



BAIL SLIP

The Petitioner/Accused namely Mr.Kumaresan S/o.Manoharan was directed to be released in bail as per the order of this court dated 09.05.2019 in CrI.MP.No.6520 of 2019 in CrI.RC.No.424 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.424 of 2019

Kumaresan,
S/o. Manoharan

... Petitioner/Appellant/Accused

Versus

State rep. By
The Inspector of Police,
H-1, Washermenpet Traffic
Investigation Wing, Chennai.
(Cr.No.178/H1/2014)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order passed by the Learned II Additional Sessions Judge, Chennai in C.A.No.256 of 2016, dated 08.02.2019 confirming the conviction and modifying the sentence passed by the Learned III Metropolitan Magistrate, George Town, Chennai in C.C.No.164 of 2015 dated 16.09.2016.

For Petitioner : Mr.R.Ganesh Kumar
for Mr.R.C.Paul Kanaga Raj
For Respondent : Mr.J.C.Durairaj,
Government Advocate, (Criminal Side)



ORDER

This Criminal Revision Petition has been filed against the order passed by the learned II Additional Sessions Judge, Chennai in C.A.No.256 of 2016, dated 08.02.2019 confirming the conviction and modifying the sentence passed by the learned III Metropolitan Magistrate, George Town, Chennai in C.C.No.164 of 2015, dated 16.09.2016.

2. The respondent police registered a case against the petitioner in Crime No.178/H1/2014 for the offence under Sections 304(A), 338(2 counts), 337 (3 counts) of IPC and Section 184 of the Motor vehicle Act. After completing the investigation, the respondent Police laid a charge sheet before the III Metropolitan Magistrate, George Town, Chennai. The learned Magistrate taken the charge sheet on file in C.C.No.164 of 2015 and framed the charges against the petitioner for the offence under sections 304(A) IPC, 338 (2 counts), 337 (3 counts) of IPC and Section 184, 146 read with 196 of Motor Vehicle Act.

3. After completion of trial, the learned Magistrate came to the conclusion that the petitioner committed the offences under Sections 304(A), 338 (2 counts) and 337 (3 counts) of I.P.C. and also under Section 184 of the Motor Vehicle Act and convicted and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default Simple Imprisonment for one month for the offence under Section 304-A of I.P.C., and also sentenced to undergo three months Rigorous imprisonment for each count and to pay a fine of Rs.1000/-, each count, in default to undergo Simple Imprisonment for one month, each count for offence under Section 338 (2 counts) I.P.C. and for the offence under Section 337 (3 counts) I.P.C., the trial Court imposed fine of Rs.500/- each count, in default to undergo Simple Imprisonment for one month, and further imposed fine of Rs.1000/-, in default to undergo Simple Imprisonment for two weeks for the offence under Section 184 of Motor Vehicle Act. However, the trial Court found the petitioner not guilty for the offences under Section 146 read with 196 of Motor Vehicle Act and acquitted him from the said offence.

4. Challenging the said conviction and sentence, the petitioner filed an appeal before the II Additional Sessions



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Judge, Chennai and the learned Sessions Judge taken the appeal on file in C.A.No.256 of 2016. After hearing the arguments advanced on either side, on perusal of materials and also re-appreciating the evidence on record, confirmed the conviction by modifying the sentence as Simple Imprisonment for a period of six months instead of one year Rigorous Imprisonment, under Section 304-A of I.P.C., and rest of the sentence for the other offences remain unaltered. Challenging the said Judgment, the accused has preferred the present Revision before this Court.

5. The case of the prosecution is that on 18.07.2014 at about 4.00 p.m when P.W.1 to P.W.5, P.W.7 and P.W.8 were waiting along with the deceased Karunanidhi at the Pencil Factory Bus stop, near Kannan Roundana, the Tata Ace Van bearing Regn. No.TN-03-K-3919 driven by the accused in a rash and negligent manner rammed into the bus stop and dashed against the above witnesses and halted on the platform. P.W.1 and P.W.8 escaped unhurt. However, the deceased Karunanidhi sustained head injuries and succumbed to death. P.W.2 to P.W.5 and P.W.7 sustained simple injuries.

6. The learned counsel for the Revision Petitioner would submit that none of the witnesses have spoken about the involvement of the petitioner in the said accident and none of the witnesses have eye-witnessed that the petitioner is the one who had driven the vehicle at the time of accident. Even as per prosecution, only five witnesses sustained injuries and they have deposed that after the accident, they sustained injuries and have become unconscious and therefore, they could not see the driver of the vehicle. Therefore, the prosecution has failed to prove the guilt of the accused and the prosecution cannot take advantage of the weakness of the defence. Further the prosecution has not examined any independent witness to prove that the petitioner alone drove the vehicle. The trial Court failed to appreciate the evidence while the prosecution witnesses have not spoken about the involvement of the accused and wrongly convicted and sentenced the accused. Hence, challenging the same, the appellant/accused filed an appeal. However, the appellate Court also confirmed the findings of the trial Court without reappreciating the evidence and only reduced the sentence imposed on the petitioner from one year Rigorous Imprisonment to six months Simple Imprisonment for the offence under Section 304 A of I.P.C., Hence, the finding of both the



Courts below are perverse and the same needs interference of this Court.

