



BAIL SLIP

The Petitioner /Accused viz, Dharmaraj, S/o.Palanisamy be and hereby was directed to be released on bail as per the order of this Court dated 01.03.2016 and made in CrI.M.P.No.2342 of 2016 in CrI.RC.No.347 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM

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

CrI.RC.No.347 of 2016

Dharmaraj

... Petitioner/Accused

Vs.

State by the Inspector of Police
M-3, Kovilpalayam Police Station
Crime No.410 of 2010
Coimbatore District.

... Respondent/Complainant

Prayer:- This Criminal Revision is filed under Sections 397 and 401 of Cr.P.C. to set aside the conviction imposed in the judgment dated 05.01.2016 made in C.A. No. 35 of 2015 of the Learned Principal District and Sessions Court, Coimbatore confirming the conviction imposed in the judgment dated 23.01.2015 made in C.C. No. 303 of 2011 of the Learned Judicial Magistrate No.2, Coimbatore.

For Petitioner : Mr. V.Anandhamurthy

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

ORDER

This Criminal Revision Petition has been preferred challenging the judgment of the Learned Principal District and Sessions Judge, Coimbatore dated 05.01.2016 made in Criminal Appeal No. 35 of 2015 confirming the conviction imposed in the judgment of the Learned Judicial Magistrate-II, Coimbatore in C.C. No.303 of 2011 dated 23.01.2015.



2.This case has arisen out of a road traffic accident. According to the case of the prosecution, on 05.12.2010 at 1.30 p.m. the accused was driving a share auto bearing Registration No. TN 38 - X 8289 from Kalapatti to Saravanampatti road, Kovilpalayam. At the time of accident, the deceased, Thiru.Muruganandham and PW1, viz., Thiru.Mohan Kumar and PW2, viz., Thiru.Praveen Kumar were travelling as passengers. PW1 and PW2 were sitting on the back seat and the deceased was sitting in the front seat along with the accused who was driving the share auto. It is alleged that the accused was driving the auto in a rash and negligent manner. While the auto was coming near Shanthome , it got toppled on the left side of the road. In the said accident Muruganandham died and the auto also got damaged.

3.On a complaint given by PW1, viz., Mohan Kumar, a case was registered in Crime No.410 of 2010 of N3-Kovilpalayam Police Station, under Sections 279 and 304-A IPC. After completion of the investigation, charge sheet was filed against the accused for the offences under Sections 279 and 304-A and the same was taken on file by the Learned Judicial Magistrate-II, Coimbatore in C.C. No. 410 of 2010.

4.After complying the legal mandates, the trial was conducted and during the course of trial on the side of the prosecution, 11 witnesses were examined and Exs.P1 to P9 were marked as documents. On the other side of the accused/petitioner, no documents were marked and no witnesses were examined.

5. It appears from the evidences of the prosecution witnesses that on 05.12.2010, PW1 along with PW2 and deceased travelled in the share auto driven by the accused. They went in the auto for the purpose of taking xerox copies of the certificates of the deceased. At that time, PW1 and PW2 were seated at the back seat and deceased was sitting in the front seat along with the accused. While the auto was coming near Senthottam, the accused tried to turn the auto from West to North. During that course, the auto got toppled and fell down into a pit on the road. In the said accident, Muruganandham (deceased) got injuries on his head and he was taken to the hospital for treatment and on examination, he was declared dead. After giving intimation to the parents, PW1 has given a complaint (Ex.P1). PW2 has corroborated the material aspects of the occurrence with PW1. PW3 is the father of the deceased and he had no knowledge about the trip undertaken by the deceased along with PW1 and PW2. On hearing the accident, PW3 rushed to



the hospital and came to know that he was succumbed to the injuries. PW4, viz., Vijay Raj is the cousin of the deceased and he also visited the deceased at the hospital. PW5, viz., Lakshmanan and PW7, viz., Devaraj stood as witnesses for Observation Mahazar, but they were treated as hostile witnesses and their signatures in the observation mahazar have been marked as Exhibits P-2 and P-3. PW6, viz., Selva Kumar is the relative of the deceased and he also went to the hospital to see the deceased after knowing the occurrence. PW8, viz., Kulanthaivelu, Doctor, who conducted postmortem, gave a report stating that the deceased could have died due to shock and hemorrhage due to multiple injuries and PW8's report has been marked as Ex.P4.

