

Bail Slip

The Petitioner/Accused namely V. Karnarajan S/o.Velayutham was directed to be released on bail as per the order of Court dated 30.04.2014 made in M.P. No. 1/2014 in CrI.R.C. No. 438/2014 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.R.C.No.438 of 2014

V.KARNARAJAN  
S/o.Velayutham

... Petitioner/Appellant/Accused

Vs.

The State represented by  
Inspector of Police  
Gopichettipalayam Police Station  
Erode - District  
Crime No.991 of 2009

...Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. to call for the records relating to the Judgement dated 11.03.2014 made in C.A.No.75 /2013 on the file of Principal Sessions Judge, Erode, confirming in C.C.No.23 of 2010 dated 05.11.2013 on the file of the Judicial Magistrate No.1, Gopichettipalayam, Erode District convicting the petitioner under Section 279 of India Penal Code and imposing the sentence of three months and 304(A) of Indian Penal code and imposing the sentence of six months simple imprisonment and fine amount Rs.5,000/- on default of payment of fine amount one month simple imprisonment.

For Petitioner : Mr.D.Balachandran

For Respondent : Mr.T.Shunmuga Rajeshwaran  
Government Advocate (CrI. Side)

O R D E R

This Revision has been filed to to call for the records relating to the Judgement dated 11.03.2014 made in C.A.No.75 of 2013 on the file of the learned Principal Sessions Judge, Erode, dismissing the appeal and confirming the Judgement of conviction and sentence passed by the learned Judicial Magistrate No.1,

Gopichettipalayam, Erode District in C.C.No.23 of 2010 dated 05.11.2013, wherein the trial Court found the accused guilty of offence under Sections 279 and 304(A) IPC and convicted and sentenced him to undergo Simple Imprisonment for 3 months for the offence under Section 279 IPC and also sentenced to undergo Simple Imprisonment for 6 months for the offence under Section 304(A) IPC and imposed fine of Rs.5,000/- and in default to undergo Simple Imprisonment for one month and the sentences were ordered to run concurrently.

2. The brief facts of the prosecution case is that on 29.12.2009 at 2.45 p.m., the victim / deceased was riding his two wheeler bearing Regn. No.TN 36L 4503 from East to West on the Southern side of the road. The petitioner/accused had driven the tanker lorry bearing Regn. No.TN 66 6592 in a rash and negligent manner in the opposite side and had over taken a lorry which was going in front of him and came to the extreme end of the road and dashed against the two wheeler driven by the victim/deceased due to which, he sustained serious injuries and later succumbed to injuries. The respondent police after completion of investigation, filed the charge sheet against the petitioner/accused for offence under Sections 279 and 304 A IPC and the case was taken up in C.C.No.23 of 2010.

3. The summons were issued to the petitioner / accused and the copies were furnished to him under Section 207 Cr.P.C. and he was given sufficient time. Thereafter, when the petitioner/accused was questioned, he denied the charges and sought to be tried.

4. On the side of the prosecution P.W.1 to P.W.16 were examined and Exs.P.1 to P.12 were marked.

5. When the incriminating circumstances in the prosecution case were put to the petitioner/ accused under Section 313 Cr.P.C., he denied the charges. However, no evidence was let on the side of the defence.

6. The trial Court after hearing the arguments, found the petitioner / accused guilty and had convicted the petitioner/accused and sentenced as stated above.

7. The case of the prosecution from the evidence of the prosecution witnesses is that; P.W.1 / Sabeer Hussain is the resident of Nanjappa Road, Gopi, P.W.2/Akthar is the mother of PW.1. and P.W.3/Ajam Bhah was resident of Gopi.

8. P.W.1 is the son of the victim/deceased. He had deposed that P.W.3 had informed over telephone that his father met with an accident and that he was hit by a tanker lorry in a rash and

negligent manner while he was riding his two wheeler and on information he had gone to the Gopi Government Hospital and seen his father with injuries and thereafter, on the advise of the doctors had taken him to the KMCH at Coimbatore, where he was declared brought dead and thereafter the body was brought back to Gopichettipalayam for post-mortem and the complaint was given on 30.12.2009.

