



BAIL SLIP

The Petitioner/Accused Vimal Kannan male aged 30 years S/o.Selvaraj was directed to be released on Bail vide order dated 21/03/2017 in CRL.MP.No.2143 of 2017 in CRL.RC.222/2017 on File of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.222 of 2017

VIMAL KANNAN
S/o.Selvaraj

... Petitioner

Vs

State by
Inspector of Police,
Koradacherry Police Station,
Tiruvarur District.
(Crime No.146 of 2007)

... Respondent

PRAYER: This Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., challenging the Judgment of the learned District and Sessions Judge, Tiruvarur, Tiruvarur District made in Crl.A.No.8 of 2016 dated 02.01.2017 confirming the judgment of the learned Judicial Magistrate, Tiruvarur, Tiruvarur District, dated 22.06.2016 made in C.C.No.576 of 2008.

For Petitioner : Mr.S.Arivazhagan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been preferred by the petitioner challenging the judgment of the learned District and Sessions Judge, Tiruvarur dated 02.01.2017 made in Crl.A.No.8 of 2016, confirming the order of the learned Judicial Magistrate, Tiruvarur, dated 22.06.2016 made in C.C.No.576 of 2008.

2. As per the case of the prosecution, on 17.07.2007, at



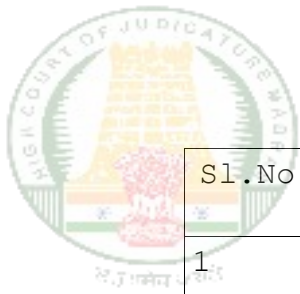
about 3.30 p.m., when the accused was driving his mini door auto bearing Reg.No.TN 50 E 0775 in a rash and negligent manner, he caused the accident and due to which the auto capsized. In view of the same, 11 persons travelled in the load carriage got injured and one person died on the spot. On the complaint given by PW2, Vijaya, a case was registered in Crime No.146 of 2007 of Koradacherry Police Station, Tiruvarur District, for the offences under Sections 279, 337 and 304-A IPC. The case was registered by PW1, Sub-Inspector of Police. Immediately after registering the FIR, he took up the case for investigation went to the place of occurrence prepared the Observation Mahazar and Rough Sketch in the presence of witnesses and also recorded their statement. On 18.07.2007, he arrested the accused and released him on bail bond. He also sent the vehicle to the Motor Vehicle Inspector for inspection.

3. Since one of the persons travelled in the load auto carriage died, he handed over the further investigation to the concerned Inspector of Police. The Inspector of Police conducted inquest on the body of the deceased and sent it for post-mortem and he also enquired the Motor Vehicle Inspector who inspected the vehicle involved in the accident and also the Doctor who gave treatment to the injured persons and conducted post-mortem and got the wound and post-mortem certificate. He also got certificate from the Motor Vehicle Inspector after his inspection. After completing the investigation, he filed charge sheet against the accused under Sections 279, 337 (10 counts) and 304-A IPC.

4. After the case was taken on file and after complying with all the legal mandates, the accused was questioned. The accused denied the involvement in the offence and he pleaded innocence and claimed to be tried. Hence, the trial was conducted.

5. During the course of trial, on the side of the prosecution, 10 witnesses were examined as PW1 to PW10 and 7 documents were marked as Exhibits P1 to P7. On the side of the defence, no witness was examined and no documents were marked.

6. After conclusion of the trial and considering the materials placed before the trial Court, the trial Court found the accused guilty of the offences under Sections 279, 337 (10 counts) and 304-A IPC and accused is convicted and sentenced as under:



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Sl.No	Offence under Sections	Punishment imposed on the accused
1	279 IPC	To pay a fine of Rs.1000/-, in default, to undergo a simple imprisonment for a period of one month.
2	337 IPC (10 counts)	To pay a fine of Rs.500/-, for each count, in default, to undergo a simple imprisonment for a period of one month.
3	304-A IPC	To undergo Simple Imprisonment for a period of two years.

7. The First Appeal preferred by the appellant in CrI.A.No.8 of 2016 was also dismissed, confirming the judgment of the learned Judicial Magistrate. Aggrieved by the said dismissal order passed by the learned District and Sessions Judge, Tiruvarur, the accused has preferred this revision before this Court.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (CrI.Side) for the respondent and perused the materials available on record.

9. The learned counsel for the petitioner submitted that the complainant, who has given the complaint, was also one of the persons who travelled in the auto and was sitting on the load carriage of the auto; hence, it would not have been possible for any of the witnesses who travelled in the auto, to witness the occurrence; in the absence of the evidence of eye-witnesses, the prosecution cannot establish that the driver of the vehicle had driven the vehicle in rash and negligent manner. The persons who travelled in the auto without the knowledge of the accused after attending a condolence, sat on the auto, had drunk and they were under the influence of alcohol and because of that they have caused lot of disturbances and vibrations on the vehicle and that had caused the accident. The Courts below have not considered the above aspect and proceeded to find the accused guilty on the wrong presumption that the accused had driven the vehicle in a rash and negligent manner and caused the accident.

