



BAIL SLIP

The Appellant/Accused namely Kaviyarasu, S/o.Sundaramoorthy was directed to be released on Bail as per Order of this Court dated 08/04/2014 in M.P.No.01 of 2014 in CRL.R.C.No.380 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19.11.2021

JUDGMENT PRONOUNCED ON : 24.11.2021

CORAM:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.380 OF 2014

Kaviyarasu

... Petitioner

Versus

The State Rep. by
The Sub-Inspector of Police,
SIPCOT Police Station,
Gummudipoondi,
Thiruvallur District.
(Crime No.26 of 2006)

... Respondent

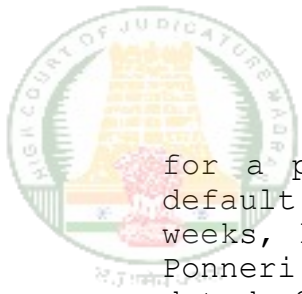
PRAYER:- Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C., to set aside the judgment passed in C.A.No.51 of 2010, dated 27.02.2014 on the file of the IV Additional District and Sessions Court, Ponneri against C.C.No.97 of 2006, dated 27.02.2014 on the file of the learned Judicial Magistrate No.I, Ponneri.

For Petitioner : Mr.T.Muruganantham

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)

ORDER

This Criminal Revision in Crl.R.C.No.380 of 2014, is filed by the Petitioner/Accused No.2 in the case, against the conviction for the offenses under Sections 279 and 304 (A) of Indian Penal Code and sentenced to undergo Simple Imprisonment



for a period of one month and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for a period of two weeks, by the judgment of the Learned Judicial Magistrate No.I, Ponneri dated 23/06/2010 in C.C.No.97 of 2006 and the judgment dated 27/02/2014 of the Learned IV Additional District and Sessions Judge, Ponneri in C.A.No.51 of 2010 confirm the same.

2. Heard Mr.T.Muruganantham, the Learned Counsel for the Petitioner. His submission was that all the witnesses in the case turned hostile and basing only on Surrender of the petitioner and the damage occurred to the car, he was convicted and as such according to him the finding of guilt by the Courts below is perverse.

3. On 12/06/2006, PW-1 Chandiran, lodged a complaint to the respondent Police stating that his cousin Jayasarathy and others were travelling in a Tata Sumo Car after attending a wedding reception. Whiles, the driver of the Lorry bearing Registration No.TN 67 3486 suddenly stopped the lorry without any signal on account of which the car hit against the lorry on the back side resulting in the death of his cousin and grievous injuries to others. The unknown driver of the lorry was arrayed as the accused and a case was registered in Cr.No.26 of 2006 and PW-10, completed the investigation and filed a final report, arraying the driver of the lorry one Powndoss as the first accused and the petitioner, Kaviyarasu, the driver of the Tata Sumo Car as the second accused and proposing both of them guilty for the offenses U/s.279, 337 and 304 (A) of Indian Penal Code.

4. Upon questioning the accused denied the charges and stood trial. On behalf of the prosecution, (1) Chandran, the first informant was examined as PW-1 and he deposed that he heard about the accident and lodged the complaint and that he did not know anything about the accident directly; (2) One Kumar, PW-2, a relative who heard about the accident and went to the police station, deposed that he did not know anything about the accident directly; (3) One Shanmugasundaram, as PW-3 who deposed that he did not know about the accident and was treated as hostile and was cross examined by the prosecution that after hearing about the accident he went to the spot and helped in admitting the deceased Jayasarathy into hospital, which was denied by him; (4) One Moorthy, as PW-4, who was a co-passenger in the Tata Sumo Car, who deposed that he was sleeping when the accident occurred and that he fainted after the accident and was treated as hostile by the prosecution and cross examined as if he originally gave statement that the accident happened only because the Accused No.1, the lorry driver suddenly and in a negligent manner stopped the lorry resulting in the Tata Sumo Car dashing against the lorry, which he denied; (5) One Ravi, as PW-5, who was a co-passenger in the Tata Sumo Car, who deposed



