



Bail Slip

Jeyaprakash, S/o. Selvam, male, (aged about 42/2017 years) (Sole Accused) is released on bail vide Court Order dated 22.02.2017 made in CRL MP(MD)No.1389 of 2017 in CRL RC(MD)No.140 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.02.2021

Pronounced on : 17.04.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C.(MD).No.140 of 2017

Jeyaprakash : Petitioner/Sole Accused
Vs.

The State represented by
The Inspector of Police,
Usilampatti Police Station,
Madurai.

Crime No.129 of 2010 : Respondent / Petitioner

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records relating to the judgment dated 08.12.2016 made in Criminal Appeal No.39 of 2016 on the file of the I Additional District and Sessions Judge, Madurai confirming the judgment dated 03.05.2016 made in C.C.No.53 of 2011 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti and set aside the conviction and sentence imposed against the appellant/accused.

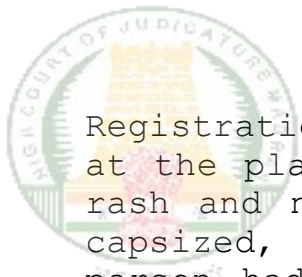
For Petitioner : Mr.M.Jerin Mathew

For Respondent : Mrs.S.E.Veronica Vincent,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision Case is directed against the concurrent judgments of conviction passed in Criminal Appeal No.39 of 2016, dated 08.12.2016 on the file of the I Additional District and Sessions Judge, Madurai, confirming the judgment made in C.C.No.53 of 2011, dated 03.05.2016, on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti.

2.The case of the prosecution is that on 04.04.2010 at about 10 hours, when the accused was proceeding in the van bearing



Registration No.TN 49 Y 2304 in Usilampatti to Theni Main Road and at the place near Poochipatti Village, he drove the vehicle in a rash and negligent manner and as a result of which, the van got capsized, 12 passengers in the said van sustained injuries and one person had died, that the accident was occurred only due to the rash and negligent driving of the van driver/the revision petitioner herein, that based on the complaint lodged by one of the injured passenger Geetha, FIR came to be registered in Crime No.129 of 2010 by the respondent police for the offence punishable under Sections 279, 337, 338 and 304(A) IPC and that after investigation, the respondent police has laid the final report before the Court of District Munsif cum Judicial Magistrate No.I, Usilampatti and that the same was taken on file in C.C.No.53 of 2011.

3.During trial, the prosecution in an attempt to prove its case, has examined eighteen witnesses as P.W.1 to P.W.18 and exhibited twenty two documents as Ex.P.1 to Ex.P.22. The revision petitioner/accused has adduced neither oral nor documentary evidence.

4.The learned Magistrate, upon considering the evidence adduced and on hearing the arguments of both side, has passed the judgment dated 03.05.2016, convicting the accused/revision petitioner for the offence under Sections 279, 337 (8 counts), 338 (4 counts) and 304 (A) IPC and sentenced him to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 279 IPC; to pay a fine of Rs.500/- for each count, in default to undergo one month simple imprisonment for each count for the offence under Section 337 (8 counts); to undergo simple imprisonment for one week for each count for the offence under Sections 338 (4 counts) and to undergo simple imprisonment of two months for the offence under Section 304(A) IPC. Aggrieved by the judgment of conviction, the accused has preferred an appeal in C.A.No.39 of 2016 on the file of the I Additional District and Sessions Judge, Madurai and the learned Sessions Judge, upon perusing the records and on hearing the arguments of both the sides, has passed the impugned judgment on 08.12.2016, dismissing the appeal and thereby, confirming the judgment of conviction and sentence passed by the trial Court. Aggrieved by the said judgment of dismissal, the accused has come forward with the present revision.

5.It is pertinent to note that there is concurrent verdict of conviction and sentence against the revision petitioner. The revisional jurisdiction of this Court under Section 397 and 401 Cr.P.C., is confined to legality, propriety and correctness of the concurrent findings of conviction entered and sentence imposed on the accused. More over, the power and jurisdiction of the



revisional Court cannot be equated with the power and jurisdiction of the Appellate Court, nor the same can be treated as second Appellate jurisdiction.

6. It is pertinent to mention that while exercising the revisional jurisdiction, there is absolutely no scope for re-appreciating the entire evidence again. But, at the same time, if the appreciation of the evidence is tainted with perversity, that can be looked into and interfered with by the revisional Court. Bearing the above legal position in mind, let us proceed with the case on hand.

7. The revision petitioner/accused has raised the following grounds of the attack :

(i) The witnesses had deposed that the petitioner drove the vehicle fast and the same cannot be sufficient to hold that the petitioner is guilty of rash and negligent driving.

(ii) The essential ingredients for rash and negligent act of the petitioner had not been proved by the prosecution.

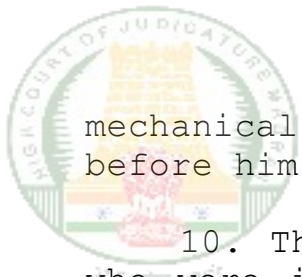
(iii) The accident was occurred only due to the mechanical fault of the vehicle.

