

BAIL SLIP

The Petitioner / Accused namely R.Arumugam M/57,S/o.K.Raju, be and hereby was directed to be released on bail vide Court order dated 01.06.2017 in Crl M.P(MD)No.3965 of 2017 in Crl R.C(MD)No.397 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.02.2021

Pronounced on : 18.02.2021

CORAM

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

CRL.R.C. (MD) .No.397 of 2017

R.Arumugam

: Petitioner

Vs.

The State represented by
The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.

(Crime No.621 of 2006)

: Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to call for the records pertaining to the judgment dated 14.03.2017 made in Crl.A.No.108 of 2016 on the file of the learned Ist Additional District and Sessions Judge, Madurai confirming the judgment dated 23.11.2016 made in C.C.No.295 of 2006 on the file of the learned Judicial Magistrate, Thirumangalam and set aside the same by allowing the above revision petition.

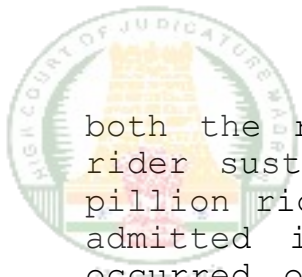
For Petitioner : Mr.C.Jaganathan,
for M/S.Veera Associates.

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

ORDER

The Criminal Revision Case is directed against the concurrent judgments of conviction passed in Crl.A.No.108 of 2016, dated 14.03.2017, on the file of the learned Ist Additional District and Sessions Judge, Madurai, confirming the judgment made in C.C.No.295 of 2006, dated 23.11.2016, on the file of the learned Judicial Magistrate, Thirumangalam.

2.The case of the prosecution is that on 27.08.2006 at about 12.30 hours, when the deceased Karuppiyah was riding a two wheeler, bearing Registration No.TN 67 E 9759 along with the defaco complainant /Subramani as pillion rider on the Thirumangalam to Madurai Road from south to north, one Mahindra Van bearing Registration No. TN 60 A 1438, which came in the opposite direction in a rash and negligent manner and while trying to over take another vehicle, dashed against the two wheeler and as a result of which,



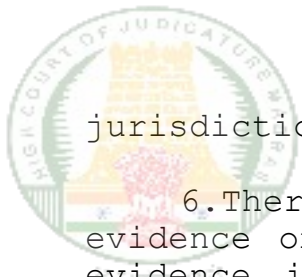
both the rider and the pillion rider were thrown away, that the rider sustained multiple injuries and died on the spot, that the pillion rider/the defacto complainant sustained injuries and he was admitted in the hospital for treatment, that the accident was occurred only due to rash and negligent driving of Mahindra Van driver / the revision petitioner herein, that based on the statement recorded from the defacto complainant, FIR came to be registered in Crime No.621 of 2006, by respondent police for the offences under Sections 279, 337 and 304 (A) IPC and under Section 196 of Motor Vehicles Act and that after investigation, the respondent police has filed the final report before the jurisdictional Magistrate Court and the same was taken on file in C.C.No.295 of 2006 on the file of the Court of the Judicial Magistrate, Thirumangalam.

3.During trial, the prosecution, in order to prove its case, has examined 12 witnesses as P.W.1 to P.W.12 and exhibited nine documents as Ex.P.1 to Ex.P.9. The petitioner/accused has adduced neither oral nor documentary evidence.

4.The learned Judicial Magistrate, upon considering the evidence and on hearing the arguments, has passed the judgment dated 23.11.2016, convicting the accused for the offence under Sections 279, 337 and 304 (A) IPC and sentencing him to undergo six months simple imprisonment for the offence under Section 337 IPC, to pay a fine of Rs.200/- in default, to undergo simple imprisonment for one month for the offence under Section 377 IPC and to undergo six months simple imprisonment and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for two months for the offence under Section 304(A) IPC. Aggrieved by the judgment of conviction, the accused has preferred an appeal in Crl.A.No.108 of 2016 and the learned I Additional District and Sessions Judge, Madurai, upon perusing the records and on hearing the arguments of both sides,

has passed the impugned judgment on 14.03.2017, dismissing the appeal and thereby confirmed the judgment of conviction and sentence passed by the trial Court. Not satisfying with the said judgment, the accused has come forward with the present revision.

