



BAIL SLIP

The Appellant/Accused Namely, Sivakumar M/A32 S/o. Murugan was directed to be released on bail vide order of this Court dated 29.03.2016 and made in CrI.MP.No.3257/2016 in CrI.R.C.No.493 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA  
CrI.R.C.No.493 of 2016

Sivakumar

... Petitioner

Vs

State represented by  
Inspector of Police,  
Sirumugai Police Station,  
Coimbatore District.  
(Crime No.232 of 2008)

... Respondent

PRAYER: This Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., against the Judgment and Conviction imposed in S.C.No.83 of 2013 dated 23.12.2014 on the file of the learned Assistant Sessions Judge and Chief Judicial Magistrate, Coimbatore and confirmed the same in CrI.A.No.4 of 2015 dated 28.10.2015 on the file of the learned I Additional District and Sessions Judge, Coimbatore and the same is liable to be set aside.

|                |   |                                |
|----------------|---|--------------------------------|
| For Petitioner | : | Mr.M.N.Balakrishnan            |
| For Respondent | : | Mr.A.Gopinath                  |
|                |   | Government Advocate (CrI.Side) |

O R D E R

This Criminal Revision Case has been filed by the petitioner/accused challenging the judgment passed by the learned I Additional District and Sessions Judge, Coimbatore, dated 28.10.2015 in CrI.A.No.4 of 2015, confirming the judgment passed by the learned Assistant Sessions Judge and Chief Judicial Magistrate, Coimbatore made in S.C.No.83 of 2013 dated 23.12.2014.

2. This case arises out of a road accident. It is the case of the prosecution that on 15.10.2009, at about 4.30 p.m., the

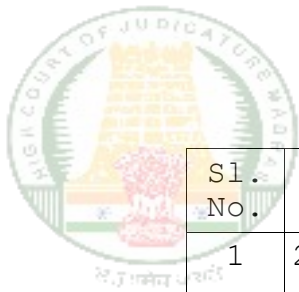


accused had driven a lorry bearing Reg.No.TN 40 B 6669 with a load of Banana. While the lorry was coming near Sirumughai and proceeded to Gopichettypalayam, the accused had driven the lorry in a rash and negligent manner, due to which, the lorry got capsized. In the lorry, 11 persons travelled by sitting on the load, and when the vehicle got capsized, out of 12 persons travelled in the lorry, 5 persons died on the spot and 7 persons got injured. On the complaint given by PW1, on 15.10.2008, PW15, Mr.Kuppuraj, Sub-Inspector of Police registered a case in crime No.232 of 2008 for the offences under Sections 279, 337, 338 and 304(Part-II) IPC. PW17, Mr.Elangovan, Inspector of Police took up the case for investigation. He went and visited the place of occurrence and prepared Observation Mahazar and Rough Sketch in the presence of witnesses. He conducted inquest on the body of the deceased Boopathi and Pushparani in the presence of witnesses and panchayatdars and prepared inquest report. Sub-Inspector of Police/Sheela conducted the inquest on the body of the deceased Pappa, which is marked as Ex.P21. PW15-Kuppuraj, Sub-Inspector of Police conducted the inquest on the bodies of Kamala and Palaniammal. Thereafter, all the dead bodies of the above said five deceased persons were sent for post-mortem to Government Hospital at Mettupalayam. PW14-Dr.Anand, conducted post-mortem on the bodies of the deceased. PW11-Dr.Lakshmanan admitted that the injured persons were taken to his hospital for treatment. He issued the wound certificates Exs.P2 to P7. The Investigating Officer examined the witnesses and the Doctor who treated the injured; and the doctor conducted the post-mortem and obtained wound certificate and post-mortem certificate. After completing the investigation, he filed charge sheet against the petitioner/accused for the offences under Sections 279, 337(3 counts), 338 (3 counts) and 304 (Part-ii) (5 counts) IPC.

3. After the case was taken on file and after complying all the legal mandates, the petitioner/accused was questioned. The accused denied his involvement in the offence and claimed to be tried.

4. During the course of trial, on the side of the prosecution, 17 witnesses have been examined as PW1 to PW17 and 21 documents were marked as Exhibits P1 to P21. On the side of the defence, no witness was examined and no documents were marked.

5. After the conclusion of the trial and on considering the materials on record, the trial Court found the accused guilty of the offences under Sections 279, 337 of IPC (6 counts) and 304-A IPC (5 counts) and accused was convicted and sentenced as follows:



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| Sl. No. | Offence under Sections | Punishment imposed on the accused by the trial Court                                                                                                                                                                                                                                         |
|---------|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | 279 IPC                | To undergo Rigorous Imprisonment for six months and to pay a fine of Rs.1000/- and in default of payment of fine to undergo Simple Imprisonment for one month.                                                                                                                               |
| 2       | 337 IPC (6 Counts)     | For each count, to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.500/- for each count and in default of payment of fine for each count to undergo Simple Imprisonment for one month.                                                                                  |
| 3       | 304-A IPC (5 counts)   | For each count, to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.1000/- for each count and in default of payment of fine for each count to undergo Simple Imprisonment for two months. All the above sentences imposed on the accused are ordered to run concurrently. |

6. The First Appeal preferred by the appellant in Crl.A.No.4 of 2015 was dismissed by confirming the judgment of the learned Assistant Sessions Judge and Chief Judicial Magistrate. Aggrieved by the said dismissal order passed by the learned I Additional District and Sessions Judge, Coimbatore, the accused has preferred this revision before this Court.

