



BAIL SLIP

The Accused viz S.Muthu, S/o.Selvaraj, was directed released on Bail in Crl.M.P.No.13423 of 2016 in Crl.R.C.No.1636 of 2016 dated 02.02.2017 as per order of this Hon'ble High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1636 of 2016

S.Muthu

...Petitioner/Accused

vs.

The State rep by
The Inspector of Police,
Bhavani Police Station,
Erode District.
(Crime No.339/2007)

...Respondent/Complainant

PRAYER: This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set-aside order passed by the learned IV Additional Sessions Judge, Bhavani, Erode District in C.A.No.82 of 2014 dated 18.11.2016 and confirming order of the learned Judicial Magistrate, Bhavani in C.C.No.271 of 2007, dated 19.11.2014.

For Petitioner : Mr.E.C.Ramesh

For Respondent : Mr.S.Vinoth Kumar
Public Prosecutor

O R D E R

(This case has been heard through video conference)

The convicted accused is the revision petitioner herein.

2.This Criminal Revision Case has been filed against the order passed by the learned IV Additional Sessions Judge in Crl.A.No.82 of 2014, dated 18.11.2016 for confirming order



passed in C.C.No.271 of 2007, by the learned Judicial Magistrate, Bhavani, dated 19.11.2014, wherein, the learned Judge has convicted the accused for the offence under Sections 279, 337 (2 Counts), 304-A of IPC and Section 3 r/w 181 of the Motor Vehicles Act and the learned Judge has sentenced the accused as under;

(i)for the offence under Section 304-A of IPC sentenced the accused to undergo simple imprisonment for six months and to pay a sum of Rs.5,000/- in default to undergo simple imprisonment for two months;

(ii)for the offence under Section 337 (2 Counts) of IPC, sentenced the accused to undergo simple imprisonment for one month and to pay fine sum of Rs.300/- in default to undergo simple imprisonment for two weeks for each count ;

(iii)for the offence under Section 3 r/w 181 of the Motor Vehicles Act, sentenced the accused to undergo one month simple imprisonment and to pay a fine of Rs.300/-, in default to undergo simple imprisonment for two weeks.

(iv)for the offence under Sections 279 of IPC no separate sentence was awarded.

3(i).The case of the prosecution is that on 18.06.2007 at about 4.30 pm, on the Bhavai to Sathi Highway, near the Kadayampatti diversion on the East-West road while the accused was driving the lorry bearing Registration No.TN 28 D 3447 from East to West in rash and negligent manner, dashed against one Govindasamy, who was riding the two wheeler TVS XL Super Vehicle bearing Registration No. TN 36 K 3885 and thereafter dashed against the Tempo bearing Registration No.TN 33 E 9180 and caused damage to the front portion of Tempo. Further, the said lorry also dashed against one Seerangan, who was driving a cycle at that point of time and thereafter, dashed against the tree on the road side. Injured Seerangan died on the spot. In the said accident another witness Sasikumar, who was accompanying the accused in the lorry also sustained grievous injuries. Accordingly, charges under Sections 279, 337 (2 counts) of IPC were framed.

3(ii).Before the Trial Court, during the course of trial on behalf of the prosecution, PW1 to PW13 were examined and marked Exs.P1 to P11; MO1 & MO2 were marked; on behalf of the defence no witness has been examined and no document has been marked; the injured Govindasamy was examined as PW1 and occurrence was witnessed by PW2/Meghanathan, PW3/Pannerselvam PW4/Natarajan.



3(iii).The manner of the accident was clearly spoken to by PW1, PW2, PW3 & PW4 and thus, the Trial Court has convicted the accused for the above said offence and sentenced him as stated supra. Aggrieved against the said conviction and sentence, the accused has preferred an appeal in Crl.A.No.82 of 2014, before the learned IV Additional Sessions Judge and the learned Judge has confirmed the conviction and sentence passed by the Trial Court and dismissed the appeal. Hence, the accused has preferred the present Criminal Revision Case before this Court.

4.Heard both the learned counsels and perused the materials placed on record.