5.As already pointed out, there is concurrent verdict of conviction and sentence against the revision petitioner. At the out set, it is pertinent to note that the jurisdiction of this Court under Section 397 and 401 of Cr.P.C is confined to legality, propriety and correctness of the concurrent findings of conviction entered and sentence imposed on the revision petitioner. The revisional jurisdiction exercised by the High Court is supervisory jurisdiction for correcting miscarriage of justice. But at the same time, the revisional power cannot be equated with the power of an Appellate Court nor it can be treated as a second Appellate



jurisdiction.

6. There is absolutely no scope for re-appreciation of entire evidence once again. But at the same time, if the appreciation of evidence is tainted with the perversity, that can be interfered with. Even if an alternative view is possible, this Court cannot substitute its own view, in lieu of the concurrent views of the Courts below.

7. In the background of the above legal position, let us consider the case on hand. The revision petitioner/accused has raised the following grounds of attack;

(i) There was an inordinate delay of nearly 8 hours in lodging the FIR and the said delay created serious doubt about the veracity of the prosecution story.

(ii) The conviction was on the basis of the solitary evidence of P.W.1 and there are no other witness to support the case of the prosecution.

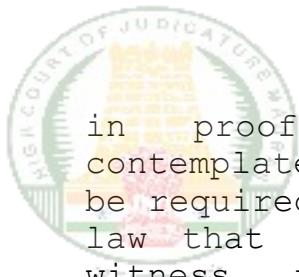
(iii) Mere rash and negligent driving does not constitute an offence under Section 304(A) IPC.

(iv) P.W.1 has given contradictory statements in his evidence with respect to the place of occurrence and no other independent witness has supported the case of the prosecution.

(v) Medical evidence of P.W.2 and wound certificate under Ex.P.9 were not considered and that the certificate has not mentioned the cause of the death of the deceased.

8. Regarding the inordinate delay in lodging the complaint, it is settled law that the delay in lodging the complaint with the police is not by itself fatal to the case of the prosecution and the defence has to show the prejudice caused to them by the said delay. Admittedly, the case on hand is an accident case and the incident was allegedly occurred at 12.30 pm on 27.08.2006. According to the prosecution, P.W.11/Sub-Inspector of Police, after getting information, had visited the Rajaji Government Hospital, Madurai and recorded the statement from P.W.1/defacto complainant at 17.30 hours and after returning to the police station, he registered a case in Crime No.621 of 2006 at about 20.00 hours. P.W.1 would say in his evidence that after accident, he sustained injuries, that he was taken to hospital through ambulance and that he was admitted in Ward No.99 and while he was taking in-patient treatment, the police came and obtained his statement. Considering the above, it is clear that there was no inordinate delay and that the delay was also explained properly. Even assuming for arguments sake, that there was some delay, the accused has not shown as to how he was prejudiced by the delay.

9. Coming to the solitary evidence of P.W.1, the law of evidence does not require any particular number of witnesses to be examined



in proof of a given fact. Section 134 of Indian Evidence Act contemplates that no particular number of witness shall in any case be required for the proof of any fact. It is well known principle of law that reliance can be based on the solitary statement of a witness, if the Court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. The time-honoured rule of appreciating evidence is that it has to be weighed and not counted.

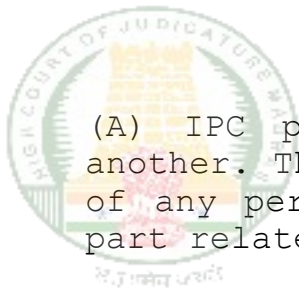
10. In the present case, the prosecution, apart from the defacto complainant/P.W.1, has cited and examined P.W.3 to P.W.5 as the occurrence witnesses. As rightly observed by the Appellate court, P.W.2 to P.W.5 are hearsay witnesses and they have themselves admitted in their cross examination that they have not witnessed the occurrence. No doubt, as rightly pointed out by the defence, P.W.1 evidence alone is available to prove the alleged occurrence. But at the same time, it cannot be said that the testimony of P.W.1 cannot be relied or considered as there was no evidence corroborating the version of P.W.1. As already pointed out, conviction can be based on the testimony of a solitary witness, provided the evidence of the witness is trustworthy.

