



BAIL SLIP

The Petitioner/Accused namely Rajendran, S/o.Thangamuthu was directed to be released on bail as per order dated 24.10.2016 made in CrI.M.P.No.11180/2016 and 11182/2016 in CrI.R.C.No.1241/2016 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE R.N.MANJULA

CrI.R.C.No.1241 of 2016

Rajendran

...Petitioner/Appellant/Accused

-vs-

State by Inspector of Police
Gobichettipalayam Police Station,
Erode District
(Crime No.193 of 2010)

...Respondent/Respondent/Complainant

PRAYER : Criminal Revision case is filed under Sections 397 and 401 of Criminal Procedure Code, against the judgment passed by the learned I Additional Sessions Judge, Erode, Erode District, dated 09.09.2016, made in C.A.50 of 2014 in confirming the conviction and sentence passed by the learned Judicial Magistrate No.I, Gobichettipalayam, Erode, Erode District made in C.C.No.110 of 2010 dated 19.06.2014 convicting the Appellant/Petitioner herein under Sections 279, 338 and 304(A) I.P.C and sentencing him to pay a fine of Rs.1000/- for the offence under section 279 I.P.C and in default in payment of the fine to undergo simple imprisonment for a period of 2 weeks; sentencing the Appellant/Petitioner herein to pay a fine of Rs.1000/- for the offence under section 338 I.P.C and in default in payment of fine to undergo simple imprisonment for a period of two weeks; also sentencing the Appellant/Petitioner herein to undergo simple imprisonment for a period of six months for the offence under section 304(A) I.P.C and to pay a fine of Rs.3000/- in default in payment of the fine to undergo simple imprisonment for a period of one month and the sentences to run concurrently.



WEB COPY

For Petitioner : Mr.R.John Sathyan for
A.Kumaraguru

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

O R D E R

This Criminal Revision case has been preferred challenging the judgment of the learned I Additional Sessions Judge, Erode, Erode District dated 09.09.2016, made in Crl.A.No.50 of 2014, confirming the judgment of the learned Judicial Magistrate, No.I, Gobichettipalayam, Erode, Erode District, dated 19.06.2014 made in C.C.No110 of 2010. .

2. This case arises out of a road accident. It is the case of the prosecution that on 17.03.2010, at about 5.15 p.m, the accused was driving his Maruthi Zen bearing registration No.TN-33-AA-9596, on Erode to Sathyamangalam Road from east to west in a rash and negligent manner and attempted to suddenly turn left. During that time, it hit against the TVS Scooty bearing registration No.TN-36-E-8759, which was also running on the same direction. Due to the accident, the rider of the two wheeler, namely, Nithiyanantham and the pillion rider of the car namely Siva Adhithiya got injured and they admitted in the hospital for treatment. But, Nithiyanantham, was declared dead. On the complaint given by P.W.1, who is the younger brother of the deceased, the case was registered by P.W.11-Manivasan, Head Constable, in Crime No.193 of 2010, under Sections 279, 338, 304-A I.P.C of Gobichettipalayam Police Station and prepared the FIR, Ex.P8 and took up the case for investigation. He went to the place of occurrence and prepared the Observation Mahazar, Sketch in the presence of witnesses. The statement of the witnesses were recorded; he proceeded to Government Hospital and conducted the inquest on the body of the deceased and prepared the inquest report. Thereafter, P.W.11, Head Constable, sent the body of the deceased, for post-mortem. He also recovered the vehicle involved in the accident and sent it for examination to the Vehicle Inspector. Thereafter, the investigation was continued by P.W.14 i.e., Manimaran, Inspector of Police and he got the report of the motor vehicle Inspector and recorded his statement; he also got the Post-mortem Certificate, from the doctor who conducted post-mortem. After completing the investigation, he filed a charge sheet against the petitioner/accused under Sections 279, 338 and 304-A IPC. The accused himself surrendered before the Police Station and he was released on Station Bail.

3. After the case was taken on file and on satisfaction of the materials produced before this Court, the Trial Court questioned the accused about the commission of offences under Sections 279, 338, 304-A I.P.C. Since the accused pleaded



innocence, and claimed to be tried, the trial was conducted.