that he was sleeping when the accident occurred and that he fainted after the accident and was treated as hostile by the prosecution and cross examined as if he originally gave statement that the accident happened only because the Accused No.1, the lorry driver suddenly and in a negligent manner stopped the lorry resulting in the Tata Sumo Car dashing against the lorry, which he denied; (6) One Jagan, as PW-6, who deposed that the police requested him to sign as witness in Mahazar and that he did not know anything else and was treated as hostile and cross examined that he was present in the spot when the observation mahazar was prepared which he denied; (7) One Arunkumar as PW-7, who deposed that when he saw a gathering on the road, he peeped into and saw that the police was preparing observation mahazar and on request he signed as witness and upon cross examination he deposed that he did not know what is being marked and he simply signed at the place shown by the police; (8) One Thirunavukkarasu as PW-8, and he is the motor vehicle inspector who inspected the vehicles and found that there was no mechanical defect in the same; (9) One Dr. Balasubramaniam as PW-9, who conducted post mortem of the two persons who died in the accident; and (10) One Rajan, Inspector of Police, who is the investigating officer in the case.

5. The Prosecution marked the complaint of PW-1 as Ex-P1, signature of PW-6 in the Observation Mahazar as Ex-P2, Signature of PW-7 in the Observation Mahazar as Ex-P3, Motor Vehicle Inspector's report for both vehicles as Ex.P4 and P5, Post mortem reports of the two deceased persons as Ex P6 and P7 and the first information report as Ex-P8, the Rough Sketch as Ex-P9, Observation Mahazar as Ex-P10 and the inquest reports as Ex. P11 and P-12.

6. Upon being questioned about the evidence let in under Section 313 of Cr.P.C., the accused denied the same and no evidence was let in by the defense.

7. The Learned Magistrate while recording that there was no other evidence as the manner of accident, considering the damage of the Tata Sumo Vehicle and the damage to the lorry, acquitted the first accused of all charges, namely the driver of the lorry, holding that the driver of the Tata Sumo car was not careful and he should have avoided the impact. Stating so, he convicted the Petitioner/Accused No.2, for the offenses under Section 279 and 304(A) of IPC while acquitting him for the offense under Section 337 IPC.

8. The Learned Appellate Judge also accepted the absence of other evidence, but however, confirmed the conviction basing upon the fact that the Petitioner/Accused No.2, surrendered in the case and considering the nature of impact. There was no



cross appeal by the state as against the acquittal for the first accused.

9. It is clear from the records that the charge sheet was filed in the case on the strength of the evidence of the alleged eye witnesses to the incident, namely PW-4 & Pw-5, who however turned hostile. All the witnesses in this case did not support the case of the prosecution. The first information report proceeded on the basis that it was the first accused who was at fault. Even the original statements of the Prosecution Witnesses, is allegedly faulting the Accused No.1, which is clear from the cross examination of the hostile witnesses by the prosecution. Under the circumstances, it is natural for the Tata Sumo car to be damaged on the left-hand side and based on the condition of the vehicle alone, the manner of accident cannot be decided and a perusal of the judgments of the courts below, it would be clear that they are based on the assumption and surmise that the Accused No.2, should have been careful enough to avoid the accident and in my view, however strong the assumption be, the same cannot be considered as proof so as to convict the Petitioner/Accused of the Criminal Charges and this is one case which requires interference of this court in exercise of revisional jurisdiction as the finding of the Trial Court and the Appellate Court are without any evidence.

10. Therefore, the judgment dated 23/06/2016 of the Learned Judicial Magistrate No.1, Ponneri in C.C.No.97 of 2006 and Judgment of the Learned IV Additional District and Sessions Judge, Ponneri dated 27/02/2014 in C.A.No.51 of 2014 are set aside and the Petitioner/Accused No.2 is acquitted of the charges, giving him the benefit of doubt. Fine amount if any paid by the Petitioner/Accused No.2, shall be refunded to him.

11. The Criminal Revision Case is allowed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

grs

To

1. The IV Additional District and Sessions Judge, Ponneri.



2. The Judicial Magistrate No.I,
Ponneri.
3. The Public Prosecutor,
High Court of Madras.
4. The Sub-Inspector of Police,
SIPCOT Police Station,
Gummudipoondi,
Thiruvallur District.
5. The Section Officer,
Criminal Section,
High Court, Madras.
6. The Chief Judicial Magistrate,
Thiruvallur.

CRL.R.C.NO.380 OF 2014

VSN-II (CO)
PBS/10/12/2021