



BAIL SLIP

The Petitioner/Appellant/Accused namely N.Harishkumar, Age 49 Years, Male, S/o.Natarajan was released on bail on 11.04.2017 made in Crl.M.P.No.5143 of 2017 in Crl.R.C.No.580 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.580 of 2017

and

Crl.MP.No.5143 of 2017

N.Harishkumar ... Petitioner / Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
J-3, Guindy Traffic Investigation Police Station,
Chennai 600 032.
(Cr.No.574/S2/2008).

... Respondent/Respondent /Complainant

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgement of conviction and sentences passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai-600 015 on 21.03.2016 in CC.No.123 of 2009, which was confirmed by the learned XIX Additional Sessions Judge at Singaravelar Maaligai, Chennai 600 001 on 06.01.2017 in Crl. Appeal No. 96 of 2016.

For Petitioner : M/S.S.T.P. Kuilmozhi

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



ORDER

WEB COPY This Criminal Revision case has been filed seeking to set aside the judgement of the learned IV Metropolitan Magistrate, Saidapet, Chennai-600 015 dated 21.03.2016 passed in C.C.No.123 of 2009 by convicting the petitioner/appellant/Accused under Sections 279 & 304(A) of IPC, confirming the conviction and modifying the sentence of the judgement of the learned XIX Additional Sessions Judge at Singaravelar Maaligai, Chennai 600 001 on 06.01.2017 in Crl. Appeal No. 96 of 2016.

2. According to the prosecution, on 04.12.2008 at about 5.00 pm., the accused had driven the M.T.C. bus bearing registration No.TN-01-N-5601 in a rush and negligent manner, dashed against the Traffic Head Constable, who was on traffic duty and caused his death.

2.1. On a complaint (Ex.P.1) given by PW.2/Gandhi-Head Constable on 04.12.2008, who was also on duty and accompanied the deceased at the time of the occurrence, a case was registered by PW.9/Sowderarajan-Investigation Officer in Cr.No.574/S2/2008 of Guindy Traffic Investigation Section for the offence under Sec.279 and 304 A IPC.

2.2. After preparing the FIR (Ex.P.8), PW.9 took up the case for investigation and went to the place of occurrence, prepared observation mahazaar (Ex.P.2) and rough sketch (Ex.P.9) in the presence of the witnesses. He also enquired the witnesses and recorded their statements and recovered the vehicle which was involved in the accident and sent it for examination to the Motor Vehicle Inspector. He also conducted inquest on the body of the deceased and prepared the Inquest Report. Then he sent the body of the deceased to the Government Royapettah Hospital, Chennai 600 014, for conducting post mortem. On 08.12.2008, he arrested the accused and thereafter the accused was released on bail.

2.3. The vehicle involved in the accident was sent to Motor Vehicle Inspector for inspection. PW.9 got the medical reports and the Report of the Motor Vehicle Inspector. After completing the investigation, he filed the charge sheet against the accused under Sec.279 and 304 A IPC.



2.4. After the case was taken on file, the case papers were furnished to the accused and charges were framed against the accused for the offence under Sec. 279 and 304 A IPC. When the accused was questioned under Sec. 313 Cr.P.C, he pleaded innocence and claimed to be tried.

2.5. During the course of the trial, on the side of the prosecution, 9 witnesses were examined as PW.1 to 9 and 11 documents were marked as Exs.P.1 to P.11. On the side of the defence, no witness was examined and no document was marked.

2.6. After conclusion of the trial and on considering the materials available on record, the learned Trial Judge found the accused guilty and convicted and sentenced him to undergo 6 months Simple Imprisonment for the offence u/s.279 IPC and 2 years simple imprisonment for the offence u/s 304 A IPC. Aggrieved over that, the accused preferred an Appeal before the Sessions Court in Crl.A.No.96 of 2016, and that was also dismissed on 06.01.2017. As against the same, the accused has preferred this Criminal Revision Case.

3. Heard, the submission made by M/S S.T.P. Kuilmozhi, learned counsel for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.side) for the respondent/State.

4. Point for consideration:

Whether the findings and the judgment of the Appellate Court is unfair, improper or not legal?

5. The learned counsel for the revision petitioner submitted that the evidence of the prosecution does not show any indulgence on the part of the accused; the learned trial Judge had omitted to note that the negligence is very much on the part of the deceased who was near the barricade on the middle of the road and without showing any signals to the vehicles; during that time it hit on the bus which came on that way. It is further submitted that the learned trial Judge has omitted to consider the contradictions in the material evidences available on record in order to find the accused not guilty.

6. The occurrence had taken place on 04.12.2018 at about 5.00 pm., and by that time, the deceased was working as a Traffic Head Constable at Guindy Traffic Investigation Section. The place of occurrence falls within the jurisdiction of the



deceased. The accused is said to have been standing near the barricade and regulating the traffic and clear the barricade and at that time, the bus, which was driven by the accused hit against him. The eyewitness of the occurrence who were examined as PWs.1, 2 and 3, have stated in their evidence that they had seen the accused driving the bus in a rash and negligent manner.

7. PW.1, 2 and 3 who have been examined as eyewitnesses, have spoken about the occurrence. The evidence of PW.1 would make out that while PW.1 was waiting at the place of occurrence to cross the road, the bus driven by the accused, was coming from Guindy to Saidapet and in that course, it hit against the barricade and the police, who was minding the traffic. But he had not stated in his evidence that the vehicle was driven in a rash and negligence manner.

8. PW.2 also corroborated the evidence of PW.1 and he has stated that the bus which was driven by the first accused came in a high speed and it hit against the deceased who was standing near the barricade.