6. PW9, viz., Subbiah, Inspector, who is the Investigation Officer took up the case for investigation on 05.12.2010 itself and went to the place of occurrence, visited the place of occurrence and prepared the observation mahazar (Ex.P5) and Rough sketch(Ex.P6). He went to the hospital around 7.30 p.m. on 06.10.2010 and conducted Inquest on the body of the deceased. He arrested the accused on 09.10.2010 at 1.30 p.m. and sent him for remand. On 10.12.2010, he sent the vehicle involved in the accident to the Motor Vehicle Inspector for his inspection and got his report. PW11, viz., Vijaya Kumar, Motor Vehicle Inspector gave a report stating that the accident had not occurred due to mechanical failure of the vehicle. After completing the investigation, PW9 laid the charge sheet against the accused for the offences under Sections 279 and 304-A IPC.

7. After concluding the trial and on considering the materials available on record, the learned Trial Judge found the accused guilty for the offences under Sections 279 and 304-A IPC and convicted them. Aggrieved over that, the accused preferred an appeal in C.A.No.35 of 2015 before the learned Principal District and Sessions Judge, Coimbatore and that was also dismissed by confirming the judgment of the Trial Court. Challenging the same, the present revision has been filed.

8. Learned Counsel for the Revision Petitioner submitted that there is no rash and negligent driving on the part of the Petitioner/accused and the prosecution has not proved the same before the Trial Court. He further submitted that the Courts below have omitted to appreciate the important aspects involved in this case and convicted the accused on the wrong presumption that he had committed the offences. And he further submitted that the accident had taken place only because of the bad



condition of the road and not because of the rash and negligent driving of the accused and that the prosecution had omitted to investigate the matter fairly.

9. The important witnesses for this occurrence are PW1 and PW2, who were passengers of the share auto, driven by the accused /petitioner at the time of occurrence. The fact that the auto was driven by the accused /petitioner was not denied. The fact that it met with an accident, was also not in dispute. The only contention of the learned counsel for the petitioner is that despite the accident occurred, it was not due to the rashness and negligence on the part of the accused/petitioner. Hence, on this aspect, it is crucial to look into the evidences of the PW1 and PW2. It is seen from PW1's evidence that the deceased was sitting on the back seat of the vehicle and PW1 and PW2 were also sitting on the back seat.

10. Learned Government Advocate (criminal side) submitted that the act of the accused by allowing the deceased to be seated with him itself is an act of negligence, it cannot be over looked. But it has to be noted that in the cross examination of PW1 and PW2, that they have stated some contradictory statement about the manner in which they had travelled in the said auto. In their cross examination, they have stated that all the three including PW1 and PW2 and the deceased were seated together in the back seat of the said auto.

11. The Learned Trial Judge has observed that PW-1 and PW-2 have been cross-examined after a period of two and half years from the date of their chief-examination. Even if it is true that the accused had allowed the deceased to be seated along with him in the driver seat, the evidences of PW1 and PW2 would show that when the auto was coming near Senthottam, the auto driver took a turn from West to North. At that time, the auto got toppled and fell into the pit on the road. In view of that the deceased was thrown out of the auto and got injuries on his head.

12. It is not the case of the prosecution that the petitioner /accused had mistakenly turned the auto from West to North side. It is seen from the evidences of PW1 and PW2 that the accused attempted to turn the vehicle as part of the trip and not as an unnecessary venture. It is not denied that the road near Senthottam was uneven and there were pits on the roads. Both PW1 and PW2 have not stated that the accused drove the auto in a rash and negligent manner. In fact, they have stated that the accused had driven the auto in a normal speed and he got struck in the pits on the road. The drivers of



vehicles cannot have any control over the conditions of the road.

13. None of the passengers of the auto who are examined as witnesses have spoken in their evidence that auto was driven by the accused in a negligent manner. The rest of the witnesses who had examined on the side of the prosecution, have not stated about the accident and the manner in which the accident had taken place. There is no evidence available on record to show that the accused had driven the vehicle in a rash and negligent manner. Since evidences of the witnesses do not pin-point out the rash and negligence on the part of the driver the accused can not be found guilty for the offences charged against him. Since the courts below had omitted to consider the important aspects of the evidence on record and the circumstances of the case, I feel the judgements of the lower courts should be set aside.

14. In the result, this Criminal Revision is allowed and the judgment dated 05.01.2016 made in C.A. No. 35 of 2015 on the file of the Learned Principal District and Sessions Court, Coimbatore is set aside.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Judge,
Principal District and Sessions Court,
Coimbatore.
- 2.The Judicial Magistrate No.2,
Coimbatore.
- 3.The Chief Judicial Magistrate,
Coimbatore(For Information)
4. The Public Prosecutor
Madras High Court
Chennai.



5.The Inspector of Police,
M.3 Kovilpalayam Police Station,
Coimbatore District.

WEB COPY

Copy To

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

+1cc to Mr.V.Anandhamurthy, Advocate SR.No.59507

Cr1.RC.No. 347 of 2016

PA(CO)
GN(16/12/2021)