7. The learned Government Advocate appearing for the respondent would submit that the accident was not disputed and the vehicle involved was also not disputed. In these circumstances, it is pertinent to note the deposition of P.W.9 who is the paternal uncle of the petitioner that he had brought the petitioner/accused to the police station in connection with the accident and took him on bail and therefore, the trial Court has rightly appreciated the evidence and came to the conclusion that the petitioner/accused who is the driver cum owner of the vehicle had driven the vehicle and committed the accident. The appellate Court also after reappraisal of evidence, agreed with the finding of the trial Court. Hence, there is no reason to set aside the conviction and sentence passed by the appellate Court. The prosecution has proved the case beyond all reasonable doubt. Further the learned Government Advocate would submit that the petitioner himself had voluntarily surrendered after six days of the accident and subsequently got bail and he has not produced any evidence to show that the vehicle was driven by somebody at the time of accident. Therefore, there is no necessity to go further to prove whether the petitioner involved in the accident or not. However, the respondent investigated the case in accordance with law and after completing investigation, laid a charge sheet and thereby the prosecution proved the case. Therefore, there is no merit in the revision.

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

9. In order to substantiate the charges, on the side of the prosecution totally 16 witnesses were examined as P.W.1 to P.W.16 and 21 documents were marked as Exhibits.

10. P.Ws.2 to 5 and P.W.7 are the injured witnesses and they have clearly spoken about the manner of accident and the involvement of the vehicle in the said accident. P.W.13, is the Motor Vehicle Inspector who inspected the vehicle after the accident, and he has clearly deposed that the accident has not taken place due to any mechanical defect. The Doctors who gave treatment to the injured witnesses and conducted post-mortem on



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the deceased, have spoken about the injuries sustained by the deceased as well as by the witnesses, thereby proving the fact that the deceased died due to the injuries sustained in the said accident. The petitioner has also admitted that he is the owner of the vehicle which caused accident.

11. The only question which has to be decided is that whether the prosecution has proved the fact that the petitioner is the one who drove the vehicle at the time of accident. According to the petitioner, he is only the owner of the vehicle and not the driver. According to the prosecution, the accident, the manner of accident and the involvement of vehicle are not denied. The only point that has to be decided herein is that as to why P.W.9, the paternal uncle of the petitioner/accused had produced the accused in the police Station after six days of accident and took him on bail. Once the petitioner accepted that he is the owner of the vehicle, it is for him to explain as to who had used the vehicle at the time of accident. Unless the owner of the vehicle proves that his vehicle was driven by somebody else without his knowledge at the time of accident, it could not be proved that he has not involved in the said accident.

12. Admittedly, the accident was not denied and the manner of accident was not denied, and that the ownership of the vehicle was also not disputed. When the Investigating Officer took up the case and started investigation, the revision petitioner has approached the respondent police 6 days after the accident and stated that he is the owner of the vehicle for the purpose of getting bail. But he has not produced any evidence to show that who was driving the vehicle at the time of accident, which would clearly establish that the petitioner/accused is the one who drove the vehicle in a rash and negligent manner and committed offence. Therefore, he cannot say that the prosecution has failed to examine any other witnesses to prove that the petitioner had driven the vehicle and caused accident. In these circumstances, the contention of the petitioner is not legally sustainable and this Court finds that the prosecution has proved its case beyond all reasonable doubts. The trial Court as well as the Appellate Court have rightly appreciated the evidence and convicted the accused.



13. The power and scope of the revision Court are very limited. As far as the fact finding is concerned, the appellate Court is final Court of fact finding and it can re-appreciate the evidence and the revision Court cannot revisit or re appreciate the evidence as that of the trial Court or appellate Court. However, this Court can interfere only if there is any perversity in the appreciation of evidence by the Courts below. The Revision Court cannot substitute own reasons and its views on findings of fact of both the Courts below. Unless, there is perversity in the appreciation of evidence by both the Courts below, the Revision Court will not interfere with the findings of both the Courts below. In this case, this Court does not find any perversity in the findings of both the Courts below and there is no merit in the Revision. The Revision therefore fails and it is accordingly dismissed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge,
Chennai
- 2.-do- through Principal Session Judge, Chennai.
3. The III Metropolitan Magistrate,
George Town, Chennai
- 4.The Chef Metropolitan Magistrate, Egmore, Chennai.
5. The Inspector of Police,
H-1, Washermenpet Traffic
Investigation Wing, Chennai.
6. The Public Prosecutor,
High Court, Madras.



Copy to

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

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+100 to Mr.R.Ganesh Kumar, Advocate, SR.No. 49114

CRL.R.C.No.424 of 2019

BR(CO)

B.VC (01/11/2021)