

**BAIL SLIP**

The Revision Petitioner/Accused Kumaraguru M/36, S/o Selvaraj was enlarged on bail in Crl MP(MD)No.7508/16 in Crl Rc (MD)No.584 of 2016 dated 30.08.2016 by this Hon'ble Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	02/02/21
DELIVERED ON	10/02/21

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI**Crl.RC (MD)No. 584 of 2016**

Kumaraguru

...Petitioner/Appellant/Accused

Vs.

The Inspector of Police,
Traffic North Police Station,
Trichy.

(In Crime no. 170 of 2012) ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the Judgment, dated 04.07.2016 made in the above Crl.A. No. 88 of 2015 on the file of the learned III Additional District Judge, Tiruchirapalli, confirming the Judgment of conviction and sentence imposed by the learned Judicial Magistrate No.I, Tiruchirappalli in C.C. No. 268 of 2015, dated 16.11.2015 and allow the above revision petition.

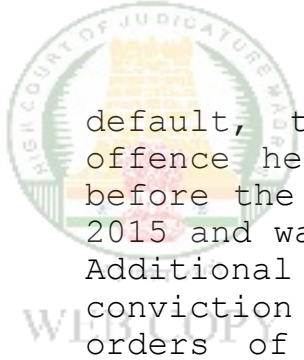
For Appellant : Mr.C. Jeganathan
for M/s.Veera Associates

For Respondent : Mrs.M. Anantha Devi,
Government Advocate (crl. side)

O R D E R

This Criminal Revision Case has been filed by the petitioner/accused as against the conviction and sentence passed by the learned Judicial Magistrate No.I, Tiruchirappalli, in C.C.No. 268 of 2012, dated 16.11.2015, confirmed by the learned III Additional District Judge, Tiruchirappalli, in C.A.No. 88 of 2015, dated 04.07.2016.

2. The revision petitioner was tried for the offence under Section 304(A) IPC, before the learned Judicial Magistrate No.I, Tiruchirappalli, 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.2,000/-, in



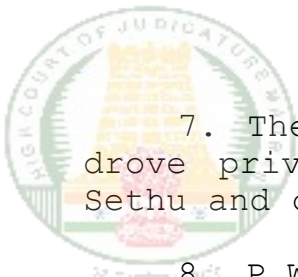
default, to undergo simple imprisonment for One month for the offence he was stood charged. The petitioner preferred an appeal before the Court of Sessions and the same was taken in C.A.No.88 of 2015 and was dismissed by order, dated 04.07.2016 by the learned III Additional District Judge, Tiruchirappalli, confirming 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 03.06.2012, at about 11.15 a.m., the deceased Settu while proceedings to Thiruvanaikovil in his two wheeler bearing Regn. No.TN-47-F-7002 and waiting near the median wall in 'Y' junction, at that time the respondent's bus bearing Regn. No.TN-45-AM-4431 driven by the accused in South-North direction and in a rash and negligent manner and dashed against the two wheeler of the deceased. In the said accident, the victim sustained head injuries and died on the spot. Based on the complaint given by PW1, the case in Crime No.170 of 2012 was registered by the respondent Police for the offence under Sections 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 Court below failed to consider that the prosecution has failed to make in the mahazar drawn at the occurrence place about the blood stains which is also fatal to the prosecution case. He further submitted that there is no statement made by P.W.1 and P.W.2 to prove that the petitioner has been driving the offending vehicle in rash and negligent manner, per contra, the Appellate Court confirmed the order of the trial Court on the ground that the petitioner drove the offending vehicle in rash and negligent manner and hence the orders of the Court below are liable to set aside. He further submitted that there are so many contradictory versions in the statements of P.W.1 & P.W.2 and P.W.3. He further submitted that the reasons assigned by the Courts below for convicting the petitioner/accused is not sustainable and is liable to be set aside. He prayed to allow the Criminal Revision Case.

5. Per contra, the learned Government Advocate (Crl. Side) submitted that, P.W.1 & P.W.2 have deposed in their chief examination 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 Section 304(A) of IPC as he drove private bus with rash and negligent manner and dashed one Sethu and caused death.

8. P.W.1 to P.W.3 are the eye witnesses. Other witnesses are only hear say witnesses. P.W.1 to P.W.3 are relatives of the deceased. P.W.4 is the daughter of the deceased who was working in Armed force at the time of accident.

9. The point for consideration is that whether the charge is proved against the petitioner beyond reasonable doubt?

10. As per evidence of P.W.1, the deceased stood in between the road divider. But, as per P.W.2 he stood 5 feet away from road divider, i.e., on the western side of Thiruvanaikaval road. P.W.3 had stated that the deceased was waiting to turn to Thiruvanaikaval road. Eventhough, blood strains were found on the road. But in observation mahazar no blood strains were shown. It was also not collected. If blood strains were shown in the rough sketch then we can easily identify the place of accident and whose fault the accident was occurred.

11. Further P.W.2 & P.W.3 had deposed that the accused drove the offending vehicle with high speed. They had not stated anything about rash and negligence manner. P.W.1 also not stated anything about rash and negligence.

12. 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".

13. There is an accident, but it may occur even as the negligence of the deceased. The prosecution has failed to prove the charge against the petitioner herein, beyond reasonable doubt.

14. In view of the foregoing discussions and reasonings this Criminal Revision Case is allowed and set aside the order, dated 04.07.2016 in C.A. No.88 of 2015 passed by the learned III Additional District Judge, Trichirappalli, confirming the Judgment, dated 16.11.2015 in C.C. No.268 of 2012, passed by the learned Judicial Magistrate No.I, Tiruchirappalli.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

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 III Additional District Judge,
Trichirappalli.
2. The learned Judicial Magistrate No.I,
Tiruchirappalli.
- 3.-Do- Through The Chief Judicial Magistrate,
Tiruchirappalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



5. The Section Officer, Criminal Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

6. The Inspector of Police,
Traffic North Police Station,
Trichy.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-4466[F] dated
11/02/2021)

**Order made in
Cr1.RC(MD)No.584 of 2016
10.02.2021**

VB (18.02.2021) 5P 9C