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

8. The learned counsel for the petitioner submitted that the vehicle was not driven in a rash and negligent manner by the revision petitioner/accused. While the lorry was crossing the check post, the lorry hit on a stone on the road and got capsized. He further submitted that the Courts below have not properly appreciated the material contradictions in the evidence of the prosecution and wrongly found the accused guilty for the offences under Sections 279, 337 IPC (6 counts) and 304-A IPC (5 counts).

9. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the learned Trial Judge has analysed the evidence in a correct perspective and found the accused guilty and the lower appellate Court has also confirmed



it correctly.

10. Point for consideration:

Whether the conviction and sentence imposed on the accused for the offences Sections 279, 337 of IPC (6 counts) and 304-A IPC (5 counts) by the learned Sessions Judge, basing on the materials available on record, is fair and proper?

11. On a perusal of the complaint, it is seen that the vehicle which was driven by the accused was a load lorry. Even at the time of accident, it carried raw banana. In the load lorry, 12 persons were allowed to travel and that itself is the negligent act of the accused. When the lorry was going near Sirumughai, the deceased and the injured got down to take lunch at Durga Mess. Thereafter, the lorry started from Sirumughai and got capsized within a short distance.

12. The Investigating Officer, who was examined as PW17, has stated during his cross-examination that there was a check post near the place of occurrence and that there were barricades placed on the two sides of the road. However, he denied the fact that no stone was placed on the road. The place of occurrence is 100 feet from the check post. PW1 to PW7 were travelling in the lorry at the time of accident. Some of them were sitting on the load and so it is impossible for them to see the features of the road from behind. PW1 has stated in his evidence that the driver drove the lorry in a rash and negligent manner and when he was about to turn the vehicle on the left side of the road, it got capsized. It is a place where the vehicle should be driven in a very careful manner. The driver ought to have noticed the barricades which are placed on both sides of the road and turned the vehicle carefully. PW1, during his cross-examination has stated that there was a stone on the road and the vehicle hit on the stone. PW1 and PW2 were said to have got seated in the cabin along with the driver. But it has to be noted that they have been cross-examined after three months from the date of their chief examination. The rest of the injured witnesses who were examined as PW2 to PW7 have stated that they were sitting on the load behind the driver cabin.

13. The Investigating Officer has stated that there was no stone on the road. The act of the accused to allow passengers to travel in the lorry by sitting on the load itself is an act of negligence. Had he driven the vehicle in a careful manner and turned it slowly, the accident could have been avoided.

14. It was not denied that the injury on the body of the injured witness and the death of the deceased, had caused due to the accident. The Motor Vehicle Inspector ruled out any



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mechanical failure in the vehicle involved in the accident. All the above evidence available on records would show that the accused had driven the vehicle in a rash and negligent manner and he invited the accident. He ought not to have allowed the passengers to travel on the load and which is perse illegal.

15. The Courts below have rightly appreciated the evidence and records and found the accused guilty of the commission of the offences under Sections 279, 337 (6 counts) and 304-A IPC (5 counts). In my opinion, I do not find any illegality or legal infirmity in the impugned judgment of the appellate Court in dismissing the appeal.

16. However, the learned counsel for the petitioner submitted that some indulgence should be shown in the matter of sentence. The persons who travelled as passengers in the load lorry, have also been negligent in allowing themselves to face the risk. They should not have travelled in the load lorry full of raw banana. Considering the above facts and other circumstances, I feel that the punishment of sentence should be reduced from two years to one year. Accordingly, the sentence of imprisonment is reduced from two years to one year in respect of the conviction under Section 304-A IPC.

17. In the result,

(a) this Criminal Revision Case is partly allowed and the judgment of the learned I Additional District and Sessions Judge, Coimbatore dated 28.10.2015 passed in CrI.A.No.4 of 2015 is modified to the effect that the sentence of imprisonment of two years Rigorous Imprisonment imposed for the offence under Section 304-A IPC is reduced to One year Rigorous imprisonment.

(b) The conviction and sentence imposed on the petitioner/accused shall stand confirmed in respect of the remaining offences.

18. The sentences 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.

19. Since the petitioner/accused is on bail, the trial Court is directed to take steps to secure him to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge,  
Coimbatore.
2. The Assistant Sessions Judge and Chief Judicial Magistrate,  
Coimbatore.
3. Inspector of Police,  
Sirumugai Police Station,  
Coimbatore District.
4. The Public Prosecutor,  
High Court of Madras,  
Chennai.

+1 cc to Mr.M.N.Balakrishnan, Advocate Sr.NO. 69441  
Cr1.R.C.No.493 of 2016  
mt (CO)  
A.SK(24.02.2022)