5.The learned counsel for the revision petitioner would submit that the accused has filed a petition under Section 311 of Cr.P.C for re-calling witness viz., PW2 to PW4 and in cross-examination though the permission was granted, the police could not bring them for cross examination and hence, valuable right of the cross-examination as to the manner of the accident, as deposed by the prosecution witnesses was defeated.

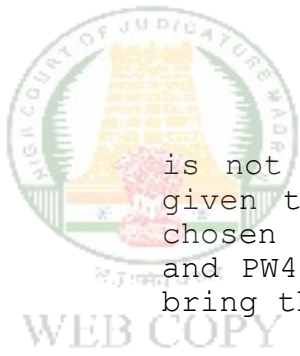
6.This Court has given its anxious consideration for the said submission made by the learned counsel for the revision petitioner.

7.It appears from the Lower Court records that at the first instant, occurrence witnesses viz., PW2 to PW4 deposed in support of the prosecution. On the date of the examination, the accused was absent and petition under Section 317 Cr.P.C., was filed. It is the specific evidence of PW2 to PW4 that if the accused is produced, they will identify, however he was absent and filed petition under Section 317 of Cr.P.C to dispense with physical appearance.

8.It appears that in the chief-examination on the side of prosecution taken on 17.06.2008, 29.03.2008 and 10.12.2008 and the cross-examination was not carried out on the same day.

9.It appears that after four years the accused has filed an application under Section 311 of Cr.P.C. to recall eye witnesses viz., PW2 to PW4 for cross examination and the same was allowed and hence, opportunity to cross-examine the occurrence witness was given at the first instance and the accused failed to avail the same. After four years the matter was posted for arguments and he resorted to file a petition under Section 311 of Cr.P.C.

10.Hence, this Court finds that non-production of PW2 & PW4 for cross examination after recall petition after four years



is not fatal to the prosecution. Initially an opportunity was given to the accused and after four years only the accused has chosen to file the recall-application. Since the witnesses PW2 and PW4 changed their address, the prosecution could not able to bring them to witness box.

11. Therefore, the taking note of the chief examination which was conducted before four years, the above factual position squarely falls under Section 33 of the Indian Evidence Act to held that it is insufficient and Section 33 of the Indian Evidence Act reads as follows:

"33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated. - Evidence given by a witness in a judicial proceedings, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceedings, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or it incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable."

12. It remains to be stated that PW3 also occurrence witnesses and that he has subsequently stated about the registration number of the vehicle in his evidence and hence, the involvement of the vehicle in the accident was clearly spoken to PW3. Furthermore, on that day, the accused only drove the vehicle has been established by PW10, who was accompanying the accused on the said day and hence, this Court finds that both points raised by the learned counsel for the revision petitioner stands negatived and reasonable opportunity was given to the accused to cross examine the occurrence witness and the involvement of the vehicle in the accident was clearly spoken to by PW3 and the accused only driven the vehicle was spoken to by PW10 and hence, the finding rendered by both the Courts below cannot be termed as perverse. In the absence of any illegality or irregularity or perversity in the finding of the Courts below I find that there is nothing on record for interfering with the finding of the Trial Court at this revision petition stage.

13. On the point of quantum of sentence both the parties heard.

14. In this view of the above, conviction is confirmed and



considering the facts and circumstances of the case, sentence of six months period imposed by both the Courts below is reduced to three months and fine amount is kept in tact.

15. Accordingly, this Criminal Revision Case is partly allowed to the limited extent as indicated above.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Judicial Magistrate, Bhavani.
2. The Inspector of Police,
Bhavani Police Station,
Erode District.
3. The Public Prosecutor,
High Court, Madras.
4. The IV Additional Sessions Judge,
Bhavani.
5. The Chief Judicial Magistrate,
Bhavani.
6. The Superintendent
Central Prison,
Coimbatore.

+1cc to Mr.E.C.Ramesh, Advocate, S.R.No.54358

Cr1.R.C.No.1636 of 2016

KV(CO)
RGA(18/11/2021)