9. P.W.2 / wife of the victim had corroborated the evidence of P.W.1.

10. P.W.3 had deposed that the incident was seen by P.W.4 and P.W.5. As per the evidence of P.W.3, on 29.12.2003 at about 2.45 p.m., he was having tea along with his friends P.W.4 and P.W.5 and was conversing with them at Sri Anbu Bhavan Hotel near MGR statue in Gopi town. At that time, he had seen the victim / deceased riding his two wheeler from East to West on the Southern side of the road. At that time a tanker lorry bearing Regn. No.TN 66 6592 was driven by the petitioner/accused in a rash and negligent manner from West to East and that he had overtaken a lorry which was going in front of him and gone to the extreme Southern side of the road and dashed against the two wheeler driven by the victim/deceased due to which, he sustained serious injuries. The petitioner/accused had stopped the vehicle after some distance. Thereafter, P.W.3 had called 108 Ambulance and admitted the victim/deceased at Gopi Government Hospital and thereafter, PW.3 immediately informed the same to the wife and son of the victim/deceased.

11. P.W.4 and P.W.5 have corroborated the evidence of P.W.3.

12. P.W.6 had deposed about the police preparing observation mahazar and he having attested to the observation mahazar, Ex.P.2.

13. P.W.7 is working as a Motor Vehicle Engineer in Bannari Amman Sugars which is the owner of the lorry bearing Regn.No.TN66 9562. He had deposed that the company had appointed the petitioner/ accused as driver of the lorry and he was engaged to drive the lorry on the date of accident and that he heard had about the accident.

14. P.W.8 is the Medical Officer attached to the Government Hospital, Gobi. He had deposed that on 29.12.2009 at 2.55 p.m., the victim was brought to his hospital in 108 Ambulance. He had found the victim in an unconscious stage and he had noted an injury measuring 8x2cm on the back of the head of the victim/deceased and had issued the Accident Register / Ex.P.3 and later, referred the victim to Coimbatore Medial College Hospital.

15. P.W.9 and P.W.10 are the relatives of the deceased. They have deposed about hearing about the accident, and having visited the hospital.

16. P.W.11 is the Assistant Surgeon at Gopi Government Hospital and he had deposed having conducted Autopsy on the victim/ deceased on 30.12.2009 at 3.15 p.m. and he had noted the injuries on the victim/deceased. He had opined that the victim died due to injuries sustained in the accident and due to loss of blood suffered 8 x 26 hrs. before the Autopsy. The post-mortem report is marked as Ex.P4.

17. PW.12 is the Motor Vehicle Inspector G-I. He had deposed that on 06.01.2010 on the request of the Investigation Officer, he had inspected the two wheeler bearing Reg.No.TN 36L4503 and noted the damages on the vehicle. He had noted three damages and opined that there was no mechanical failure in the vehicle. The inspection report in respect of the two wheeler is marked as Ex.P.5. He had also inspected the tanker lorry bearing Regn.No.TN66 9562 and issued a report, Ex.P.6 and he had deposed that there was no mechanical failure in the vehicle.

18. P.W.13 is the witness to the observation mahazar and the rough sketch. He had deposed that the observation mahazar and rough sketch were prepared in his presence.

19. P.W.14 is the Inspector of Police. He had deposed about having registering the case in Crime No.991 of 2009 and handing it over to the Investigating Officer.

20. PW.15 is the Doctor who had admitted the victim/deceased at Coimabtoire Medical College Hospital and he had deposed that the victim/deceased was brought in a serious condition and that he was unable to do the C.T. Scan and while he was under treatment, he passed away at 8.20 p.m. The Accident Register Copy was marked as Ex.P.8 and the treatment summary was marked as Ex.P.9 and the death intimation was marked as Ex.P.10.

21. P.W.16 is the Investigating Officer. He had deposed that he had taken up the investigation on 30.12.2009 and gone to the place of occurrence at 7.00 a.m. and had prepared observation mahazar (Ex.P.2) in the presence of PW.6 / Duraisamy, PW.13/Murugan and had also prepared rough sketch (Ex.P.11). Thereafter, on the same day, he had conducted inquest over the body of the victim/ deceased at 12.30 p.m. in the presence of witnesses and Panchayadars and prepared the inquest report (Ex.P12) and on the same day, he had sent the lorry for inspection by the Motor Vehicle Inspector. He had further deposed that in continuation of the investigation, he arrested the petitioner/accused on 31.12.2009 and thereafter, released

him on station bond. Thereafter, he had examined the witnesses and recorded their statements and after examining the Government Witnesses and obtaining their reports, laid the charge sheet against the accused for offence under Sections 279 and 304(A) IPC.

