



BAIL SLIP

The Petitioner/Accused viz., Parameswaran, S/o.Duraimanickam, aged 39 years was directed to be released on bail as per the order of this Court dated 19/06/2019 and made in Crl.M.P.No.7278 of 2019 in Crl.R.C.No.532 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.532 of 2019

Parameswaran, M/39 years,
S/o. Duraimanickam.

... Petitioner

Versus

State, represented by
The Inspector of Police,
Taluk Police Station,
Mannargudi.
(Cr.No.30 of 2015)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the conviction and sentence dated 16.05.2018 made in C.C.No.71 of 2015 on the file of the Judicial Magistrate No.1, Mannargudi and as confirmed in Criminal Appeal No.32 of 2018 dated 29.03.2019, on the file of the District & Sessions Court, Tiruvarur.

For Petitioner : Mr.V.Paarthiban

For Respondent : Mr.S.Sugendran
Government Advocate, (Criminal Side)

ORDER

This Criminal Revision Petition has been filed to set aside the judgment dated 29.03.2019 passed in Criminal Appeal No.32 of 2018, on the file of the District and Sessions Court, Tiruvarur, confirming the judgment dated 16.05.2018 passed in C.C.No.71 of 2015 on the file of the Judicial Magistrate No.1, Mannargudi.

2. The respondent police registered a case against the petitioner in Crime No.30 of 2015 for the offence under



Section 304(A) IPC and after investigation laid a charge sheet before the Judicial Magistrate No.I, Mannargudi. The learned Magistrate taken the charge sheet on file in C.C.No.71 of 2015 and after trial, convicted the petitioner for the offence under Section 304(A) I.P.C and sentenced him to undergo two years simple imprisonment and to pay a fine of Rs.2000/- in default to undergo one month simple imprisonment. Challenging the said judgment of conviction and sentence, the petitioner herein, has filed the appeal before the Principal District and Sessions Judge, Thiruvarur. The learned Sessions Judge taken the appeal on file in C.A.No.32 of 2018 and after hearing the arguments advanced on either side and perused the materials dismissed the appeal by confirming the conviction and sentence passed by the learned Magistrate. Challenging the judgment of dismissal of the appeal, the accused has filed the present Revision before this Court.

3. The learned counsel for the petitioner would submit that the prosecution failed to prove its case beyond reasonable doubt. P.Ws.1 and 2 are said to have been the eye-witnesses and P.W.1 is none other than the husband of the deceased. Though, he has stated that he has seen the occurrence, during cross-examination, he has stated that his wife went for serving the summons and after half an hour, he sent the children to School. Therefore, it is not possible that, P.W.1 would have seen the accident. Therefore, P.W.1 was set up only for the purpose of eye -witness. P.Ws.1 and 2 might not be the eye-witnesses. P.W.2 is the rider of the vehicle, which P.W.1 was driving. Cross examination of P.Ws.1 and 2 clearly shows that P.Ws.1 and 2 might not have been the eye- witnesses. Further, he would submit that the motor vehicle inspector P.W.6 has clearly stated that damages caused to the vehicle is very doubtful that the manner in which the prosecution projected the case is not known. Further, one of the eye-witness has stated that soon after the accident, the driver escaped from that place and nobody has seen the driver. Therefore, the identification itself disputed as to whether the petitioner is the one who caused the accident. Therefore, the prosecution failed to prove its case beyond reasonable doubt. All the eye-witnesses P.Ws.1,2 and 8 were created for the purpose of this case and they are not actually the eye-witnesses. The trial court based on the eye-witness, wrongly convicted the petitioner. The trial court extended the benefit of doubt to the petitioner, without considering the basic principle and settled proposition of law, wrongly convicted the petitioner and also awarded maximum sentence and there is no witness has spoken about that the accident has taken place due to rash and negligent driving of the driver of the vehicle bearing Registration No.TN63AZ6818. Therefore, the prosecution failed to prove its case beyond reasonable doubt.

4. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.8 is the



independent eye-witness, has clearly spoken about the manner of the accident and though the learned counsel for the petitioner raised the question about the identification, none of the witnesses have been cross-examined regarding the identification of the accused that the petitioner is the one who drove the vehicle in a rash and negligent manner. The deceased is the police constable, who went for serving the summons and after serving the summons, while she returning back, the accident had occurred. P.W.8 is the eye-witness who has seen the accident, has clearly deposed the manner of accident. The opinion of the motor vehicle inspector is not a conclusive one, since the suggestion put before the witnesses is the possibility of damage. That cannot be the sole ground to disallow the case of the prosecution. However, prosecution proved its case beyond reasonable doubt and both the Courts below rightly appreciated the evidence and given concurrent finding. There is no perversity in the order passed by the Courts below and the revision is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the records.

6. The case of the prosecution is that the deceased was working as a constable and while she was proceeding from Needamangalam to Mannargudi in her motor cycle for serving summon, the petitioner drove the bus bearing Registration No.TN63AZ6818 in a rash and negligent manner, dashed against the deceased, due to which, the accident occurred. Hence the complaint.

7. In order to substantiate the charges framed against the petitioner, on the side of the prosecution, as many as 13 witnesses were examined and 10 documents were marked. On the side of the defence, no witness was examined and no oral and documentary evidence was produced. Out of 13 witnesses, P.Ws.1,3 and 8 are cited as eye witnesses. Though P.Ws.1 and 2 are cited as eye-witnesses, on a perusal of cross-examination, P.Ws.1 and 2 would not have been the eye witnesses and they are interested witnesses, particularly the victim is a police constable and P.W.1 is the husband of the victim. Therefore, from the evidence of P.Ws.1 and 2 particularly during cross-examination, P.W.1 has stated that half an hour later to the victim left from the house, he sent the children to school and they would not have seen the occurrence. However, on a reading of evidence P.W.8, who has cited as eye-witness, has clearly deposed that the victim came to his village to serve the summon and that was not questioned by the defence and he has also stated that he has seen the occurrence. Therefore, from the evidence of P.W.8, the eye-witness, both the Courts below convicted the petitioner and imposed the sentence.



cannot act as trial court or the appellate court to re-appreciate or revisit the entire evidence, unless there is a perversity in the appreciation of the evidence. On a reading of the entire materials, this Court does not find any perversity in the appreciation of the evidence and there is no merit in the revision and the same is liable to be dismissed. As far as the quantum of sentence is concerned, the accident itself is not an intentional one. However, the accident occurred due to the rash and negligent act of the petitioner. Therefore, this Court finds no reason to interfere with the judgment. However, as the accident is not an intentional one, the quantum of sentence is modified from two years simple imprisonment to six months simple imprisonment.

9. With the abovesaid modification, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Judge,
Tiruvarur.
2. The Judicial Magistrate No.1,
Mannargudi.
3. The Inspector of Police,
Taluk Police Station,
Mannargudi.
- 4 The Public Prosecutor,
High Court, Madras.
5. The Section Officer,
Criminal Section,
High Court, Madras.

CRL.R.C.No.532 of 2019

PA(CO)
GN(02/11/2021)