



BAIL SLIP

Maheeswaran, aged about 26 years/2016 S/o.Shanmugam is released on bail vide court dated 03.11.2016 made in CRL.MP(MD).8236/2016 in CRL.RC. (MD) .629/2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.01.2021
DELIVERED ON	08.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 629 of 2016

Maheeswaran

...Appellant/Sole Accused

Vs.

State rep. By its
The Inspector of Police,
Fort North Traffic Investigation Wing,
Trichy.
(In Crime no.87 of 2013)

... Respondent/Complainant

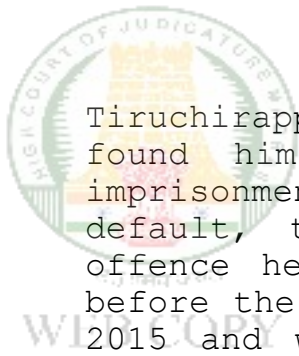
PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and allow the Criminal Revision Case and acquit the appellant by setting aside the Judgment of the learned Judicial Magistrate No.I, Tiruchirappalli in C.C.No.117 of 2013, dated 10.10.2015 confirmed by the learned II Additional District Judge, Tiruchirappalli in Crl.A.No.85 of 2015, dated 12.08.2016.

For Appellant : Mr.P.Ganapathi Subramanian, Advocate
For Respondent : Mrs.M.Anantha Devi,
Government Advocate (crl. side)

O R D E R

This Criminal Revision Case is filed by the petitioner/sole accused as against the conviction and sentence passed by the learned Judicial Magistrate No.I, Tiruchirappalli, in C.C.No.117 of 2013, dated 10.10.2015, confirmed by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in C.A.No.85 of 2015, dated 12.08.2016.

2. The revision petitioner was tried for the offence under Section 304(A) IPC before the learned Judicial Magistrate No.I,
<https://hcservices.ecourts.gov.in/hcservices/>



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.85 of 2015 and was dismissed by order dated 12.08.2016 by the learned Sessions Judge, Mahila Court, 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 04.04.2013, at about 11.00 a.m., in Uraiyur-Kuzhimani Road, near Mangala Nagar, when the deceased Periyamayagam, was riding Honda two wheeler bearing Regn. no.TN-45-BB-2979 from west to east, a Indica car, bearing Regn.No.TN-48-M-5432, drove by the petitioner/accused, came in a rash and negligent manner and dashed against the deceased Periyamayagam. In the said accident, the victim sustained injuries and was taken to a Government General Hospital and thereafter, to another Hospital. Based on the complaint given by PW1, the case in Crime No.87 of 2013 was registered by the respondent Police for the offence under Sections 279 & 337 IPC. Despite the best treatment, the victim succumbed to the injuries. The respondent Police, after investigation, has filed the final report and both the Courts below have convicted the petitioner/accused as stated supra.

4. According to the learned Counsel for the revision petitioner, the Court below failed to appreciate the fact that the presence of the P.W.1 & P.W.2 at the place of the accident is highly doubtful and they were put up by the prosecution as if they are the eye witnesses and P.W.1 being the son of the deceased is interested in securing the conviction of the appellate and his evidence is doubtful one. He further submitted that the Court below failed to appreciate the fact that P.W.1 & P.W.2 failed to speak about rash and negligent driving on the part of the appellant. He further submitted that the Court below failed to appreciate the fact that the prosecution failed to examine independent witnesses to corroborate the interested testimony of P.W.1 & P.W.2. He further submitted that the Court below failed to appreciate the fact that the identity of appellant was not known to them and they failed to identify the appellant as required by law. 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 clearly deposed that they were going behind the deceased who is said to be the father of P.W.1 in 20 feet distance and P.W.1 & P.W.2 firmly deposed that they were in the spot and they were the eye witnesses. She further submitted that the defence taken by the appellant is not acceptable and 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 petitioner/accused was charged and convicted under Section 304(A) of the IPC., by the learned Judicial Magistrate No.I, Tiruchirappalli 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. Against the said order, dated 10.10.2015, appeal was filed and the same was dismissed by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in C.A.No.85 of 2015, dated 12.08.2016.

8. The present criminal revision case is that the accused drove a Indica Car bearing Regn. No.TN-48-M-5432 rashly and negligently and dashed the Honda two wheeler bearing Regn. no.TN-45-BB-2979 drove by the deceased Periyanaayagam and caused death.

9. According to the revision petitioner, P.W.1 and P.W.2 were not present in the occurrence place. Observation mahazar was prepared on the date of occurrence. But, the death took place after four days from the accident. So, Section 304(A) of IPC mentioned in observation mahazar itself created doubt on the evidence. No independent witness was examined.

10. P.W.1 is the son of the deceased. He and P.W.2 went along with the deceased. One car came behind them rash and negligent manner without using horn and dashed against his father. They have no chance to see the vehicle came rash and negligently. P.W.3 to P.W. 7 are only hear say witnesses.

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".

12. Further, the alleged accident was happened on 04.04.2013 and the victim died on 08.04.2013. But, in the observation mahazar, which was prepared on 04.04.2013 contained the Section 304(A) of the IPC., so, it is also created a doubt.

13. Except P.W.1 & P.W.2, no other eye witnesses evidences also not sufficient to prove the rash and negligence act of the accused.

14. Though the learned counsel appearing for the petitioner/accused requested to remand the matter since the appeal was dismissed for non-appearance of the appellant before the appellate Court. This revision is decided on merits.

15. In view of the foregoing discussions and considering the totality of the circumstances, this Court is of the view that the conviction and sentence on the petitioner/accused cannot be sustained and the same warrants interference. Accordingly, conviction and sentence passed by the learned Judicial Magistrate No.I, Tiruchirappalli, in C.C.No.117 of 2013, dated 10.10.2015, confirmed by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in C.A.No.85 of 2015, dated 12.08.2016, is set aside and the petitioner/ accused is acquitted of the charge framed against him. Fine amount, if any paid, shall be refunded and bail bonds, if any executed, shall stand terminated.

16. In fine, this Criminal Revision Case is allowed.

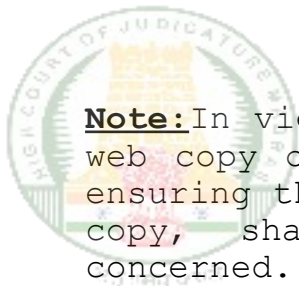
Sd/-

Assistant Registrar ()

// True Copy //

/ /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.

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To

- 1.The Sessions Judge, Mahila Court,
II Additional District Judge, (FAC)
Tiruchirappalli
- 2.The Judicial Magistrate No.I,
Tiruchirappalli.
- 3.Inspector of Police,
Fort North Traffic Investigation Wing,
Trichy.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

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

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate (SR-3864[F] dated 08/02/2021)

Order made in
Crl.RC(MD)No.629 of 2016
08.02.2021

KSA
TK/SAR/27.02.2021/5P/8C