



Bail Slip

The Appellant herein/Accused viz namely Subramani S/o.Ramasamy 59 has directed to be released on bail as per order of this Court dated 02.08.2019 made in CrI.M.P. No.9257/2019 in CrI.R.C.No.664/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.664 of 2019

Subramani,
S/o. Ramasamy

...Petitioner/Accused

Versus

The State Rep by
The Inspector of Police,
Papparapatty Police Station,
Dharmapuri District.

...Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397(1) and 401(1) of the Code of Criminal Procedure, to call for the records and allow the Criminal Revision by set aside the judgment dated 18.02.2019 passed by the Principal Sessions Judge, Dharmapuri in C.A.No.40 of 2018, confirming the conviction and the sentence imposed on the petitioner in C.C.No.73 of 2011 on the file of the District Munsif Cum Judicial Magistrate, Pennagaram, by the judgment dated 02.08.2018.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.M.Sugendran

Government Advocate, (Criminal Side)

ORDER

This Criminal Revision Petition has been filed to call for the records and to set aside the judgment dated 18.02.2019 passed in C.A.No.40 of 2018, on the file of the Principal Sessions Judge, Dharmapuri, confirming the judgment dated 02.08.2018 passed in C.C.No.73 of 2011 on the file of the District Munsif Cum Judicial Magistrate, Pennagaram.



2. The respondent police registered a case against the petitioner for the offence under sections 279 and 304(A) I.P.C in Crime No.270 of 2010 and after completing the investigation, laid a charge sheet before the District Munsif cum Judicial Magistrate, Ponnagaram. The learned Judicial Magistrate taken the charge sheet on file in C.C.No.73 of 2011. After completing the trial, found the petitioner guilty for the offence under Sections 279 and 304(A) I.P.C and convicted and sentenced to undergo six months simple imprisonment and to pay fine of Rs.5000/-, in default to undergo one week simple imprisonment for the offence under section 304(A) I.P.C and he was convicted and sentenced to undergo one month simple imprisonment for the offence under section 279 I.P.C.

3. Challenging the said judgment of conviction and sentence, the petitioner herein filed the appeal before the Principal District and Sessions Judge, Dharmapuri. The learned Sessions Judge taken the appeal on file in CrI.A.No.40 of 2018 and after hearing the arguments advanced on either side, dismissed the appeal and confirmed the judgment of conviction and sentence passed by the Magistrate. Again challenging the said judgment of dismissal of appeal, the petitioner has filed the present Revision Case before this Court.

4. The learned Counsel for the petitioner would submit that in this case, prosecution has not proved its case beyond all reasonable doubt. Though P.Ws.1 and 2 are said to have been the eye witnesses, they are relative and interested witnesses. There are material contradictions between their evidence. In this case, the deceased is said to have been travelled in TVS Champ bearing Reg.No.TN 29 V 8466 and the said vehicle was not inspected by the Motor vehicle Inspector. Therefore, the non-submission of vehicle for the inspection is fatal to the case of the prosecution. Therefore, conviction cannot be recorded based on the interested witnesses. Further, the postmortem report was not corroborated with the evidence of P.Ws.1 and 2. They have stated that due to accident, the deceased died, whereas the post-mortem shows that there is no crush injury. If two wheels of the bus runs over a person, definitely there would be a crush injury, whereas, as per the postmortem report, there is only abrasion. There are material contradictions, which create many doubts and the prosecution has not proved its case beyond all reasonable doubt. Even the trial court failed to appreciate the evidence properly and simply convicted the petitioner only on the ground of sympathy. Therefore, petitioner approached the appellate court and the



learned appellate Judge also failed to appreciate the evidence and simply endorsed the views of the Magistrate. The appreciation of the evidence by the appellate court is perverse. Hence the judgment of conviction and sentence passed by the both the Courts below are liable to be set aside.

5. The learned Government Advocate would submit that in this case, P.Ws.1 and 2 are the eye witnesses and they have clearly narrated the incident and they have stated that the petitioner drove the bus in a rash and negligent manner and dashed against the two wheeler, due to which the deceased fell down and even then also, the petitioner did not stop the bus and due to that act, wheel of the bus ran over the deceased. Admittedly, the two wheeler of the deceased was not subjected to inspection by the Motor Vehicle Inspector, however, the eye witnesses have clearly stated about the accident. Hence the trial court as well as the appellate court rightly appreciated the evidence and convicted the petitioner and the revision case is liable to be dismissed.

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

7. The respondent police registered a case against the petitioner for offence under section 279 and 304(A) I.P.C in Crime No.270 of 2010.

8. In order to substantiate the charges, P.Ws.1 and 2 were examined by the prosecution and they were cited as eye witnesses. They have clearly spoken about the accident, though the learned counsel for the petitioner submitted that they are interested witnesses. Even if any interested or relative witnesses, that may not be the sole ground to disbelieve the case of the prosecution. The evidence of the interested witnesses are cogent, consistent and inspired the confidence of the Court. Conviction can be recorded. Hence the trial court recorded the conviction based on the interested or relative witnesses. In this case, there is no reason to discard the evidence of the relative witnesses, whereas, in this case, P.Ws.1 and 2 are only eye witnesses. Both the Courts below rightly appreciated the evidence.

9. Since this Court is a revisional court, it cannot re-appreciate the entire evidence and exercise the power of either the trial court or the appellate court and give the independent views on fact findings. This Court, while exercising revisional



jurisdiction, has to find out as to whether any perversity in appreciation of the evidence by the trial court or the appellate court.

10. On a reading of the entire materials, this Court does not find any perversity in appreciation of the evidence and the judgment of both the Courts below, since the accident is admitted and further the prosecution proved the manner of the accident through P.Ws.1 and 2, they have clearly stated that the accident has occurred due to rash and negligent driving of the driver of the Transport bus/the petitioner herein.

11. This Court finds that there is no perversity in appreciation of the evidence by both the Courts below and there is no reason to interfere with the findings of the both the Courts below. Therefore, under this circumstances, this Court finds that there is no merit in the revision and the same is liable to be dismissed. However, considering the age of the petitioner, sentence of six months simple imprisonment for the offence under section 304(A) I.P.C alone is modified to three months simple imprisonment and also imposed fine of Rs.5000/-.

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

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Principal Sessions Court,
Dharmapuri.

2.The District Munsif Cum Judicial Magistrate,
District Munsif cumd Judicial Magistrate Court,
Pennagaram.

3. The Chief Judicial Magistrate
Dharmapuri



4. The Inspector of Police,
Papparapatty Police Station,
Dharmapuri District.

5. The Public Prosecutor,
High Court,
Madras.

6. The Superintendent
Central Prison, Salem.

CRL.R.C.No.664 of 2019

VGII(CO)
SP(03/03/2022)