**BAIL SLIP**

Mathiyazhagan , S/o Samikannu, Petitioner/Accused, released on bail by this Court vide order dated 20.03.2020 made in CRL.MP.(MD). No.2877 of 2020 in CRL RC(MD).No.344 of 2020.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 19.07.2021****CORAM****THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI**Crl.R.C(MD)No.344 of 2020

Mathiyazhagan

: Petitioner/Accused

Vs.

The Inspector of Police,
Traffic Wing-Thanjavur,
Thanjavur.

(Crime No.158 of 2015)

: Respondent/Complainant

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the order, passed by the Principal District and Sessions Judge, Thanjavur, dated 10.01.2020 in CA No.94 of 2019, thereby modifying the sentence into 3 months Simple Imprisonment from 2 years and confirmed the fine amount of Rs.2,000/- imposed upon the petitioner, by the Judicial Magistrate Court No.III, Thanjavur, made in CC No.138 of 2015, dated 27.06.2019.

For Petitioner : Mr.B.Sekar

for Mr.P.Ganapathi Subramanian

For Respondent : Mr.P.Kottaichamy

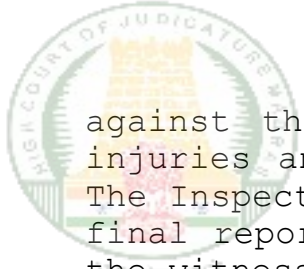
Standing Counsel for

State Government (Crl. side)

J U D G M E N T

This Criminal Revision is directed against the order, dated 10.01.2020 passed by the Principal District and Sessions Judge, Thanjavur, in CA No.94 of 2019, modifying the sentence to 3 months Simple Imprisonment from 2 years and confirmed the fine amount of Rs.2,000/- imposed upon the petitioner, by the Judicial Magistrate Court No.III, Thanjavur, dated 27.06.2019, made in CC No.138 of 2015.

2.The short facts of the case is that on 21.09.2015 at 8.30 am, at Thanjavur Yagappa Nagar, near LIC Soundar Rajan house, when the boy Ragulraj was riding his bicycle, the driver of the Tipper Lorry TN-49-AD-8121 came in a rash and negligent manner and dashed



against the bicycle. In that process, the boy Ragulraj sustained injuries and subsequently, he died in the hospital, on 21.09.2015. The Inspector of Police, attached to Traffic Wing-Thanjavur, filed a final report under section 304(A) IPC against the accused examining the witnesses.

3. In the trial court, 6 witnesses were examined and 8 Exhibits were marked. When the accused was questioned about the incriminating circumstances, he denied the same. The trial court convicted the revision petitioner for the offence under Section 304 (A) IPC and sentenced him to undergo 2 years Simple Imprisonment with a fine of Rs.2,000/-, in default to suffer 1 month Simple Imprisonment. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in C.A No.94 of 2019, which was heard by the Principal District and Sessions Judge, Thanjavur. The First Appellate Court modified the judgment of conviction and sentence passed by the trial court into 3 month SI. Hence, this criminal revision.

4. The learned counsel for the revision petitioner/accused submitted that the prosecution has failed to establish the ingredients required for the offence with which he stood charged and convicted him for the said offence and none of the witnesses have spoken that the accused has driven the vehicle either rashly or negligently and there is no specific allegation of negligence as against the accused in driving the vehicle and the eye witnesses are interested witnesses and the prosecution has failed to prove the case beyond reasonable doubt and the accused is entitled to acquittal and prays that the criminal revision may be allowed.