(iv) The vehicle involved in the accident was inspected by the Motor Vehicle Inspector only after 33 days of the occurrence and there was no explanation for the said inordinate delay.

(v) The Courts below ought not to have believed the evidence of P.W.3 as she was not an eye witness of the occurrence.

8. It is pertinent to mention that the involvement of the van bearing Registration No. TN 49 Y 2304 and that the revision petitioner/accused was the driver of the said van at the time of the accident are not in dispute. More over, the defence has neither disputed the time of the accident nor the place of the occurrence. But, the defence of the accused is that the revision petitioner was not at all responsible for the accident and that the accident was occurred only due to the mechanical fault of the vehicle.

9. No doubt, as rightly pointed out by the learned counsel for the revision petitioner, the vehicle was produced for the inspection of the Motor Vehicle Inspector on 07.05.2010 and the alleged accident was occurred on 04.04.2010. P.W.15/ Motor Vehicle Inspector in his evidence before the Court below would categorically say that the accident was not occurred due to the mechanical defect of the vehicle. During cross examination, it was suggested to P.W.15 that the reason for the accident could be ascertained correctly, only if the vehicle was inspected at the occurrence place, P.W.15 would deny the suggestion. He would also deny the suggestion that the accident was occurred only due to the



mechanical failure of the vehicle and that the vehicle was brought before him after repairing the vehicle.

10. The prosecution has examined P.W.1 to P.W.10 and P.W.12, who were injured witnesses. As rightly observed by the Appellate Court, the factum that P.W.1 to P.W.10 and P.W.12 sustained injuries in the alleged accident and one person had died was not at all disputed by the defence. No doubt, most of the injured witnesses in their witness would only say that the van was driven with speed. During cross examination of the injured witnesses, a specific suggestion was put by the defence, as to whether they were aware of the speed at which the van was driven by the revision petitioner ? Except P.W.9, all other witnesses would only say that they were not aware of the same. But, P.W.9 would say that the van was driven at 100 km speed, but he has not elaborated anything further. As rightly contended by the learned Government Advocate, it is not possible for any person, travelling in a vehicle to say about the speed at which the vehicle was driven.

11.P.W.9 in his cross examination would deny the suggestion that the accident was occurred due to the bursting of tyre and when a question was put to him as to whether there was any defect in the vehicle, he would say that he was not aware of the defect, but the vehicle was running in good condition. He would also deny the suggestion that the accident was occurred due to the breaking of spring on the rear side of the van. As rightly contended by the learned counsel for the respondent, we cannot expect ordinary people to depose evidence in such a way to attract the ingredients for the offence with which, the accused was charged. As already pointed out, all the injured witnesses would say in one voice that the van was driven with speed.

12. More over, it is pertinent to mention that there was no other vehicle involved in the accident and the only vehicle involved was driven by the revision petitioner.

13. P.W.13 would say that the revision petitioner had driven the vehicle with speed in an attempt to overtake their van and at that time, the van got capsized. Most of the witnesses would say that there was a 'S' type bend in the road at the occurrence place. It is evident from Ex.P.5 rough sketch that a caution board (விபத்து வளைவு பலகை) was found near the occurrence place. As rightly observed by the learned Appellate Judge that the evidence of P.W.13 assumes significance as he was travelling in another van, which were carrying the relatives of the persons travelling in the van driven by the accused.



14.As rightly pointed out by the Appellate Court, in the absence of any other evidence to show that the van was having mechanical fault, the delay which occasioned in sending the vehicle for Motor Vehicle Inspection, cannot be considered as fatal to the prosecution.

15.Considering the above, it is very much clear that the Appellate Court has re-assessed the evidence and gave its findings concurring with the trial Court. The sentence imposed by the trial Court and confirmed by the Appellate Court cannot said to be excessive. The revision petitioner has not shown any other valid reason or legal ground to interfere with the concurrent judgments and sentence imposed on him. Hence, this Court decides that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

16. In the result, the Criminal Revision is dismissed. The trial Court is directed to take necessary steps to secure the accused to undergo remaining period of sentence, if any.

Sd/-

Assistant Registrar(T & P)

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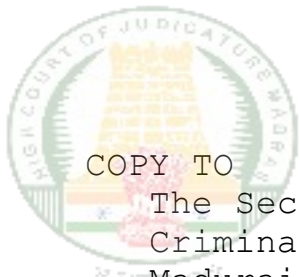
/ /2021

Sub Assistant Registrar(CS)

das

To

- 1.The I Additional District and Sessions Judge,
Madurai.
- 2.The Principal District Judge, Madurai.
3. The District Munsif cum Judicial Magistrate No.I,
Usilampatti.
- 4.The Chief Judicial Magistrate, Madurai.
- 5.The Inspector of Police,
Usilampatti Police Station, Madurai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



COPY TO

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

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CRL.R.C. (MD) .No.140 of 2017
17.04.2021

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