



BAIL SLIP

Criminal Revision Case No.684 of 2019

The Petitioner/Accused viz Vinoth Kumar S/o.Magiya was released on bail as per the order of this court dated 31.07.2019 made in CrI.M.P.No.9497 of 2019 in CrI.RC.No.684 of 2019 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.684 of 2019

Vinoth Kumar

...Petitioner

Vs.

State Represented by its
Sub Inspector of Police
Thirupattur Town Police Station
Thirupattur, Vellore District

...Respondent

Prayer : Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the order in C.A.No.5 of 2017 dated 22.03.2019 passed by the III Additional District and Sessions Judge, Vellore @ Thirupattur, by confirming the order of Judicial Magistrate Court No.1, Thirupattur District in C.C.No.115 of 2013 dated 25.01.2017.

For Petitioner : Mr.R.Jaikumar

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

ORDER

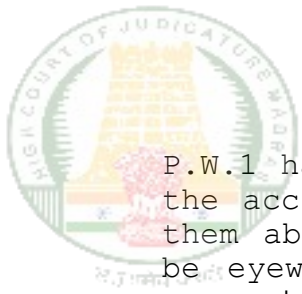
(The case has been heard through video conference)

This Criminal Revision has been filed against the Judgment in C.A.No.5 of 2017 dated 22.03.2019 passed by the learned III Additional District and Sessions Judge, Vellore @ Thirupattur, confirming the order of the learned Judicial Magistrate Court No.1, Thirupattur District in C.C.No.115 of 2013 dated 25.01.2017.



2. The respondent police registered the case in Crime No.236 of 2013 against the petitioner for the offences under Sections 304(A) and 279 IPC. After completing the investigation, the respondent police laid the charge sheet before the learned Judicial Magistrate-I, Thirupattur District and the learned Magistrate taken the charge sheet on file in C.C.No.115 of 2013. On conclusion of trial, the learned Magistrate found the petitioner guilty for the offence under Sections 279 and 304(A) IPC and convicted and sentenced him to undergo 6 months simple imprisonment for the offence under Section 304(A) IPC and to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence under Section 279 IPC. Challenging the order of conviction and sentence, the petitioner filed an appeal before the Principal District and Sessions Judge, Vellore, and the learned Sessions Judge, taken the appeal on file in C.A.No.5 of 2017 and made over the case to the III Additional District and Sessions Judge, Vellore at Tirupattur. The learned III Additional District and Sessions Judge, after hearing the arguments advanced on either side and re-appreciating the evidence, dismissed the appeal. Challenging the said Judgment of dismissal of appeal, the petitioner has filed the present revision before this Court.

3. The learned Counsel for the petitioner would submit that there is no eyewitness to this case. Though P.Ws.4, 5 and 6 have been cited to be eyewitnesses to this case, there are contradictions even with regard to place of occurrence. In the complaint, P.W.1 has stated that the accident took place when the deceased was driving his two wheeler at the left side of the road whereas, the witnesses have stated right side of the road which itself shows that P.Ws.4,5, and 6 are not eyewitnesses and they could not have present at the time of accident in the place of occurrence. Even the Motor Vehicle Inspector's report clearly shows that the evidence of the prosecution witnesses are not corroborating the same. Therefore, there are material contradictions which can go into the root of the case of the prosecution and the prosecution has failed to prove the case beyond all reasonable doubt. Further, P.W.1 / complainant is not an eyewitness and he is only hearsay witnesses and P.W.2 is the wife of the deceased who is also not an eyewitness. P.W.1 in his evidence has stated that P.Ws.4,5 and 6 are not relatives and they are known persons whereas, P.Ws.4,5 and 6 have stated that they are not known persons. Further P.Ws.4,5 and 6 have not stated the name of the deceased and they have only stated when a person was driving a two wheeler, the accused who drove the lorry in a rash and negligent manner hit on the two wheeler from the back side and thereby, the person who was driving the two wheeler fell down and sustained injury and there was bleeding in the nose of the injured and that they saw the incident. Further



