



Bail Slip

The Petitioner/Accused namely Vinoth S/o Kunjan Pillai be and hereby was directed to be released on bail as per order of this Court dated 05/01/2017 in Crl.M.P.No.13510 of 2016 in CRL.R.C.No 1641 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.1641 of 2016

Vinoth ... Petitioner/Accused

Vs

State

Represented by

The Inspector of Police,
Mettupalayam Police Station,
Coimbatore District.

(Crime No.543 of 2010).

... Respondent/Respondent

PRAYER: This Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., against the judgment and conviction dated 01.10.2014 on the file of the District Munsif cum Judicial Magistrate, Mettupalayam in C.C.No.213 of 2010 and confirmed by the 1st Additional District and Sessions Judge, Coimbatore, in his judgment dated 07.06.2016 in C.A.No.155 of 2014.

For Petitioner : Mr.C.Ramkumar

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 District and Sessions Judge, Coimbatore, dated 07.06.2016 in Crl.A.No.155 of 2014, confirming the conviction and sentence, passed by the District Munsif cum Judicial Magistrate, Mettupalayam in C.C.No.213 of 2010, dated 01.10.2014.



2. The case of the prosecution is that, on 14.03.2010 at about 22.00 Hrs., near Rohini Hotel at Mettupalayam-Udhgai Main Road, the petitioner/accused had driven his lorry bearing Reg.No.KL 13 G 7633 from East to North East in a rash and negligent manner and hit against the cycle ridden by the deceased in the same direction from behind. On the complaint given by PW1, a case was registered by PW9 in Crime No.543 of 2010 of Mettupalayam Police Station under Sections 279 and 304(A) of IPC. The FIR has been prepared and marked as Ex.A5. PW10, Mr.Mani, Inspector of Police, took up the case for investigation and went to the place of occurrence and prepared Observation Mahazar and Rough Sketch and sent the body of the deceased for post-mortem. After completing the post-mortem, he examined the witnesses and recorded their statement. He also examined the Doctor and got post-mortem certificate and arrested the petitioner/accused on 17.03.2010 and sent him for remand. The vehicle involved in the accident was sent for inspection to the motor vehicle inspector. After completion of inspection, he filed the Charge Sheet against the accused under Sections 279 and 304(A) of IPC. When the accused was questioned, he denied his involvement in the offences.

3. During the course of trial, on the side of the prosecution, 10 witnesses have been examined as PW1 to PW10 and 7 documents were marked as Exhibits P1 to P7. On the side of the defence, no witness was examined and no documents were marked.

4. After conclusion of the trial and on considering the materials available on record, the learned trial Judge has found the accused guilty for the offences under Sections 279 and 304(A) IPC and convicted and sentenced him by imposing Simple Imprisonment for three months and to pay a fine of Rs.300/- in default to undergo one week Simple Imprisonment for the offence under Section 279 IPC, and he was convicted and sentenced by imposing Rigorous Imprisonment for one year and to pay a fine of Rs.1000/-, in default to undergo one month Simple Imprisonment for the offence under Section 304(A) IPC.

5. The Appeal preferred by the accused before the I Additional District and Sessions Judge in CrI.A.No.155 of 2014 was also dismissed on 07.06.2016. Aggrieved by that, this Criminal Revision Case has been filed before this Court by the accused.



6. Heard the learned counsel for the petitioner/accused and the learned Government Advocate (Crl.Side) appearing for the respondent.

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7. Point for consideration:

'Whether the conviction and sentence of the accused for the offences Sections 279 and 304(A) of IPC by the learned Sessions Judge basing on the materials available on record, is fair and proper?'

8. The learned counsel for the petitioner/accused submitted that the evidence of eye witnesses namely PW1 to PW3, are contrary to each other and it causes doubt in the case of the prosecution; the Doctor, who conducted post-mortem, has not produced viscera report and sent it for chemical examination, the deceased had drunk and rode the cycle and then invited the accident; there is no negligence on the part of the driver of the lorry; the evidence of Motor vehicle Inspector-PW7 also shows that there was no damage to the lorry involved in the accident; the Courts below have omitted to give doubt to the accused and hence this Revision Case may be allowed.