22. The trial Judge, based on the available evidences and materials on record, found the accused guilty of offence under Sections 279 and 304(A) IPC and convicted and sentenced the petitioner/accused to undergo three months S.I. for offence under Section 279 IPC and also convicted and sentenced to undergo 6 months S.I. for offence under Section 304 (A) IPC and to pay fine of Rs.5,000/- and in default to undergo S.I. for one month. Against the Judgement of conviction and sentence, the petitioner/accused had filed a petition in C.A.No.75 of 2013 before the Court of Principal Sessions Judge, Erode, and the appellate Court by Judgement dated 11.03.2014 had dismissed the appeal confirming the conviction and sentence passed by the learned Judicial Magistrate No.1, Gopichettipalayam, Erode District, in C.C.No.23 of 2010 dated 05.11.2013. Against which, the present revision has been filed.

23. The learned Counsel for the revision petitioner/accused while assailing the Judgements of the Courts below would submit that the Courts below have failed to properly analyse the evidence on record and they have committed grave error in convicting the petitioner/accused. The Courts below have failed to take into consideration the enormous delay in registering the FIR. The accident had happened on 29.12.2009 at 3 p.m. The wife of the victim/deceased was examined on the same day by the police officials. However, for the reasons not known, the case has been registered only on the next day. The Courts below have failed to note that the witnesses have not spoken anything about rashness and negligence on the part of the petitioner/accused. Further, the Courts below have failed to note that the witnesses P.W.3 and P.W.5 are the relatives of the victim / deceased. Further, P.W.3, P.W.4 and P.W.5 are from different places and that they could not have seen the occurrence and thereby, their presence at the relevant time is doubtful. He would further submit that P.W.16 has not conducted the investigation in a proper manner. As per P.W.16 none of the witnesses had pointed out the place of occurrence and that the place of occurrence had been fixed based on presumption and assumption. Hence, he would seek to set aside the order of the Courts below.

24. Per contra, the learned Government Advocate (Crl. Side) would submit the petitioner/accused had driven the lorry in a rash and negligent manner and had over taken a lorry which was going in front of him and driven his lorry to the extreme right side on the southern side of the road and dashed against the

victim/deceased who was coming in the opposite direction and caused his death. He would submit that PW.3, P.W.4 and P.W.5 are the eyewitness to the occurrence and that there is no contradictions between their statements. Though, a doubt is created by the petitioner whether the incident had happened in front of the Anbu Tea stall or before the MGR Statue, he would submit that the incident had happened in the place where Anbu tea stall is on the left side of the road and MGR Statue is on the right side of the road and that there is no contradiction in the evidences of the eyewitnesses. He would further submit that PWs.3,4, and 5 had identified that the petitioner/accused is the person who had driven the vehicle in a rash and negligent manner and PW.7, the employer of the petitioner/accused had also confirmed that the petitioner/accused was entrusted to drive the offending vehicle on the date of accident. Thereby, the Courts below have rightly found the petitioner/accused guilty of the offences. Further, though the witnesses are stated to be persons from other village, their presence at the particular time, cannot be doubted and that PW.7 and P.W.13 who are the mahazar witnesses, have spoken about PW.16 preparing the observation mahazar and sketch and thereby, the prosecution has proved the case beyond doubt and that the Courts below have rightly held the petitioner/accused guilty of the offence and rightly convicted him. Hence, he prays for dismissal of the petition.

25. Heard the learned Counsels on either side and perused the materials and evidence on record.

26. In this case, the occurrence had happened on 29.12.2009 at 3 p.m. The deceased Mohammed Ali was driving his two wheeler bearing Reg.No.TN 36L4503 from East to West on the Southern side of the road. The petitioner/accused who had driven the tanker lorry bearing Regn.No.TN66 9562 in a rash and negligent manner, had over taken a lorry which was going in front of him and driven to the extreme end on the right side and dashed against the victim/deceased who was driving on the Southern side. It had been seen by P.W.3, P.W.4 and P.W.5 who were having Tea near the place of occurrence. The evidence of PWs.3,4 and 5 are cogent and clear with regard to the incident. P.W.3 had informed to 108 Ambulance and he had taken the victim to the Government Hospital, Gopichettipalayam and he had informed to his wife and son. Thereafter, they had come to Gopichettipalayam Government Hospital and on finding that the condition of the victim was critical, had taken him to Coimbatore Medical College Hospital where he was given treatment and thereafter he had died at 8.20 p.m. without responding to treatment. Thereafter, the body was brought back to Gopichettipalayam for post-mortem and since, P.W.1/son and P.W.2/ wife of the deceased were along with the victim, the complaint had been given only on the next day. In