4. During the course of the trial, on the side of prosecution, 14 witnesses were examined as PW1 to PW14 and 12 documents were marked as Exs.P1 to P12. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating materials available in the evidence, he denied the same. On the side of the defence, no witness was examined and no documents were marked.

5. After conclusion of the trial and considering the materials placed before the trial Court, the trial Court found the accused guilty of the offences under Sections 279, 338 and 304-A IPC and accused was convicted and sentenced for the said offences as under:

Sl.Nos.	Conviction	Sentence
1	Under Section 279 IPC	To pay a fine of Rs.1000/-, in default, to undergo S.I., for a period of two weeks.
2	Under Section 338 IPC	To pay a fine of Rs.1000/-, in default, to undergo S.I., for a period of two weeks.
3	Under Section 304-A IPC	To undergo Simple Imprisonment for a period of six months and a fine of Rs.3000/-, in default, to undergo S.I., for a period of one month

6. Aggrieved by that, the accused preferred the Appeal in CrI.A.No.50 of 2014 before I Additional Sessions Judge, Erode and that was also dismissed. Aggrieved by that, the accused has filed this Criminal Revision case before this Court.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (CrI.Side) for the respondent and perused the materials available on record.

8. Mr.R.John Sathyan for Mr.A.Kumaraguru, learned counsel appearing for Revision petitioner submitted that the accident did not happen due to the negligence on the part of the accused and the evidence of P.W.2 and P.W.7 would show that, they were the relatives of the deceased and they haven't witnessed the place of occurrence; the manner in which the accident had taken place and the damages caused on the vehicles involved in the accident would show that, the accident did not occur in the manner stated by the prosecution. He further submitted that the Trial Court, without properly appreciated the evidence and record had found the petitioner/accused guilty on some wrong presumption.



9. Mr.A.Gopinath, learned Government Advocate appearing for the State (Crl. Side) submitted that P.W.2 and P.W.7 are the eye witnesses for the occurrence and they have given a clear ocular account of how the accident had taken place; the rash and negligent manner in which the accused had driven the vehicle is also clearly spoken in their evidence. He further submitted that the Courts below have rightly appreciated the evidence and therefore, there is no reason to interfere with the judgments of the Courts below and hence, this Revision Case may be dismissed.

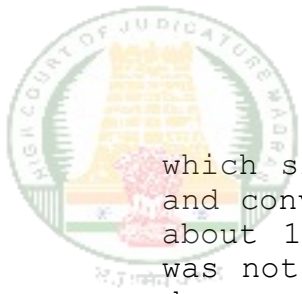
10. Point for consideration:

'Whether the conviction and sentence imposed on the accused for the offences Sections 279, 338 and 304-A IPC by the learned Sessions Judge, is fair and proper?'

11. The two vehicles involved in the accident are Maruthi Zen bearing registration No.TN-33-AA-9596 and TVS Scooty bearing registration No.TN-36-E- 8759, and they were coming from Erode to Sathyamangalam Road on the left side of the road. The road was running from east to west.

12.P.W.1 is the brother of the deceased Nithiyanantham, who heard about the occurrence and immediately rushed to the spot. His evidence reveals that he got the information about the accident from P.W.2 i.e., Sampath. He is one of the eye-witnesses for the accident and he has given the complaint and set the law in motion. P.W.7 is an another eye-witnesses. According to the evidence of P.W.2, they were standing near S.P.Nagar Junction and chatting. At that time, they found the vehicle which was driven by the accused coming form east to west direction in a rash and negligent manner. He also stated that the vehicle driven by the deceased was coming from the same direction on the left side of the road and the accused suddenly took a cut on the left side and hit on the back side of the Scooter driven by the deceased. P.W.2 has further stated that immediately after the accident, he gave intimation to the brother of Nithiyanantham, who got injured.