9. The learned Government Advocate(Crl.Side) appearing for the respondent submitted that, normally three of the eye witnesses had seen the occurrence at a very short distance from Rohini Hotel and the lorry had hit the cycle from behind; so, there cannot be any negligence on the part of the cyclist and hence, this Revision Case has to be dismissed.

10. The case has been registered based on the complaint given by PW1, who is the witness for the occurrence. The presence of PW1 in the place of occurrence is incidental to his taking dinner at the hotel nearby to the place of occurrence. There is no mistake as to the identity of the place of occurrence. PW1 was an Auto driver, and he went to the hotel near the place of occurrence to have his dinner. After taking dinner, when he was about to come out of the hotel, he witnessed the accident. Even the cross-examination of PW1 also confirms that he came out of the hotel and saw the accident. PW1 took the deceased to the hospital. The evidence of PW2 and PW3 also corroborated the evidence of PW1 on these material aspects. They were present at the place of occurrence, since they also went to Rohini Hotel for taking dinner. Their evidence reveal that the lorry had hit the cycle from behind. Since the lorry is bigger than the cycle and the cycle does not have any motor engine, there cannot be any rash or negligent driving by the cyclist. It



is witnessed by the witnesses that the lorry had gone on the road in zig-zag manner. The cyclist who was going straight got hit by the lorry from behind.

11. It can be argued that the cycle was going zig-zag and that is why the lorry also went in a similar manner. In that case, any prudent driver of a big heavy vehicle like the lorry would halt the vehicle by applying break. No one will follow a cyclist in a zig-zag manner. So it makes clear that the lorry driver lost his control and hit on the cyclist.

12. The cross-examination of the Investigating Officer also did not reveal anything contrary to the case of the prosecution. The Doctor, who examined the deceased immediately after he was brought to the hospital had not opined that the deceased was under the influence of alcohol at the time of his death. Since there is no sign of alcohol or its smell on the body of the deceased, the non-examination of viscera is not fatal to the case of the prosecution. According to the evidence of PW6, the deceased is an ice-cream seller, and he is known to PW6. The deceased being an ice cream vendor, after finishing his sales, he took his bicycle to go back home. The lorry driver ought to have noticed the cyclist who was proceeding in front of the lorry, and maintained a safe distance.

13. The evidence of eye witnesses about the manner in which the accident had taken place and the features of the spot as shown in the Rough Sketch and all other supporting materials, would only establish that the negligence is on the part of the driver of the lorry only.

14. The trial Court and the Appellate Court have appreciated the evidence in the right perspective and found the petitioner/accused guilty. Hence, the judgment of the appellate Court does not warrant any interference by this Court.

15. It is submitted by the learned counsel for the petitioner that the petitioner/accused was 32 years at the time of occurrence and he did not have any adverse driving records prior to the accident and hence, he prayed that some indulgence should be shown in the quantum of sentence.

16. The prosecution also did not claim that the accused had caused some other accidents previously. Taking into considerations the submission of the learned counsel for the petitioner and all other attending circumstances, I feel that the punishment for the offence can be reduced from one year to



three months Simple Imprisonment and the point is answered accordingly.

17. In the result, this Criminal Revision Case is partly allowed and the point framed by this Court is answered as below:

(i) The judgment of the First Appellate Court is modified to the effect that the sentence of Simple Imprisonment is reduced to three months for the offence under Section 304(A) of IPC.

(ii) The conviction and sentence imposed on the petitioner/accused for the offence under Section 279 IPC are confirmed.

(iii) The sentence imposed on the petitioner/accused shall run concurrently. The sentences of imprisonment already undergone by him shall be set off under Section 428 Cr.P.C.

iv) If the petitioner/accused is on bail, the trial Court is directed to issue Non-Bailable Warrant for securing him to undergo the remaining sentence, if any.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The 1st Additional District and Sessions Judge,
Coimbatore.
2. The District Munsif cum Judicial Magistrate,
Mettupalayam.
3. The Chief Judicial Magistrate,
Coimbatore.
4. The Superintendent,
Central Prison, Coimbatore.
5. The Inspector of Police,
Mettupalayam Police Station,
Coimbatore District.



6. The Public Prosecutor,
High Court of Madras,
Chennai.

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Copy to

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

Cr1.R.C.No.1641 of 2016

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srg 04/03/2022