



Bail Slip

Sheik Kasim, S/o. John Bai, Male aged about 54 years / 2014 (Sole Accused) is released on bail vide Court Order dated. 24.11.2016 made in CRL MP (MD) No. 11536 of 2016 in CRL RC(MD) No. 796 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	24.06.2021
DELIVERED ON	09.07.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Cr1.RC(MD)No. 796 of 2016

Sheik Kasim ...Revision Petitioner/Sole Accused
Vs.

State of Tamil Nadu
Represented by its
Sub-Inspector of Police,
Sivagangai Taluk Police Station,
Crime No76 of 2010. ...Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the Judgment, dated 16.09.2016 in Cr1.A.No.5 of 2015 on the file of the Fast Track Mahila Court, Sivagangai in C.C.No.82 of 2010 on the file of the Judicial Magistrate No.II, Sivagangai and set aside the same and acquit the petitioner.

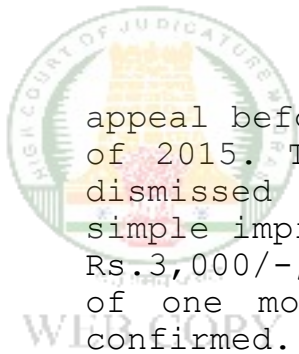
For Petitioner : Mr.T.Lajapathi Roy

For Respondent : Mr.R.M.S.Sethuraman
Government Advocate(Criminal side)

O R D E R

The revision petitioner/accused has filed this revision to set aside the Judgment, dated 16.09.2016 in Cr1.A.No.5 of 2015, passed by the Fast Track Mahila Court, Sivagangai confirmed the Judgment, dated 05.01.2015 in C.C.No.82 of 2010 passed by the learned Judicial Magistrate No.II, Sivagangai.

2.As against the judgment of conviction and sentence passed by the learned Judicial Magistrate No.II, Sivagangai, in C.C.No.82 of 2010, dated 05.01.2015, the revision petitioner has preferred an



appeal before the Fast Track Mahila Court, Sivagangai, in Crl.A.No.5 of 2015. The lower Appellate Court, by judgment dated 16.09.2016, dismissed the appeal and the conviction and sentence to undergo simple imprisonment for a period of nine months and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 304(A) of IPC, was confirmed. Aggrieved over the same, the petitioner has preferred the instant criminal revision case.

3.The case of the prosecution is that on 11.05.2010, P.W.1 and his wife travelled in a two wheeler Bajaj Discover bearing Reg.No.TN-63-K-1757 from Sivagangai to Madurai. When they were near Muthupatti, at 09.45 a.m, a car bearing Reg.No.TN-09-T-3978 which came in a rash and negligent manner with high speed, dashed the P.W.1's two wheeler. Due to the impact, P.W.1 sustained injuries on his forehead, right elbow and right foot. The wife of P.W.1 had also sustained injuries on her head, right hand and mouth. After enquiry, P.W.1 came to know that the accused drove the vehicle. The wife of P.W.1 was admitted in Sivagangai Government Hospital and thereafter, for further treatment, she was admitted in Madurai Apollo Hospital, but she died on the same day at 03.00 p.m. P.W.1 gave complaint and it was registered in Crime No.76 of 2010 for the offences punishable under Sections 279, 337 and 304 (A) of IPC.

4.In order to prove the charges, the prosecution examined P.W.1 to P.W.9 and marked Ex.P.1 to Ex.P.7. Based on the oral and documentary evidence, both the Courts below convicted the accused. Aggrieved by the said conviction, the petitioner/accused has filed this revision.

5.The learned counsel for the revision petitioner/accused submitted that the rash and negligent driving on the part of the petitioner was not proved by the prosecution and no other case was registered against this petitioner. He further submitted that now the petitioner age is 61 years. So, this Court may consider the petitioner's age and allow this revision case.

6.The learned Government Advocate (Criminal side) appearing for the State contended that both the Courts below appreciated the evidence in a proper manner and believed the evidence of the eyewitnesses and having regard to the nature of the offences, convicted the revision petitioner for rash and negligent driving of the accused and passed proper sentence, which does not require any interference by this Court and the accused is not entitled for acquittal. Hence, he prays for dismissal of this revision case.

7.Heard the learned counsel for the petitioner and the learned Government Advocate (crl. Side) for the respondent police and perused the material documents available on record.

8.On perusal of the records, it reveals that P.W.1 who is the husband of the deceased, stated as to how the accident was occurred. P.W.2 and P.W.3 who are alleged to be eyewitnesses, admitted in their cross examination that they did not see the occurrence directly. No corroborative evidence with regard to the evidence of P.W.1. There is no doubt in the fact that the accident was occurred.

<https://hls.crlcourts.gov.in/hls/cases/5514623> occurred due to rash and negligent driving of the



accused/car driver, is the issue to be decided. P.W.1 had not stated anything about the rash driving in chief examination.

9.The Judgment reported in **2017(1) LW Cri. 160, M. Subramani Vs. State, rep. By Inspector of Police, Edapadi Police Station, Salem District and 1998 (8) SCC, 493, Hon'ble Apex Court**, held that the respondent found guilty for the offences under Sections 337, 338 & 304(A) of IPC., after recording finding that the respondent was driving the truck at 'high speed'. No specific finding has been rendered either by the trial Court or by the Appellate Court to the effect that the respondent was driving the truck either negligently or rashly. After holding that the respondent was driving the Truck at high speed both the Courts pressed into aid the doctrine of *res ipsa loquittur* to hold the respondent guilty.

10.The only evidence against this accused is the complaint and evidence of P.W.1. But P.W.1 admitted in his cross examination that he could not see that where the car dashed on his motor cycle. He also admitted that he suddenly turned the vehicle on the left side of the road. The accident may occur due to this act of P.W.1 also and no other prosecution witness corroborated with the evidence of P.W.1.

11.For the foregoing reasons, I am of the considered view that the conviction and sentence recorded by the Courts below are not supported by credible evidence and the prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

12.In the result, this Criminal Revision Case is allowed and set aside the Judgment, dated 16.09.2016 in Crl.A.No.5 of 2015, passed by the Fast Track Mahila Court, Sivagangai confirmed the Judgment, dated 05.01.2015 in C.C.No.82 of 2010 passed by the learned Judicial Magistrate No.II, Sivagangai. The petitioner/accused is acquitted from the charge framed against him. Fine amount, if any paid, shall be refunded and bail bonds, if any executed, shall stand terminated.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sji

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, Fast Track Mahila Court, Sivagangai.
2. The Judicial Magistrate No.II, Sivagangai.
3. The Chief Judicial Magistrate, Sivagangai.
4. The Sub-Inspector of Police,
Sivagangai Taluk Police Station.
5. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Record Keeper,
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai. (2C)

+1 CC to M/s.T.LAJAPATHY ROY, Advocate(SR-22038[F] dated 12/07/2021)

Cr1.RC(MD)No.796 of 2016
09.07.2021

RC (16.07.2021) 4P-9C