10. The learned Government Advocate (CrI.Side) appearing



for the respondent submitted that, for the very act of the accused allowing the persons to travel in the load auto itself, is an act of negligence. The auto was not handled by the accused in a proper manner and that only caused the accident, due to which wherein the auto got capsized. The Courts below have rightly appreciated the evidence on record and proceeded to find the accused guilty.

11. Point for consideration:

Whether the conviction and sentence of the accused for the offences Sections 279, 337 IPC (10 counts) and 304-A IPC by the learned Sessions Judge basing on the materials available on record, is fair and proper?

12. The fact that the vehicle involved in the accident, was driven by the petitioner/accused, is not denied. On the date of accident, 11 persons travelled in the load auto and they were going to attend a condolence. The auto returned only after they attended the condolence. So, the driver of the load auto, cannot say that he did not have the knowledge of some 11 persons travelling in the load auto carriage.

13. Had there been one or two persons travelling in the load auto, it is possible that they might have sneaked into the vehicle without the knowledge of the driver. But, in the case on hand, 11 persons had travelled in the auto carrier and that would show that they have been travelling only with the consent of the driver of the load auto. It is rightly pointed out by the learned Government Advocate that the very act of allowing passengers to travel in a load auto itself, is an act of negligence. Further, the Auto got capsized without hitting any other vehicle / persons. Since the persons who have been travelling in the auto were in the backside, they could not have seen what caused the auto to get capsized. In this context, the learned counsel for the petitioner drew the attention of this Court to a decision of this Court passed in Crl.R.C.No.149 of 2007 dated 10.10.2012, in the case of Balachandran v. State, represented by Inspector of Police, M-1, Periyanaickenpalayam Police Station, wherein, it is held that when there is impossibility for a person to witness the occurrences, the 'benefit of doubt' should be given to the accused. In the case on hand, the learned Government Advocate vehemently argued that the manner in which the accident had taken place, would speak for itself and hence, the negligence of the driver cannot be condoned. The learned Government Advocate cited the judgment of the Hon'ble Supreme Court in the case of Thakur Singh v.



State of Punjab reported in (2003) 9 SCC 208, wherein, it is held as under:

''4.It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into a canal. In such a situation the doctrine of res ipsa loquitur comes into play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part.''

14. The said proposition laid down by the Hon'ble Supreme Court, was later followed by this Court also, in a decision reported in 2015 SCC OnLine Mad 1012 in the case of Ganapathy v. The Inspector of Police, Tindivanam Police Station, Tindivanam.

15. The learned counsel for the petitioner further submitted that the evidence of PW1 is contrary to his complaint, wherein he has stated that they were standing near the bus stop and at that time only, the accident had taken place. Though PW2 and other witnesses had concealed that they were travelling in the auto, the fact remains that they travelled only on the backside of the load auto. PW2 has given a complaint by stating that the auto hit against the vehicle in which the witnesses were travelling. However, PW1 has stated in his cross examination that they travelled in the load auto in order to attend a condolence. So, it is proved by the prosecution that the injured persons and the deceased were travelling in the load auto in an unauthorised manner.

16. The learned Government Advocate stated that, when the evidence itself speaks for itself, it is not necessary to look for other evidence. The accused did not bring out any other possible reasons for the accident than his own negligence of allowing passengers to travel and handling the vehicle in a slipshod manner.

17. The Courts below have rightly appreciated the evidence on record and found the accused guilty for the offence under Sections 279, 337 (10 counts) and 304-A IPC. However, during the course of arguments, the learned counsel for the petitioner submitted that, considering the age of the accused, some indulgence should be shown in the matter of punishment. For the offence under Section 304-A IPC, the accused had been



convicted and sentenced to undergo for 2 years Simple Imprisonment. The accused is not a habitually negligent driver. The Motor Vehicle Inspector had ruled out the possibility of any mechanical failure as the cause for the accident. The negligence on the part of the passengers, should also be considered while imposing punishment for the accused. Considering the age and other attending circumstances of the case, I feel that the punishment imposed under Section 304-A IPC alone can be modified.

18. In the result, this Criminal Revision Case is partly allowed and the point framed by this Court is answered accordingly and the judgment of the First Appellate Court is modified and the accused is convicted and sentenced to undergo 6 months Simple Imprisonment for the offence under Section 304-A IPC. The conviction and sentence imposed on the accused in respect of the other offences would remain unaltered.

19. The sentences of imprisonment already undergone by the accused shall be set off under Section 428 Cr.P.C. If the petitioner/accused is on bail, the Trial Court is directed to issue Non-Bailable Warrant to secure the accused and to send him to prison for undergoing the remaining period of the punishment.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

Ssn

To

- 1.The Principal District and Sessions Judge,
Thiruvarur.
2. The District and Sessions Judge,
Tiruvarur, Tiruvarur District.
3. The Judicial Magistrate,
Tiruvarur, Tiruvarur District.
4. Inspector of Police,
Koradacherry Police Station,
Tiruvarur District.



5. The Public Prosecutor,
High Court of Madras,
Chennai.

Copy To

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

+1cc to Mr.S.Arivazhagan, Advocate SR.No.69413

Cr1.R.C.No.222 of 2017

MT (CO)
GN(24/02/2022)