13.It is submitted by the learned counsel appearing for the petitioner that P.W.2 and P.W.7 are known to the family of the deceased and they haven't really witnessed the occurrence as stated by them. It is not known from the evidence of P.W.2, whether they were standing on the left side of the road or right side of the road near S.P.Nagar Junction. But, P.W.2 admitted that he alone had passed the information to the brother of the deceased. Had P.W.2 was a stranger, it could not be possible for him to immediately contact the brother of the deceased and inform him, by knowing his phone number. Another eye witness PW7, has stated in his evidence that the deceased Nithiyanantham and the injured Siva Adhithya belonged to the same place and they are known to him. His evidence also does not reveal on



which side of the road, at S.P Junction they have been standing and conversing. P.W.2 claimed that he had seen the occurrence at about 100 feet distance. Though P.W.2 denied that the deceased was not known to him, the evidence of P.W.7 would show that the deceased P.W.2 and P.W.7 belonged to same place and they are known to each other. The scene of occurrence, as it appears from exhibit P.W.10 rough sketch would show that the place of occurrence is on the left side of the east west road, just opposite to the place of occurrence.

14. It is claimed by the Revision petitioner / Accused that, he was just filling petrol from the petrol bunk, which is on the left side of the road and was proceeding to the main road slowly. The sketch also shows that there is a petrol bunk on the left side of Erode to Sathyamangalam Road. However, neither the Investigating Officer nor the Revision petitioner has placed before the Court the petrol purchase receipt in order to show that at the relevant point of time the vehicle of the deceased was stopped at the petrol bunk for filling petrol. It is further submitted by the learned counsel for the Revision petitioner that the two wheeler which proceeded before the car might have suddenly swerved on the right side alone, if the accident had occurred in the manner stated by the prosecution. He has further submitted that the rider of the motor cycle who died in accident was 23 years at the time of the accident and he ought to have ridden the two wheeler in a fast and fancy manner in which the youngsters tend to handle motor cycles.

15. It is not the case based on the circumstantial evidence alone. The case of the prosecution is based on the statements of P.W.2 and P.W.7. It is already noted that P.W.2 and P.W.7 have not stated on which side of the road they were standing at the time of the accident, near S.P.Nagar Junction. However, P.W.13 Investigating Officer has stated in his cross-examination that the investigation revealed that P.W.2 and P.W.7 were standing near the petrol bunk. So, it could be presumed that they were standing on the left side of the road, at a distance of 100 metres away from the scene of occurrence.

16. The damages present on the vehicles involved in the accident could give some idea about the manner in which the accident had taken place. Had the driver of the car hit the motor cycle from behind then the vehicle ought to have got damaged on the back side only. Had the car overtaken the two wheeler and hit on the motor cycle, the accident could have occurred at the middle portion of the road. But, the place of occurrence is shown on the left side of the road.

17. Hence, the possibility of the car trying to overtake the motor cycle can be ruled out. Neither the motor cycle seemed to have overtaken the car. Because the damages on the car is found to be present on the front left side. So there is also a



possibility that the two wheeler could have moved on the right side and in which it would have hit on the car on its front right side. P.W.2 and P.W.7 have stated that the driver of the car came in a rash and negligent manner and hit on the motor cycle by suddenly moving on the left side. Curiously both the vehicles were running on the left side of the road and it seems that the car driver was also following the rules of the road. So from the evidence of P.W.2 and P.W.7 no concrete idea can be got with regard to the negligence on the part of the accused and how the accident occurred.

18.The scene of occurrence and all other attending circumstances would not strictly rule out the possibility of the negligence on the part of the rider of the motor cycle as well. It is a settled position of law that whenever there are two views of the fact is possible, the view which is favourable to the accused should be taken and he should be given benefit of doubt. The prosecution has not proved the guilt of the accused by transcending all these auspicious circumstances. In view of the same, I feel that it warrants to interference.

19.In the result, this Criminal Revision Case is allowed and the judgments of the learned I Additional Sessions Judge, Erode, dated 09.09.2016 made in Crl.A.No.50 of 2014 is set aside.

20.The petitioner/accused is on bail, pending this Criminal Revision Case. Since now, this Court has acquitted him of the charge under 279, 338 and 304-A IPC, the bail bond, if any executed by him, shall stand cancelled. The fine amount, if paid by him, shall be refunded to him.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rap/ssn

To

1. The I Additional Sessions Judge,
Erode, Erode District.
2. Do Tho The Principal Sessions Judge,
Erode.
3. The Judicial Magistrate No.I,
Gobichettipalayam, Erode
Erode District.



4. Do Thro The Chief Judicial Magistrate,
Erode.

5. The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.

6. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.RC.No.1241 of 2016

NR(CO)
RGA(10/02/2022)