



Bail Slip

The Petitioner / Accused namely Pushparaj (aged 55 years) S/o.Arulraj was directed to be released on bail in and by the order of this Court dated 17.11.2016 and made in CrI.M.P.No.12218 of 2016 in CrI.R.C.No.1397 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.12.2021

CORAM :

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.R.C.No.1397 of 2016

Pushparaj

.. Petitioner

Vs.

State rep.by
The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.
(Crime No.927/2007)

.. Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records pertaining to the order of conviction and sentence dated 26.03.2015 in C.A.No.57 of 2012, on the file of the Principal Sessions Court, Nagapattinam, confirming the order of conviction and sentence dated 28.09.2012 in C.C.No.213 of 2008, on the file of the Judicial Magistrate Court No.I, Mayiladuthurai, Nagapattinam District and set aside the same.

For Petitioner : Mr.V.Venkatesan (Legal aid)

For Respondent : Mr.A.Gopinath
Government Advocate (CrI.side)

O R D E R

This Criminal Revision Case has been preferred challenging the judgment of the learned District and Sessions Judge, Nagercoil, dated 26.03.2015 made in C.A.No.57 of 2012,



sentenced vide impugned judgment dated 28.09.2012, made in C.C.No.213 of 2008, as follows:-

Rank of the accused	Charges	findings	Punishment
Sole accused	U/s.279 IPC	Found guilty	Convicted and imposed with a fine of Rs.700/-; in default to undergo three weeks Simple Imprisonment.
	U/s.338 IPC	Found guilty	Convicted and imposed with a fine of Rs.800/-; in default to undergo three weeks Simple Imprisonment.
	U/s.304(A) IPC	Found guilty	To undergo one year Simple Imprisonment and to pay a fine of Rs.1,000/-; in default to undergo one month Simple Imprisonment.

7. Against the said conviction and sentence, the petitioner / accused had preferred an appeal in C.A.No.57 of 2012 on the file of the learned District and Sessions Judge, Nagapattinam, which was dismissed by confirming the judgment of the trial Court. Aggrieved over the decision of the Appellate Court, this Criminal Revision Case has been filed by the petitioner / accused.

8. Heard the learned counsel for the petitioner/accused and the learned Government Advocate (Crl.Side) for the State.

9. The learned counsel for the petitioner submitted that the accident has not occurred due to rash and negligent driving of the accused; rash and negligence on the part of the accused was not proved by the prosecution. The trial Court without appreciating the evidence in proper perspective, convicted the accused and the same was wrongly confirmed by the Appellate Court.

10. The learned Government Advocate (Crl.side) for the State submitted that PW.2 is not only the complainant, but also an eye witness; he has stated in his evidence about the accident in a cogent and convincing manner; the Courts below have also appreciated the evidence in a proper perspective.



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11. Points for consideration:

"Whether judgment and sentence of the lower Appellate Court confirming the judgment of the learned trial Judge is fair, proper or legal?"

12. The fact that the accused was driving the milk tanker lorry at the time of accident was not denied by him. The deceased and his friend [PW.2] were coming in a two wheeler on the opposite direction. The occurrence had taken place near Savadi Kanniamman Koil. The tanker lorry was coming from south to north. It is seen from the rough sketch viz. Ex.P7 that the accident had taken place near the turning and on the middle part of the road. PW.2, who is the injured witness, has stated in his evidence that the accused/lorry driver was coming in a rash and negligent manner in the turning and because of that the accident had occurred. The learned trial Judge has also observed that the accused did not exercise proper precaution while coming near the turning of the road and that would show his negligence. As stated by the learned Government Advocate, PW.2 is not only an eye witness but also the pillion rider in the two wheeler which involved in the accident. His evidence would go to show that the accident had taken place due to negligent driving of the accused.

13. PW.3, who has also witnessed the accident, has stated that after the accident, the accused had ran away from the spot. The conduct of the accused is relevant to present that he had caused the accident due to his negligence and only because of that he ran away from the place of occurrence. The Motor Vehicle Inspector inspected the vehicle and certified that there is no mechanical failure in the vehicle and the accident was not caused due to any mechanical reasons. The learned trial Judge had appreciated the facts and evidence on record in correct perspective and convicted the accused.

14. The doctor had certified that the deceased had died due to this injuries sustained in the accident. The eye witnesses have also stated about the rash and negligent driving of the accused. When a vehicle come near the turnings on the Highways, it should take maximum precaution to avoid accident by skidding or hitting. The driver of the heavy vehicle like lorries need to be still more careful. The materials on record would show that the accused had failed to take due caution while coming near the turning and caused the accident.

15. The learned counsel for the petitioner requested that some indulgence should be shown in the matter of punishment. Considering the age and other circumstances of the accused.



16. In the result, this Criminal Revision Case is partly allowed and the judgment of the learned District and Sessions Judge, Nagapattinam, dated 26.03.2015 passed in C.A.No.57 of 2012 is modified to the extent that the accused is found guilty for the offence under Section 304 (A) IPC and he stands convicted and sentenced to undergo 3 months Simple Imprisonment and pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month. The punishment imposed for the offences under Sections 279 and 338 IPC stand unaltered. If the fine amount has already been paid by the accused it need not be paid again. The period of incarceration undergone by the accused can be set off under Section 428 Cr.P.C. The learned trial Judge is directed to issue non-bailable warrant for securing the accused and send him to prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Court,
Nagapattinam.
2. The Judicial Magistrate Court No.I,
Mayiladuthurai,
Nagapattinam District.
3. The Chief Judicial Magistrate,
Nagapattinam District.
4. The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.
5. The Public Prosecutor,
High Court, Madras.
6. The Superintendent,
Central Prison, Coimbatore.
7. The Secretary,
TN Legal Services Authority
High Court, Madras - 104.



Copy to

The Section Officer,
Criminal Section,
High Court, Madras - 104.

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PL[co]
NSK 31/03/2022