



BAIL SLIP

The Petitioner/Accused namely G.Aruchamy, Male aged 49 years was directed to be released on bail by order of this Hon'ble Court dated 22.11.2016 made in CRL.M.P.No.10925 of 2016 in CRL.R.C.No.1222 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.R.C.NO.1222 OF 2016

G.Aruchamy

... Petitioner/Accused

Vs.

State Represented by
The Inspector of Police,
Traffic Investigation Wing,
Central - Coimbatore.

... Respondent

Prayer:- This Criminal Revision Petition filed under Section 397 & 401 of the Code of Criminal Procedure, pleaded to set aside the Judgement made on 21.07.2016 in C.A.No.109 of 2015 on the file of the learned I Additional District and Session Judge, Coimbatore confirming the Conviction and Sentence made in C.C.No.33 of 2006 dated 20.04.2015 on the file of the learned Judicial Magistrate No.VIII, Coimbatore and to acquit the appellant of all the charges.

For Petitioner : Mr.B.R.Shankaralingam

For Respondent : Mr.A.Gopinath
Govt. Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been preferred challenging the judgement of the learned I Additional District and Session Judge, Coimbatore, made in C.A.No.109 of 2015, dated 21.07.2016, confirming the conviction and sentence made in C.C.No.33 of



2006, on the file of the Judicial Magistrate No.VII, Coimbatore, dated 20.04.2015

2. The case of the prosecution is that on 13/14.01.2006 at about 12.30 midnight, the petitioner/accused was driving the mini lorry bearing registration number TN-02-6867. The lorry was loaded with vegetables and it was taken to Saibaba Colony Anna Market. After unloading the vegetables, the petitioner/accused took the vehicle in reverse direction and negligently ran it over the deceased (Kumar @ Kumaravel), who was lying in front of a nearby vegetable shop. In the said accident, the deceased died on the spot.

3. On the complaint given by the Tax Collector namely Nagaraj, a case was registered in Crime No.19 of 2006 for the offence under Sections 279 and 304(A) IPC. After completing the investigation, charge sheet was filed before the District Munsif cum Judicial Magistrate, Mettupalayam, for the offences under Sections 279 and 304(A) IPC. After completing the due legal mandates the learned District Munsif cum Judicial Magistrate, Mettupalayam, framed the charges against the revision petitioner for the offences under Sections 279 and 304(A) IPC.

4. During the course of the trial 16 witnesses and 7 documents have been marked on the side of the prosecution as P.W.1 to P.W.16 and Ex.P.1 to Ex.P.7. After completing the trial and considering the evidence on record, the learned Trial Judge convicted the accused as under:

S.No.	Charges	Findings	Punishment
1.	279 of IPC	guilty	imposed Rs.500/- as fine in default to undergo one week Simple Imprisonment.
2.	304(A) of IPC	guilty	sentenced to undergo one year simple imprisonment and to pay a fine of Rs.3,000/- in default to undergo three months simple imprisonment.
3.	Section 3 read with Section 181 of the Motor Vehicles Act	guilty	imposed a fine of Rs.500/- in default to undergo one week simple imprisonment.

5. The First Appeal filed before the learned I Additional District and Session Judge, Coimbatore, in C.A.No.109 of 2015



was also dismissed on 21.07.2016 by confirming the judgements of the Trial Court. Aggrieved over that the petitioner/accused has preferred this Criminal Revision Case.

6. The learned counsel for the revision petitioner has submitted that the occurrence had taken place during dark hours and at midnight 12.30 hours and so the petitioner/accused could not see the deceased, who was sleeping on the road behind the vehicle; the Courts below omitted to appreciate the material contradictions in the evidence of the prosecution and proceeded to convict the accused wrongly. He further submitted that the offence against the accused was not proved beyond reasonable doubt and hence, revision petition should be allowed.

7. The learned Government Advocate (Crl.Side) for the respondent has submitted that despite the accident had taken during midnight, it was within the knowledge of accused that he was driving the vehicle in the market area where people would be sleeping on the road. He further submitted that just because the accused reversed the vehicle in a negligence manner, it had ran over the deceased and the Courts below had appreciated the evidence in a correct perspective and hence, it does not require any interference.

8. The case of the prosecution as it appears from the prosecution witnesses PW1 to PW16 can be summarized for a better appreciation. P.W.1(Nagaraj) is the eyewitness, who was collecting tax at Anna Market on the day of the occurrence. According to his evidence the deceased(Kumar @ Kumaravel) was sleeping near the vegetables shop and at that time the accused who drove a loaded lorry, took it on the reverse side after unloading; at that time it ran over the deceased and hence the deceased died; on the complaint (Ex.P1) given by Nagaraj (P.W.1), a case has been registered. P.W.2/Kuttan is also an eyewitness, who has his vegetables shop in the same market; P.W.3/Dinesh & P.W.4/Rajan were the labourers, who were unloading the vegetables at the time of the occurrence along with other two load men. They also have given their ocular account of the accident in the same manner; P.W.5/Sulaiman, is a garlic seller and he also deposed evidence about what was seen by him; P.W.6/Murugan is a vegetable agent who was present at the vegetable market for getting vegetables for his business and he had also seen the occurrence. P.W.7/Baladhandyuthabani is the brother of the deceased. On hearing the information about the death of his deceased brother in the accident, he rushed to the spot. He also stood as a witness for inquest; P.W.8/Subbalakshmi is the mother of the deceased, whose house is nearby to the place of occurrence and she also rushed to the spot on hearing the news about the death of her son in the



