

**BAIL SLIP**

Manickasundaram, S/o. Samgapillai, Male age about 45 years/2016
Sole Accused released on bail vide Court order dated 29.06.2016 made
in CRL.MP. (MD).5145/2016 in CRL.RC. (MC).447/2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	02.02.2021
DELIVERED ON	10/02/21

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI**Cr1.RC(MD)No. 447 of 2016**

Manickasundaram

...Petitioner/Appellant/Sole Accused

Vs.

The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.

(In Crime No. 396 of 2012)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in C.A. No. 25 of 2016, dated 22.04.2016 on the file of the Mahalir Fast Track Court, Karur by modifying the conviction and sentence passed by the learned Chief Judicial Magistrate, Karur in C.C.No. 8 of 2014, dated 01.03.2016 and acquit the petitioner.

For Appellant : Mr.K. Suresh
For Respondent : Mrs.M. Anantha Devi,
Government Advocate (crl. side)

ORDER

This Criminal Revision Case has been filed by the petitioner/accused as against the conviction and sentence passed by the learned Chief Judicial Magistrate, Karur, in C.C. No. 8 of 2014, dated 01.03.2016, confirmed by the Mahalir Fast Track Court, Karur, in C.A.No. 25 of 2010, dated 22.04.2016.

2. The revision petitioner was tried for the offence under Sections 279 & 304(A) IPC, before the learned Chief Judicial Magistrate, Karur, and the trial Court, in conclusion of the trial, found him guilty, convicted and sentenced to undergo simple imprisonment for Six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for One month for the offence under Section 279 of IPC and to undergo simple imprisonment for Two years and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for Six months for the offence under Section 304(A) of IPC. The petitioner preferred an appeal before the Court of Sessions and the same was taken in C.A.No.25 of 2016 and was modified by order, dated 22.04.2016 by the learned Mahalir Fast Track Court, Karur, modified the conviction and sentence imposed by



the trial Court. Aggrieved by the orders of the Courts below, the petitioner has preferred this revision case.

3. The brief fact of the case is that on 31.07.2012 at about 08.30 a.m., in Trichy and Karur main road, at Dhinnappanagar near Vairam Mahal, one Padmavathi, who is the daughter of the defacto complainant Boopalakrishnan was proceeding by walking towards Therasa School along with her friend Uthrapriya from east towards west on the extreme left side of the road, the petitioner/accused drove the bus bearing Regn. No.TN-63-AS-7675 in the same direction behind them in a rash and negligent manner at a high speed, dashed the left front side of bus against Padmavathi and caused the accident. In the said accident, the victim sustained grievous injuries and died. Based on the complaint given by PW1, the case in Crime No.396 of 2012 was registered by the respondent Police for the offence under Sections 279, 304(A) of the IPC. The respondent Police, after investigation, has filed the final report and both the Courts below have convicted the petitioner/accused as stated supra.

4. The learned Counsel for the revision petitioner submitted that the Appellate Court has failed to consider that eventhough the prosecution has examined P.W.3, P.W.4 & P.W.5 as eye witnesses and they were not supported the prosecution case. He further submitted that the Appellate Court has failed to consider that P.W.2, Mahazar witnesses has clearly stated that after the occurrence two bi-cycle were found in the scene of occurrence, but the prosecution has not seized the two bicycles. He further submitted that the Appellate Court failed to consider that all the witnesses stated that the scene of occurrence i.e., road was fully damaged and the other reasons given by the Appellate Court was not sound and not sustainable in law and facts. He prayed to acquit the petitioner/accused.

5. The learned Government Advocate (Crl. Side) submitted that the accident was happened due to the rash and negligent driving of the petitioner/accused. She further submitted that the minor discrepancies in the evidence of prosecution is not material contradiction. She further submitted that the prosecution has proved the case against the appellant beyond reasonable doubts and therefore, she prays for dismissal.

6. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

7. The accused was charged under Sections 279 and 304(A) of IPC and he was convicted and sentenced by the learned Chief Judicial Magistrate, Karur in C.C. No. 8 of 2014, dated 01.03.2016 convicted and sentenced to undergo simple imprisonment for Six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for One month for the offence under Section 279 of IPC and to undergo simple imprisonment for Two years and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for Six



months for the offence under Section 304(A) of IPC and the same was modified by the Judgment, dated 22.04.2016 on the file of the Mahalir Fast Track Court, Karur.

8. P.W.1 is the hearsay witness who preferred complaint. P.W.2 to P.W.5 are eye witnesses. P.W.2 who accompanied the deceased, deposed that when they went to school from east to west on the left side of road one bus bearing Regn. No.TN-63-S-7675 came behind them with high speed and without horn and dashed against Padmavathi. On the way to hospital the Padmavathi died.

9. Her name was mentioned in the witness list as Uthrapriya. But in deposition her name was stated as Rudra Prabha. Investigating Officer also has stated that he was examined only Uthrapriya. The identify of the witness is in dispute. Because, in the statement under Section 161 of the Cr.P.C., P.W.1 also the name who accompanied the deceased is Uthrapriya. It is a duty of the prosecution to prove that both persons are same. No identity card is produced to prove that she is a class mate of the deceased.

10. Apart from that the offending vehicle is responsible for the accident which came behind the P.W.2 and the deceased. Obviously, P.W.2 could not see the speed and rashness of vehicle.

11. The relevant portion of the Judgment reported in **2003(2) LW (CRL.) 208, Kulandaisamy Vs. Inspector of Police, Aravakkurichi Police Station, Karur District**, is extracted hereunder:

.....

"In the present case, it is not their case that P.W.1 & P.W.2 were looking towards the direction of the place of accident and they happened to have witnessed the accident. The evidence of P.W.1 & P.W.2 revealed that they heard the noise and only thereafter they had gone to the spot and by that time, the accident was over. Therefore, the oral evidence let in by the Prosecution does not prove the rash and negligent driving of the motorcyclist. Therefore, the version of the Prosecution that the accident had occurred on the Eastern side of the road appears to be untenable, being contrary to the documentary evidence, i.e. Observation mahazar.

There can be no general presumption that a person should have driven a motor vehicle in a rash and negligent manner, merely because there was an accident. Though, contributory negligence on the part of the victim is no known to criminal law, but, however the negligence of the victim may be relevant in deciding whether the negligence of the accused was direct and efficient cause of the death. Requirements of Section 304(A) of IPC are that the death of any person must have been caused by doing



any rash or negligent act. In other words, there must be proof that the rash or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash and negligent act of the accused".

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12. P.W.3 has stated in her cross examination that she saw the accident after she heard the sound. Therefore, she is also not a competent person to speak about the accident. P.W.4 & P.W.5 also have narrated that they also saw the accident after hearing sound. Hence, except P.W.2 no other eye witness. Identity of P.W.2 also in question. Further, her evidence also not sufficient to prove the rash and negligent act of the driver/petitioner herein/accused. Therefore, this Court is inclined to interfere with the Judgment passed by the Court below.

13. In view of the foregoing discussions and reasonings this Criminal Revision Case is allowed and set aside the order, dated 22.04.2016 in C.A. No.25 of 2016 passed by the Mahalir Fast Track Court, Karur, by modifying the Judgment, dated 01.03.2016 in C.C. No.8 of 2014, passed by the learned Chief Judicial Magistrate, Karur.

Sd/-

Assistant Registrar (ADII)

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/ /2021

Sub Assistant Registrar(CS)

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 Sessions Judge Mahilir Fast Track Court, Karur.
2. The Chief Judicial Magistrate Court, Karur.
3. The Inspector of Police,
Pasutpathipalayam Police Station, Karur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

Cr1.RC (MD) No.447 of 2016

10.02.2021