P.W.1 has not stated that P.Ws.4,5 and 6 had informed him about the accident. Even P.W.1 and P.W.2 have not stated who informed them about the accident. Therefore, P.Ws.4,5 and 6 could not be eyewitnesses to the accident and the trial Court failed to appreciate the evidence properly and there is no corroboration and that the trial Court convicted the appellant based on conjectures and sympathy and in order to get the compensation from the Tribunal, the petitioner has been made liable to the accident. Further, the appellate Court also failed to appreciate the evidence properly and without giving independent findings, simply endorsed the views of the Magistrate. Therefore, the Judgments of both the Courts below are liable to be set aside.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police would submit that P.W.1 is the complainant and he is the father of the deceased. P.Ws.4,5 and 6 are the eyewitnesses and they have clearly deposed that they had seen the accident; when the deceased was crossing in front of them in a two wheeler, TATA 407 truck which came in a rash and negligent manner, hit against the two wheeler from its back due to which, the deceased sustained injury and died. Further, P.W.5 in his evidence has clearly stated that at that time, a friend of the deceased who had come there informed that the deceased is a Mechanic and through him, intimation was given to the family of the deceased. The prosecution by examining witness 4 to 6 clearly proved that the appellant committed offence under Section 279 IPC. Thus, the prosecution proved its case beyond all reasonable doubt. Both the Courts below have rightly appreciated the evidence and there is no merit in this revision and the revision is liable to be dismissed.

5. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent police and perused the materials on record.

6. The case of the prosecution is that on 07.04.2013 at about 6.30 hours when the deceased was riding the two wheeler bearing Regn. No.TN 23 AQ 2905 and proceeding near Tirupattur Meenakshi Theatre towards North side of the road, TATA 407 Truck bearing Regn. No.TN 45 E 3191 driven by the petitioner / accused in a rash and negligent manner in high speed, dashed against the back side of the two wheeler of the deceased due to which, the deceased sustained injuries and died on the spot.

7. In order to substantiate the charges framed against the petitioner, on the side of the prosecution as many as 11 witnesses were examined as P.W.1 to P.W.11 and 7 documents were marked as Exs.P.1 to P7. Out of the 11 witnesses, the defacto complainant was examined as P.W.1.

8. A reading of the evidence of the complainant/P.W.1 shows



that he is the father of the deceased who gave the complaint before the respondent police. However, he has not stated as to who informed him about the accident. Though, he has stated during cross examination that P.Ws.4,5 and 6 are not relatives and they are known persons, the reading of the evidence of P.Ws.4,5 and 6 shows that the deceased is not a known person to them and in their evidence they have only stated that one person travelled in a two wheeler in front of them. Further, in the F.I.R. and the rough sketch, it is mentioned that the vehicle proceeded from South to North on the left side of the road whereas, the witnesses P.Ws.4 and 5 have stated right side of the road. Further P.Ws.5 and 6 have stated that they had not seen the injured immediately after the accident and they have stated that P.W.4 had rushed to the accident place and seen the deceased immediately after the incident. However, P.W.4 has not stated that he informed about the accident to the father of the deceased or relatives or to the police. Therefore, P.Ws.4, 5 and 6 neither stated that immediately after the accident they informed to the police or to the relatives of the deceased or taken the deceased to the hospital and they have not acted in that manner which itself shows that they could not be eyewitnesses to the case. The trial Court and the appellate Court not properly appreciated the evidence and this Court finds perversity in the appreciation of evidence by the Courts below.

9.A reading of the evidence of P.W.1 to P.W.6 and also the rough sketch/Ex.P.7 and report of the Motor vehicle Inspector/Ex.P.3, this Court finds that the prosecution has failed to prove its case beyond all reasonable doubt and that due to the rash and negligence of the petitioner, the accident had happened. When two views are possible, the benefit of doubt should go in favour of the accused. This Court finds that the evidence adduced by the prosecution are not sufficient to convict the petitioner and the prosecution has failed to prove the case beyond all reasonable doubt. Therefore, the benefit of doubt is extended in favour of the petitioner.

10. Accordingly, in the interest of justice, this Criminal Revision case is allowed. The order of conviction and sentence passed by the learned Judicial Magistrate No.I, Thirupattur District in C.C.No.115 of 2013 dated 25.01.2017 and confirmed by the learned III Additional District and Sessions Judge, Vellore @ Thirupattur, by Judgment dated 22.03.2019 in C.A.No.5 of 2017 are set aside.

11.Bail bond if any executed by the petitioner shall stand cancelled and fine amount if any paid by the petitioner shall be refunded to him.



WEB COPY

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Judge,
Vellore @ Thirupattur,
2. The Judicial Magistrate No.I,
Thirupattur District.
3. Do thro Chief Judicial Magistrate,
Thirupattur.
4. The Sub Inspector of Police
Thirupattur Town Police Station
Thirupattur, Vellore District
5. The Public Prosecutor Officer,
High Court, Madras.

Copy To

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

+1cc to Mr.Fennwalter Associates, Advocate, S.R.No.44525

Criminal Revision Case No.684 of 2019

SMI (CO)
RGA(02/03/2022)