5. Further, the learned counsel appearing for the revision petitioner/accused submitted that when there was no evidence for rash and negligent driving, the accused is entitled to the benefit of acquittal. For that, the learned counsel appearing for the revision petitioner/accused submitted the following decisions:-

(1) 2014(1)MLJ (Cr1.) 301 (Vetrivelan Vs. State by Inspector of Police, Chennai);

(2) 2013(4) MLJ (Cr1) 619 (R.Nandakumar Vs. State rep. by Inspector of Police, Pollachi);

(3) 2011(4)MLJ (Cr1) 50 (Magesh Vs. State by Inspector of Police, Gudivatham Taluk Police Station);

(4) Unreported decision of this Court, dated 08.02.2021 made in Cr1.RC(MD)No.629 of 2016 (Maheshwaran Vs. State rep. by its Inspector of Police);

(5) 1998(8)SCC 498 (State of Karnataka Vs. Sathish);



(6) Unreported decision of this Court, dated 03.01.2011 made in CrI.RC(MD)No.1242 of 2007 (Nachimuthu Vs. State by the Inspector of Police); and

WEB COPY

(7) 2011(3) MLJ (CrI) 983 (V.Manju Vs. State rep. by Sub Inspector of Police).

6. On the other hand, the learned Standing Counsel appearing for the respondent/State submitted that the first appellate court, after proper appreciation of the facts, passed proper sentence, which does not require any interference by this court and the accused is not entitled for acquittal and prays that the criminal revision may be dismissed.

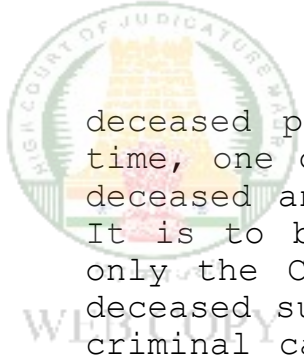
7. Heard both sides and perused the materials available on record.

8. PW1 is the father of the deceased and he gave Ex.P1 complaint. PW1 is not the eye witness. PW1 in his complaint and evidence stated that on 21.09.2015 at 8.00 am, his son proceeded in his bicycle and when he proceeded in front of the house of Soundar Rajan, at that time, the accused drove his vehicle and came to the wrong side and dashed against his son's bicycle and due to it, his son has sustained multiple injuries and thereafter, he admitted his son in the hospital and on the same day, his son died. Hence the evidence of PW1 is corroborated with the contents found in the complaint.

9. PW3 is the eye witness, who saw the occurrence. PW3 stated during his evidence that on 21.09.2015 at about 8.30 am, when he was proceeding to Yagappa Nagar, at that time, the deceased boy travelled in his bicycle, proceeding from west to east and at that time, the accused drove his vehicle to the wrong side and dashed against the deceased and due to it, the deceased sustained injuries and the injured was taken to KMC Hospital, Trichy, but he died.

10. In this case, the rough sketch was produced and it was marked as Ex.P5. On perusal of Ex.P5, it reveals that the deceased proceeded from west to east in his bicycle on the left side of the road, but the accused went to the wrong side and dashed against the deceased. Hence, from the evidence of PW3 and Ex.P5, it reveals that the accused only went to the wrong side and dashed against the deceased. Therefore, it shows the rash and negligent driving of the accused.

11. In this case, the owner of the offending vehicle was examined as PW6. PW6 stated that the accused told him that he parked his lorry near the house of one Soundar Rajan, at that time, the



deceased proceeded in his bicycle from west to east and at that time, one car came in the opposite direction and dashed against the deceased and the deceased fell down on the back side of the tyre. It is to be noted that no complaint was given to the effect that only the Car dashed against the deceased and only due to it, the deceased sustained injuries. Further, in respect of the accident, a criminal case was registered only as against accused. It is to be noted here that the accused has not given any complaint to the police stating that only due to the negligence on the part of the deceased, the accident occurred. Further, he has not sent any petition to the superior police officials, objecting registration of the FIR against him. From the evidence of PW3 and Ex.P5, it reveals that the accident occurred only due to the rash and negligent driving of the accused. Hence, it is held that the accused drove his vehicle in a rash and negligent manner, thereby caused the accident and accordingly, it is not necessary to interfere with the finding of the first appellate court.

12. In the result, this criminal revision fails and the same is dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/ litigant concerned.

To,

1. The Principal District and Sessions Judge,
Thanjavur.

2. The Judicial Magistrate No.III,
Thanjavur,

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.R.C(MD) No.344 of 2020
19.07.2021

SRK(CO)

KB(28.07.2021) 4P 4C

<https://hcservices.ecourts.gov.in/hcservices/>