



BAIL SLIP

The Petitioner/Accused namely M.Suresh, S/O, Mallaiyan, was released on bail by the order of this Court dated 30.09.2019 made in WMP No.13629 of 2019 in Cr1 RC No.966 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.966 of 2019

M.Suresh

...Petitioner

Vs.

State represented by
The Inspector of Police,
M-3, Kovilpalayam Police Station,
Coimbatore, Coimbatore District.
Crime No.275 of 2011

...Respondent

Criminal Revision case filed under Section 397 r/w 401 of Code of Criminal Procedure to call for entire records in respect of judgment rendered by the learned I Additional District Cum Sessions Judge, Coimbatore, dated 18.07.2019 in C.A.No.98 of 2019 against the judgment passed by the learned Judicial Magistrate II, Coimbatore, dated 12.02.2019 in C.C.No.502 of 2012 and set aside the same.

For Petitioner : Mr.M.Jaikumar

For Respondent : Mr.S.Sugendran
Govt. Advocate (Cr1.Side)



ORDER

The criminal revision case has been filed against the judgment made by the learned I Additional District Cum Sessions Judge, Coimbatore, dated 18.07.2019 in C.A.No.98 of 2019 against the judgment passed by the learned Judicial Magistrate II, Coimbatore, dated 12.02.2019 in C.C.No.502 of 2012.

2 Case of the prosecution is that on 28.08.2011 at about 2.45 p.m. one Ravi along with his pillion rider one Kanagaraj drove a two wheeler bearing Reg.No.TVS XL Super TN 42-4156 and were proceeding from Kovilpalayam to Coimbatore. While both of them together were proceeding near the Sakthi Main Road, Karattumedu Mattu Pannai, in the opposite direction suddenly one Eicher Lorry bearing Reg.No.KA-11-A-2259 came in a rash and negligent manner and hit against the two wheeler, resulting which the said Ravi sustained severe head injury and died and the another one Kanagaraj sustained injuries on his left leg and right hand. Hence the present case in Crime No.275 of 2011 was registered against the petitioner for the offence under Sections 279, 338 and 304 (A) IPC.

3 After competing investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No.II, Coimbatore, and the same was taken on file in C.C.No.502 of 2012. The learned Magistrate, after trial and hearing of arguments advanced on either side, by judgment dated 12.02.2019 convicted the petitioner and imposed fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 279 of IPC, sentenced to undergo rigorous imprisonment for a period of six months with fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of one month for the offence under Section 338 of IPC and sentenced him to undergo rigorous imprisonment for a period of one year of 1 year with fine of Rs.5000/-, in default, to undergo simple imprisonment for a further period of one month for the offence under Section 304(A) of IPC.

4 Assailing the above judgment of conviction and sentence, the petitioner/accused preferred an appeal before the learned Principal District and Sessions Judge, Coimbatore and same was taken on file in C.A.No.98 of 2019 and made over the



appeal to the learned I Additional District and Sessions Judge, Coimbatore. The learned I Additional District and Sessions Judge after hearing both the parties, by judgment dated 18.07.2019, dismissed the appeal and confirmed the judgment of conviction and sentence passed by the trial Court. Aggrieved over the same, the petitioner is now before this Court with the present criminal revision case.

5 According to the learned counsel for the petitioner there is no proof to show that the petitioner/accused had driven the vehicle in a rash and negligent manner and prosecution did not prove that the accident had occurred only due to carelessness of the petitioner. P.W.1, 3 and 4 are not eye witnesses to the occurrence and from their evidence it is clear that they are all only hearsay witnesses and their evidence cannot be taken into account for recording conviction. Further P.Ws.5, 6 and 7 are only interested witnesses, who would naturally support the case of the prosecution. Even as per Ex.P3 and 4, the accident could not have happened as projected by the prosecution. The prosecution has failed to prove its case beyond reasonable doubt. Further the alleged occurrence is only an accident and not a pre-planned incident, but the prosecution has given a criminal color for the accident. Both the Courts below have failed to consider the nature of the case and erroneously convicted the petitioner/accused, which warrants interference of this Court.

6 The learned Government Advocate (CrI.Side) appearing for the respondent police would submit that P.W.1 and P.W.2, who are the eye witness to the occurrence had clearly stated about the manner in which the accident had taken place. There is no material contradiction. The petitioner/accused having seen that there was a vehicle coming from opposite direction, drove the vehicle at high speed in a rash and negligent manner and dashed against the two wheeler, due to which, the said Ravi died and P.W.2 sustained grievous injuries. Both the Courts below had rightly appreciated the evidence on record and convicted the petitioner, which does not call for any interference of this Court and the revision is liable to be dismissed.

7 Heard the learned Counsel for the petitioner and the learned Government Advocate (CrI.Side) appearing for the



respondent police and perused the materials available on record.

8 On a perusal of the records, it reveal that P.Ws.1 and 2, who are eye witnesses to the occurrence, had clearly stated that the accident had occurred only due to the rash and negligent driving of the offending vehicle. P.W.10, the Doctor, who conducted autopsy on the deceased, had opined that the death had occurred only due to the injuries, which was grievous in nature, sustained at the time of accident. The accused, being a driver of a heavy vehicle, after seeing the vehicle coming from opposite direction, should have taken more care and conscious and should have reduced the speed and avoided the accident. After perusing the entire documents available on record, this Court is of the view that the prosecution had proved its case beyond reasonable doubts. The lower appellate Court, as a final Court of fact finding, had re-appreciated entire evidences on record and come to the conclusion, that the accident had occurred only due to rash and negligent driving of the driver of the offending vehicle and hence convicted the petitioner/accused, in which this Court does not find any reason to take a different view. However in order meet ends of justice, this Court is inclined to modify the sentence of imprisonment alone, since it is only an accident and not a pre-planned incident.

9 In the result, the conviction made by both the Courts below is hereby confirmed. The sentence of imprisonment for a period of one year for the offence under Section 304(A) of IPC alone is modified to six months. The criminal revision is dismissed with the above modification. Trial Court is directed to secure the petitioner/accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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1. The I Additional District Cum Sessions Judge,
Coimbatore.

2. The Chief Judicial Magistrate, Coimbatore, (For Information)

3. The Judicial Magistrate II, Coimbatore.

4. The Inspector of Police, M-3, Kovilpalayam Police
Station,
Coimbatore, Coimbatore District.

5. The Public Prosecutor, High Court of Madras.

Copy to

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

+1CC to Mr.M.Jai Kumar, Advocate, SR.No. 45383

Cr1.R.C.No.966 of 2019

JP II(CO)

B.VC (02/11/2021)