above said private bus "Usharaman" heading from Nagapattinam to Thiruthuraipoondi came at high speed and instead of heading on the left hand side of the road i.e., on the eastern side came to the right hand side of the road i.e., to the left hand side of the road and hit Rajendran who was thrown from the place of occurrence.

13. Based upon the fact that even before the death of the injured, the accused was remanded and subsequently, released on station bail by P.W.15/Sub Inspector of Police and after the death of the injured, Section was altered under Section 304(A) of IPC. The trial Court and the appellate Court had held that it is the accused who drove the private bus in a rash and negligent manner had caused the accident. Accordingly, laid the conviction under Section 304(A) of IPC.

14. The learned counsel for the revision petitioner/accused raised three points. (i) on the date of the accident, the deceased had consumed alcohol and hence, without noticing the on going vehicle, he had crossed the road and invited the accident. (ii) There was a soil heaped on either side of the road due to the repair and hence, the possibility of moving of high speed vehicle is not possible. (iii) The postmortem certificate and



Motor Vehicle Inspection Report or other documents were not marked through the Investigation officer.

15. The accused defended the case on the basis that deceased Rajendran on the said day had consumed alcohol and was under intoxication and he had crossed the road without noticing the on-coming vehicle and hence, accident had occurred only because of the negligence on the part of the deceased. According to the accused, the fact that there is a speed braker, 10 feet away to the south of banks of Vellai river, as admitted by P.W.1 and P.W.2, there is no possibility for the above said bus to have come at high speed and hence, there is no rash and negligent driving on the part of the bus driver.

15(a). Admittedly, both P.W.1 and P.W.2 had admitted that there is a speed braker 10 feet away to south of banks of river. As per the mahazar and rough sketch, the river channel is shown only to the south of the place of occurrence and as such 10 feet away to the banks of river would be only further south to the place of occurrence. Hence, the speed of the vehicle heading from north to south cannot be presumed to be slow for the reason that the speed braker is situated to the further south to the place of occurrence, especially when all the prosecution witnesses had stated that the vehicle headed at high speed and even had left its pathway and come to the right hand side of the road where deceased Rajendran was standing, assumes significance.

16. The fact in issue as to intoxication of the deceased Rajendran during the time of occurrence was denied by P.W.1 and P.W.2. They would specifically state that deceased Rajendran though is in the habit of consuming alcohol, on the said day he had just had tea in P.W.4 Nagaraj's tea shop. P.W.4 Nagaraj, the owner of the tea shop would state that the said day being a Sunday deceased Rajendran along with P.W.3 Raja was having tea and was standing near the shop while the bus that came rashly to the western side of the road where his shop is situated, hit Rajendran and there was huge space on the eastern side of the road. He would further state that he saw the driver of the bus who is also a resident of the said place and would depose that he sent the injured to the hospital in a Car that passed by P.W.3 also would depose that deceased Rajendran was standing only on the corner of the road in front of the tea shop and that the bus which was running on the eastern side of the road came to the western side of the road and hit deceased Rajendran.

17. The fact that soil was heaped on either side of the road for repairs though admitted by P.W.1 and P.W.2, P.W.1, would



explain that such heap of sand was only small and there was much space in the road. Even otherwise, when that being the situation, the driver of the vehicle ought to have moved only in a minimum speed in the said place and not to have deviated to the wrong side.

18.Thus, on combined reading of PW.1 and P.W.2, stating that the deceased was standing when the vehicle driven by the accused came in a high speed to the right hand side when there is sufficient space on the left hand side and hit the deceased and caused the accident and hence, the suggestive theory advanced by the accused stands negatived. The said evidence of P.W.1 and P.W.2, were duly corroborated by the evidence of P.W.3 and P.W.4.

19.Furthermore, P.W.1 to P.W.5 would categorically deposed about the occurrence and also identified the accused as the bus driver on the said vehicle, on the said date. P.W.6 to P.W.9, are the relatives of the deceased, who had identified the body of the deceased as Rajendran. P.W.10 and P.W.11 are the attestors of the observation mahazar. With regard to the marking of the documents viz., Motor Vehicle Inspection report, marked through investigation officer, the lower Court record reveals that those documents were received without proof of the document without any objection at the time of marking, assumes significance.

20.A document to be received without proof of the documents shall be mentioned in the list and the opposite party or his pleader shall be called upon to admit or deny the genuineness of such document under Section 294 of Cr.P.C., and only by such process the document can be received in evidence. Admittedly, in the present case, the documents postmortem report and MVI report has been received in evidence without proof of the signature of the person to whom it purports to be signed and on the side of the accused no objections was raised during receipt of such evidence through P.W.16 the Investigation Officer.

21.Thus, when the accused side had not raised any objection at the time of marking, whether non raising of objection would be equated to admit the genuineness of the document within the meaning of Section 294(1) of Cr.P.C.

22.In this case, on the accused side, objection was not raised at the time of marking of the document. The core question as to whether, such non raising of



objection could be equated for admitting the genuineness of the document, within the meaning of Section 294(1) of Cr.P.C. If express consent is given, it would constitute consent under Section 294(1) of Cr.P.C., and if, there is no such express consent obtained from the learned defence Advocate or the accused, it is not permissible to hold that mere marking of document without any objection from the accused side would tantamount to admitting the genuineness of the document under Section 294(1) of Cr.P.C.

23.Thus, all the contentions raised by the learned counsel for the revision petitioner stands negatived and hence, I find that by clear and cogent evidence, the prosecution has proved the charge under Section 304(A) of IPC beyond reasonable doubt and the accused has failed to probabalise the suggestive case for the reason discussed supra.

24.In view of the clear evidence of P.W.1 to P.W.4, it is clear, cogent and corroborated in the accident occurred when the deceased was standing near P.W.4/Tea Shop after having the tea and the bus driven by the accused came rashly and negligently on the right hand side of the road, deceased who was standing caused injuries and subsequently, he succumbed to injury and died due to the road accident and hence, the charge under Section 304(A) of IPC, has been proved beyond reasonable doubt.

25.Accordingly, the conviction passed by both the Courts below is hereby confirmed. The learned counsel for the petitioner heard on the quantum of sentence. Taking into consideration of the case and facts that gravity and nature of the case, the sentence is reduced to three months simple imprisonment and to pay a fine of Rs.1000/- in default.

26.In the result, the criminal revision case is partly allowed only to the extent in respect of the sentence.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

at
To

1.The District and Sessions Judge,
Nagapattinam.



2.The Principal Sessions Judge,
Nagapattinam.

3.The Judicial Magistrate No.1,
Nagapattinam.

4.The Chief Judicial Magistrate,
Nagapattinam.

5.The Officer incharge,
Sub Jail, Nagapattinam.

6.The Inspector of Police,
Velangani Police Station.

7.The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.605 of 2015

rsi[col]
srg 03/01/2022