accident; P.W.9/Pon Senthil Nathan, Motor Vehicles Inspector, had inspected the vehicle involved in the accident and given his report by stating that the accident had not occurred due to any mechanical failure in the vehicle; P.W.10/Dr.Mansoor, has conducted the post-mortem on the body of the deceased and given his report as under:

"the deceased appear to have died of head injury".
P.W.13/Murugan is also an eyewitness, who had seen the occurrence and he deposed about the accident. P.W.14/Sundaram, Sub-Inspector of Police has registered the FIR after receiving the complaint and he also obtained statement from some of the witnesses. P.W.15/Aarumugam, Inspector of Police, had taken the investigation of the case, went to the place of occurrence at about 6.00 a.m., on 14.01.2006 and prepared the observation magazar and rough sketch in the presence of witnesses. He also conducted the inquest and the inquest report was marked as Ex.P7. The accused was arrested on 15.01.2006 at about 2.00 p.m. and sent for remand. The vehicle involved in the accident was sent for inspection of Motor Vehicles Inspector. Further investigation was taken up by P.W.16/Gowtham, Inspector of Police. He enquired the rest of the witnesses and completed the investigation and filed charge sheet against the accused for the offences under Sections 279, 304(A) IPC and Section 3 read with Section 181 of the Motor Vehicles Act.

9. The complainant/PW1 is a Tax Collector of the vegetable market and hence his availability at the place of occurrence is quite natural. The rest of the witnesses, who stood as eyewitnesses for the occurrence are also connected to physical labour like loading and unloading the vegetables and hence, their presence at the place of the occurrence at the relevant point of time is not unnatural. The house of the deceased is just nearby to the market and his brother and mother had rushed to the spot on hearing the accident. The petitioner/accused did not deny the accident. He admitted that the vehicle which caused the accident was driven by him on the day of occurrence at the relevant point of time. His one and only contention is that since the accident had taken place during odd hours at midnight, it is not his negligence which caused the accident, but it was the negligence of the deceased, who had taken the risk of sleeping on the road. It is not the contention of the petitioner that he was handling vegetables loaded vehicle only on the day of occurrence. As a driver, who handles the lorry for loading different kinds of loads to different places could have been aware of the fact that in the vegetable markets labourers like loadmen would be sleeping on the road until they are called up to unload the vegetables. While taking the vehicle on the reverse side in those places he should have been



more careful in order to confirm that no person is lying on the back of the vehicle.

10. From the evidence of P.W.4/Rajan, it appears that the vehicle was driven by the accused without the help of the cleaner. The accused took the risk of taking the reverse, without the assistance of the cleaner. Had he avoided such a risk, a valuable life would not have been lost. The deceased was a humble labourer who was sleeping in the market for unloading the vegetables. It is equally wrong on the part of the deceased to sleep on the road. Hence, he also contributed his negligence for the accident to happen. Though the Courts below have correctly appreciated the evidence on record, they failed to record the contributory negligence on the part of the deceased also.

11. However, the contributory negligence on the part of the deceased would not affect the finding of guilt on the accused, though it may impact the quantum of punishment.

12. In the result, this Criminal Revision Case is partly allowed and the judgement passed in C.A.No.109 of 2016 by the learned I Additional District and Session Judge, Coimbatore, dated 21.07.2016, confirming the order of conviction and sentence passed in C.C.No.33 of 2006, by the learned Judicial Magistrate No.VIII, Coimbatore, dated 20.04.2015, is modified to the effect that the accused is imposed with the fine of Rs.500/- for the offence under Section 279 IPC, in default to undergo one week simple imprisonment; six months simple imprisonment for the offence under Section 304 (A) of IPC with the fine of Rs.3000/- in default to undergo three months simple imprisonment; a fine of Rs.500/- in default to undergo one week simple imprisonment for the offence under Section 3 read with Section 181 of Motor Vehicles Act and the period of sentence already undergone for prison can be set off.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ham/dua

To

1. The I Additional District and Sessions Judge,
Coimbatore.



2. The Judicial Magistrate No.VIII,
Coimbatore.

3. The Chief Judicial Magistrate,
Coimbatore.

4. The Inspector of Police,
Traffic Investigation Wing,
Central - Coimbatore.

5. The Public Prosecutor.
High Court, Madras.

+1cc to Mr.B.R.Shankaralingam, Advocate, S.R.No.59569

Cr1.R.C.No.1222 of 2016

GPL(CO)
RLP(10/12/2021)