9. PW.3 also corroborated the above version in his evidence. PW.3 has spoken in his evidence about the fact that the deceased /Traffic Head Constable was regulating the traffic by standing near the barricade which was kept at the middle of the road. He has further stated that the bus which was coming from Guindy to Saidapet (From south to north) came near Annasalai turning and suddenly hit against the police constable who was standing on the road and thereafter the bus dashed against the barricade and stopped.

10. The duty of the Traffic Poice is regulate the traffic in congested junctions and to enable free flow of traffic. They can not be expected to stand on the corner or edge of the road and regulate traffic. As a duty traffic police, the deceased was discharging his duty on the fateful day. It is also seen that the place of occurrence has got a zebra crossing for the pedestrian to cross the road. Therefore, no attribution can be made against the deceased for having stood near the barricade at the time of accident. Wherever the traffic was regulated by the traffic head constable, he would be very busy and sometimes he might stand at the middle of the road.

11. In the case in hand it is stated that the deceased had to engage himself on the middle of the road. The cross



examination of PW.1 to 3 did not evince anything negative for the case of the prosecution and it did not demolish their version in chief. In the rough sketch the place of occurrence is shown at the 2/3rd portion away from the road. Since the place of occurrence is one of the busiest traffic point, it was inevitable for the deceased to engage himself in regulating the traffic by standing in the middle of the road.

12. It is the contention of the learned counsel for the accused that the deceased was placing a barricade in the place of occurrence which is not, actually required. In fact PW.2/Gandhi has stated in his evidence that the place of occurrence is a one way road and the bus stop is situated nearby to that place. PW.2 has stated in her cross examination that at that time of occurrence, the road was very busy and some of the shops were opened. The presence of the deceased at the place of occurrence is relevant to do his duty as a traffic police. The accused who had driven his bus ought to have noticed the presence of the deceased at the road. But he had driven his vehicle in a negligent manner and hit against the deceased.

13. PW.8/ Motor Vehicle Inspector had inspected the bus and noted the following damages on the vehicle involved in the accident and given his opinion that the accident had not occurred due to any mechanical failure.

"Damages: front left side corner body paint scratched (marking yellow paint)

Opinion: I am on opinion at that time accident was not due to any mechanical defect of the vehicle."

14. PW.8 has certified that the accident was not caused due to any mechanical failure. It is submission of the learned counsel for the defense that the vehicle first hit against the barricade and the deceased, who was standing behind the barricade, got injured and it is falsely claimed by the prosecution that the vehicle was first hit against the deceased and the damages on the bus involved in the accident were noticed to be present on the left side, but the deceased had sustained the injuries on his right side and in the sketch, the place of occurrence is shown as 1/3 length of East West road on its eastern side.



15. The vehicle, which was proceeding from South to North, ought to have kept left. But it seemed to have swivelled on the right side of the road and hit against the police constable who was standing near the barricade and caused the accident. A traffic police constable who was on duty, cannot be expected to be present on the edge of the road in junctions of this nature. This duty would be present near the barricade and minded the traffic. The accused, who is the driver of the bus belonging to MTC, would have knowledge on this, as he would have taken a regular trips in that way. Had the accused, who was driving the bus seen on his right side, he would have avoided, the accident. The witnesses have stated that the bus was being driven in a speedy manner. The rough sketch of the place of occurrence and the damages on the vehicle and the ocular account of the eye witnesses would show that the accused was driving the vehicle in a rash and negligent manner and hit against the deceased, who was on traffic duty.

16. The learned Trial Judge has appreciated the evidence in a right, perspective and arrived at a conclusion that the accused is guilty and convicted and sentenced him to undergo imprisonment as stated supra. In my opinion, the well reasoned judgment of the Sessions Court does not suffer from any infirmity or illegality.

17. However, it is submitted by the learned counsel for the petitioner that some indulgence should be shown in the quantum of sentence by reducing the same. No doubt in a road traffic accident, the driver who caused the accident, would not have any motive to cause the death. This litigation was pending for a long time at various levels and that itself would have been an ordeal for the petitioner/accused. Taking into consideration of the long pendency of this proceedings and the other attendant circumstances of the case, this Court feels that some lenience can be show in the matter of punishment.

In the result, this Criminal Appeal is partly allowed and the judgement of the learned IV Metropolitan Magistrate, Saidapet, dated 21.03.2016 made in CC.No.123 of 2009, is modified to the effect that the guilt of the petitioner/Accused is confirmed and he is convicted and sentenced to undergo one month Simple Imprisonment for the offence U/s.279 IPC; and to undergo three months Simple Imprisonment for the offence U/s.304 (A) IPC. The sentences shall run concurrently. The learned trial Judge is directed to issue Non Bailable Warrant in order to secure the appellant and send him for undergoing the remaining period of imprisonment. The period of imprisonment already



undergone by him shall be set off against the punishment now imposed. Connected Criminal Miscellaneous Petition in CrI.MP.No.5143 of 2017 is closed.

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Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The IV Metropolitan Magistrate,
Saidapet, Chennai-600 015.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The XIX Additional Sessions Judge,
Singaravelar Maaligai, Chennai 600 001.
4. The Inspector of Police,
J-3, Guindy Traffic Investigation Police Station,
Chennai 600 032.
5. The Public Prosecutor,
Madras High Court,
Chennai.
6. The Superintendent,
Central Prison, Puzhal, Chennai.

+1cc to M/s.S.T.P.Kuilmozhi, Advocate, S.R.No.65913

CrI.R.C.No.580 of 2017
and
CrI.MP.No.5143 of 2017

SR(CO)
SU(20/01/2022)