



BAIL SLIP in Crl.R.C.No.1338 of 2019

The Petitioner/Accused viz., Prabhuram, Male, Aged 47 years, S/o.Angamuthu was directed to be released on bail vide order dated 05.12.2019 in Crl.M.P.No.18010 of 2019 in Crl.R.C.No.1338 of 2019 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1338 of 2019

Prabhuram

...Petitioner/Accused

Vs.

Stated represented by
The Inspector of Police,
Karumalaikoodal Police Station,
Salem District.
(Crime No.288/2011)

...Respondent/Complainant

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure seeking to call for records and set aside the judgment dated 31.10.2019 of the learned Additional District and Sessions Judge, Additional District (Fast Track) Court, Mettur, in C.A.No.139 of 2018 against the judgment dated 23.08.2018 of the learned Judicial Magistrate No.II, Mettur, in C.C.No.213 of 2011.

For Petitioner : Mr.Ramnath RMV for
M/s.R.M.Venkatesh

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

ORDER

This criminal revision is preferred against the judgment dated 31.10.2019 of the learned Additional District and Sessions Judge, Additional District (Fast Track) Court, Mettur, in C.A.No.139 of 2018 modifying and enhancing the sentence awarded in the judgment dated 23.08.2018 of the learned Judicial Magistrate No.II, Mettur, in C.C.No.213 of 2011.

2.Case of the prosecution is that on 03.07.2011, the deceased Swaminathan was going in a Motor Cycle bearing Reg.No.TN-52-6635 with his wife viz., Lakshmi on the pillion and

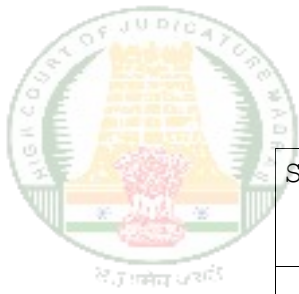


at that time, they were hit by the Tipper Lorry, which was driven by the petitioner, resulting in the death of Swaminathan and grievous injuries to Lakshmi. Hence the present case in Crime No.288 of 2011 was registered against the petitioner for the offence under Sections 279, 338 and 304 (A) IPC.

3.After competing investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No.II, Mettur, and the same was taken on file in C.C.No.213 of 2011. The learned Magistrate, after trial and hearing of arguments advanced on either side, by judgment dated 23.08.2018 convicted the petitioner and imposed fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of four weeks for the offence under Section 279 of IPC, imposed fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of four weeks for the offence under Section 338 of IPC and sentenced him to undergo simple imprisonment for a period of three months with fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of four weeks 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, Salem, and same was taken on file in C.A.No.139 of 2018 and made over the appeal to the learned Additional District and Sessions Judge, Additional District (Fast Track) Court, Mettur. The learned Additional District and Sessions Judge after hearing both the parties, by judgment dated 31.10.2019, dismissed the appeal and confirmed the judgment of conviction and modified the sentence as follows and ordered the sentence to run concurrently:

Section s	Sentence awarded by the Trial Court	Sentence modified by the Lower Appellate Court
279 of IPC	Fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of four weeks	To undergo rigorous imprisonment for a period of six months
338 of IPC	Fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of four weeks.	To undergo rigorous imprisonment for a period of two years with fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of six months



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Section s	Sentence awarded by the Trial Court	Sentence modified by the Lower Appellate Court
304(A) of IPC	To undergo simple imprisonment for a period of three months with fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of four weeks.	To undergo rigorous imprisonment for a period of two years with fine of Rs.50,000/- in default, to undergo simple imprisonment for a further period of six months

5. Aggrieved over the same, the petitioner is now before this Court with the present criminal revision case.

6. According to 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 and 5 could not be eye witnesses to the occurrence and their evidence cannot be taken into account for recording conviction. Further P.Ws.1, 5, 11 and 12 are only interested witnesses, who would naturally support the case of the prosecution. The prosecution has failed to prove its case beyond all 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. Further, the learned counsel submitted that the petitioner is now aged about 49 years and prayed mercy of this Court.

7. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1 and P.W.5, 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 proceeding before him, drove the vehicle at high speed in a rash and negligent manner and dashed behind the two wheeler, due to which, the said Swaminathan died by sustaining grievous injuries and the said Lakshmi, who is the pillion rider sustained grievous injuries. The trial Court had rightly appreciated the evidence on record and convicted the petitioner and the lower appellate Court had enhanced the sentence, which does not call for any interference of this Court and the revision is liable to be dismissed.



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

9. On a perusal of the records, it reveals that P.Ws.1 and 5, 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 were grievous in nature, sustained at the time of accident. The accused, being a driver of a heavy vehicle, after seeing the vehicle proceeding before him, should have taken more care and consciousness and should have reduced the speed and avoided the accident.

10. 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 confirmed the conviction recorded by the trial Court and enhanced the sentence, in which this Court does not find any reason to take a different view. However in order to 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.

11. In the result, the conviction made by both the Courts below is hereby confirmed. The sentences of imprisonment for a period of two years imposed for each of the offences under Sections 338 and 304(A) of IPC alone is modified to one year for each of the offences. The criminal revision is disposed of 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-IX)

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Sub Assistant Registrar

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To

1. The Additional District Judge,
Additional District(Fast Track) Court,
Mettur.



2. The Judicial Magistrate No.II,
Mettur.

3. The Chief Judicial Magistrate
Salem (For Information)

4. The Inspector of Police,
Karumalaikoodal Police Station,
Salem District.

5. The Public Prosecutor,
High Court, Madras.

Copy To

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

Crl.R.C.No.1338 of 2019

PMK(CO)
RGA(25/02/2022)