such circumstances, the delay in registering the FIR will not assume any significance. P.Ws.3, 4 and 5 have deposed clearly about the occurrence. Further, the prosecution by examining P.W.7, had confirmed that the petitioner accused was entrusted to drive the said lorry on the date of occurrence. Thereby, the trial Court finding that the prosecution has proved its case beyond reasonable doubt, found the petitioner/accused guilty and convicted him and the appellate Court after analysing the evidences on record, has confirmed the conviction and sentence passed by the trial Court.

27. The High Court can exercise its jurisdiction in a case involving concurrent finding if it finds a grave error and the power of the Court to re-analyse the evidence is also been preserved. However, in this case on hand, perusal of records shows that there is no manifest error or illegality in the order passed by the Courts below, warranting any interference.

28. In the result, this Criminal Revision case stands dismissed. The conviction imposed by the Courts below is hereby confirmed. The Trial Court is hereby directed to secure the the petitioner/accused and commit him to undergo remaining period of sentence. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

s/d-  
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Sessions Judge, Erode.
2. The Judicial Magistrate No.1,  
Gopichettipalayam, Erode
- 3.The Chief Judicial Magistrate  
Erode District (for information)
4. The Inspector of Police  
Gopichettipalayam Police Station, Erode District.
5. The Public Prosecutor  
High Court of Madras, Chennai.

Copy to

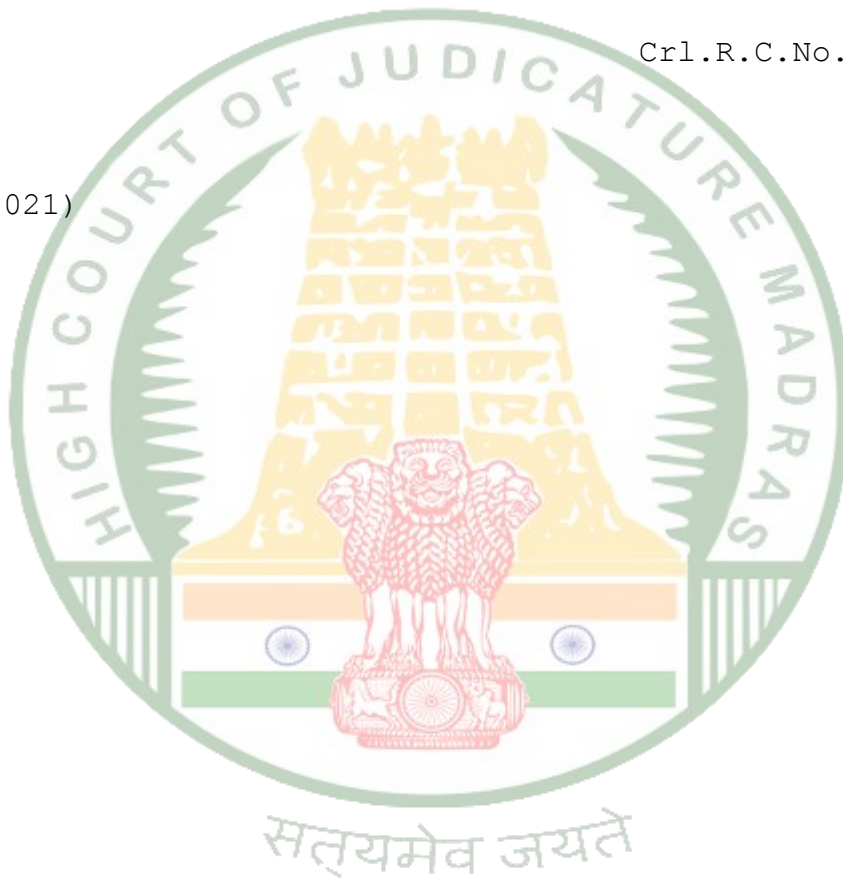
1.The Deputy Registrar(Records)  
Criminal Section  
High Court, Madras 104.

2. The Section Officer  
Criminal Section  
High Court, Madras 104.  
(to return the original records to the respective Courts)

+1 CC to Mr.D. Balachandran, Advocate sr 17843.

Cr1.R.C.No.438 of 2014

VBM(CO)  
SP(15/06/2021)



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