11. P.W.1 is none other than the pillion rider of the vehicle, which was involved in the accident. P.W.1 would say in his evidence, that the deceased Karuppiyah had driven the two wheeler at the time of accident, that they were proceeding from south to north in Thirumangalam to Madurai Road on the left side of the road, that the Mahendra van came with speed in the opposite direction and proceeded to the side of the two wheeler and dashed against the two wheeler and as a result of which, both of them had fallen down and sustained injuries.

12. According to the revision petitioner, P.W.1 had made contradictory statement with regard to the place of occurrence, that he stated that the accident took place in the mud road and subsequently, changed the occurrence place. No doubt, in chief examination, P.W.1 would say that the accident was occurred, while they were proceeding in the mud road in front of Sidco, Kappaloor, but in cross examination, he would deny the suggestion that the accident was occurred only at mud road.

13. On perusing the evidence of P.W.1, I do not find any contradictions with respect to the place of occurrence or with respect to any other facts, particularly, touching the accident.

14. The next contention of the revision petitioner is that the Courts below failed to consider the fact that mere rash and negligent driving of the petitioner does not constitute an offence under Section 304 (A) IPC is incorrect and against law. Section 304



(A) IPC postulate a rash and negligent act entailing death of another. The first part of Section 304(A) relates to causing of death of any person by any rash act of the accused and that the second part relates to causing of death due to negligent act.

15. The prosecution has either to prove the first part or the second part, but there may be cases where both parts may come in operation simultaneously if the evidence suggests that the act of the accused was not only rash, but also negligent, which resultant in the death of some one. It is necessary for the prosecution to prove either the rashness or the negligence on the part of the accused so as to attract the offence under Section 304 (A) IPC. When the above Section 304(A) contemplates only the rash or negligent act of the accused, the contention of the revision petitioner that his mere rash and negligent driving does not constitute any offence under Section 304(A) IPC is absurd and untenable.

16. In the case on hand, no doubt P.W.1 in his evidence has not stated that the accused had driven the vehicle in a rash and negligent manner. But he would say that the Mahendra Van, which was driven with speed came to their side and dashed against the two wheeler. It is the specific case of the prosecution that the two wheeler was proceeding from south to north in Thirumangalam to Madurai Road and whereas the Mahendra van came in the opposite direction i.e., is from north to south and that the accident was occurred on the western extremity of the north south road. As rightly observed by the Appellate Court, the damages caused to the right side and front side bumper of the van and front right side of

the two wheeler would only confirm the version of the prosecution regarding the manner of the accident.

17. Regarding the last ground of revision, a perusal of the same does not convey any meaning. P.W.12 is the investigating officer and Ex.P.9 is the wound certificate issued to P.W.1. The prosecution has exhibited the post-mortem certificate as Ex.P.7 and whereunder the Doctor has given his opinion that the deceased would appear to have died of multiple injuries. In Ex.P.9 wound certificate, the medical officer has given a specific opinion that the injury suffered by P.W.1 is of simple in nature.

18. Considering the above, it is very much clear that the Appellate Court has re-assessed the entire evidence and gave its findings, concurring with the trial Court. The Courts below have rightly appreciated the evidence and arrived at the correct findings. The revision petitioner has not shown any reason or ground to interfere with the judgment of conviction made by the trial Court and confirmed by the Appellate Court. Hence, this court decides that the criminal revision is devoid of merits and the same is liable to be dismissed.



19. In the result, the criminal revision case is dismissed. The trial Court is directed to take steps to secure the revision petitioner/accused to undergo remaining period of sentence, if any.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1. The I Additional District and Sessions Judge,
Madurai.

2. The Judicial Magistrate, Thirumangalam.

3. The Inspector of Police,
Thirumangalam Town Police Station,
Madurai 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. (2C)

Copy to:

The Chief Judicial Magistrate,
Madurai.

+1 CC to M/s. VEERA ASSOCIATES, Advocate (SR-6070[F] dated
19/02/2021)

CRL.R.C. (MD) .No.397 of 2017
18.02.2021

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