



Bail Slip in Crl.RC(MD)No.597/2017

The Appellant/Sole Accused Anandaraj was directed to be released on bail as per order of this Court and made in Crl.MP(MD) No.6663/2017 in Crl.RC(MD)No.597/2017, Dated 26/07/2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**

Crl.R.C. (MD) No. 597 of 2017

Anandaraj : Petitioner/Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Gandarakottai Police Station,
Pudukkottai District.
(Crime No.151 of 2006)

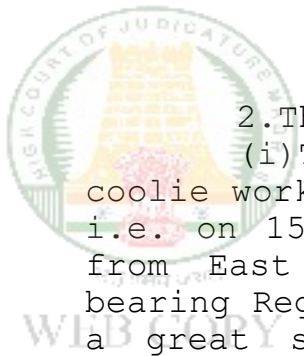
: Respondent/Respondent/Complainant

PRAYER: The Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the entire records pertaining to the judgment, dated 17.07.2017 in C.A.No.13 of 2013 on the file of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai confirming the conviction and sentence made in C.C.No.113 of 2006, dated 04.03.2013 on the file of the learned Judicial Magistrate, Pudukkottai and set aside the same by allowing this Revision.

For Appellant	: Mrs.M.Malathi
For Respondent	: Mr.E.Antony Sahaya Prabahar Additional Public Prosecutor

JUDGMENT

The accused, in C.C.No.113 of 2006 on the file of the learned Judicial Magistrate, Pudukkottai, is the revision petitioner. The respondent laid a final report against him before the said Magistrate alleging that the petitioner had committed an offence punishable under Section 304(A) of IPC. By judgment dated 04.03.2013, the trial Court convicted him under Section 304(A) of IPC and sentenced him to undergo Simple Imprisonment for six months. Challenging the same, he filed an appeal in C.A.No.13 of 2013 before the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai. The learned Sessions Judge, by judgment dated 17.07.2017, has dismissed the appeal, thereby confirming the conviction and sentence imposed on him. Challenging the aforesaid conviction and sentence, the petitioner has come before this Court with this revision.



2.The case of the prosecution in brief is as follows:-

(i)The deceased, in this case, was one Chinnaponnu. She was a coolie worker and residing in Aravampatti. On the date of occurrence i.e. on 15.04.2006 at about 8.40 a.m., the deceased while walking from East to West in Gandarvakottai-Pudukkottai road, a lorry bearing Registration No.TN-55-H-9365 came from the same direction in a great speed, rashly and negligently and dashed against the deceased. The lorry was driven by the accused. The deceased sustained injuries and then P.W.1-Rajendhran, who is the son of the deceased, with the help of P.W.2-Saravanan and P.W.3-Pavunraj admitted her in the Government Hospital, Gandarvakottai and within 30 minutes, the doctor declared the death of Chinnaponnu. P.Ws. 2 to 4 are the occurrence witnesses.

(ii)On the complaint of P.W.1, P.W.9-Manoharan, the then Sub-Inspector of Police, Gandarvakottai Police Station, on 15.04.2006 around 9.30 a.m., registered a case in Crime No.151 of 2006 under Section 304(A) of IPC. Ex.P.1 is the complaint and Ex.P.4 is the printed First Information Report. After registering the case, P.W.9 handed over the case diary to the Inspector of Police for investigation.

(iii)P.W.10-Iyyampillai, the then Inspector of Police, Gandarvakottai, took up the case for investigation on 15.04.2006 itself. He proceeded to the place of occurrence and in the presence of witnesses, prepared an Observation Mahazar under Ex.P.2 and drawn a rough sketch showing the place of occurrence under Ex.P.6. Then, on the same day, he conducted an inquest on the body of the deceased in the Government Hospital, Gandarvakottai. The inquest report was marked as Ex.P.5. He examined P.Ws.1 to 7 and recorded their statements. Then, he forwarded the body for postmortem.

(iv)P.W.8-Dr.Shek Dhawooth, conducted an autopsy on the body of the deceased on 15.04.2006. He found a fracture in the skull. Similarly, he found abrasion all over the body. He opined that the death was due to the cumulative effect of the aforesaid injuries. Ex.P3 is the postmortem certificate.

(v)Continuing the investigation, P.W.10 forwarded the vehicle for examination to the Motor Vehicle Inspector. The Motor Vehicle Inspector opined that there was no mechanical defect in the offending vehicle. The Motor Vehicle Inspector report was marked as Ex.P.7. P.W.10 collected the medical records, examined the doctor, collected the reports from the Motor Vehicle Inspector and finally on completing the investigation, laid charge sheet against the accused under section 304(A) of IPC.

4.Based on the above materials, the trial Court tried the accused under Section 304(A) of IPC. The accused denied the same. In the charges, the prosecution examined as many as 10



witnesses and marked 7 documents as Ex.P1 to Ex.P7.

5.Out of the above said witnesses, P.Ws.1 to 6 are the eye witnesses. P.W.7-Senthil Kumar is the witness attested in the Observation Mahazar prepared by the Investigating Officer. P.W.8-doctor has spoken about the autopsy conducted by him. P.W.9-Manoharan and P.W.10-Iyyampillai are the police officers spoken about the registration of the case, investigation and about the filing of final report.

6.When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. It is the submission of the accused that the alleged eye witnesses have not seen the occurrence, particularly, they have not stated about the rash and negligent act of the accused. Thus, according to the petitioner, he had not committed any offence punishable under Section 304(A) of IPC.

7.Having considered all the above materials, the trial Court found him guilty under Section 304(A) of IPC and the lower Appellate Court confirmed the same. That is how, the accused is before this Court with this revision.

8.I have heard Mrs.M.Malathi, learned counsel appearing for the revision petitioner and Mr.E.Antony Sahaya Prabahar, learned Additional Public Prosecutor appearing for the State. I have also perused the records carefully.

9.The learned counsel appearing for the revision petitioner would submit that the accident would not have happened in the manner as it is projected by the prosecution. It is his contention that P.Ws.1 to 6 are the interested witnesses and therefore, their evidences require close scrutiny. He would further submit that in respect to the direction from which the lorry came and in respect to the direction the deceased had proceeded, the witnesses examined on the side of the prosecution gave an inconsistent evidence and therefore, it can be said that the prosecution has not proved the case. However, the Courts below without appreciating the same, convicted the accused and the same is nothing but perverse.

10.But the learned Additional Public Prosecutor appearing for the respondent would vehemently oppose this Criminal Revision. According to him, the evidences of P.Ws.1 to 6 would clearly go to show that the accident was wholly due to the rash and negligent driving on the part of the petitioner. He would further submit that the road was broad enough and therefore, the accused would have avoided the accident, had he taken due care and caution. Thus, according to him, the conviction and sentence imposed on the petitioner does not require any interference at the hands of this Court.



11.I have considered the rival submissions made by the learned counsels appearing on either side.

12.P.Ws.1 to 6 claimed to have the eye witnesses to the occurrence. A close reading of the evidences given by P.Ws.1 & 2 would go to show that the revision petitioner has drove the lorry at the time of occurrence. In otherwise, in respect of the identity, there was no denial on the side of the accused as he has not driven the offending vehicle at the time of occurrence.

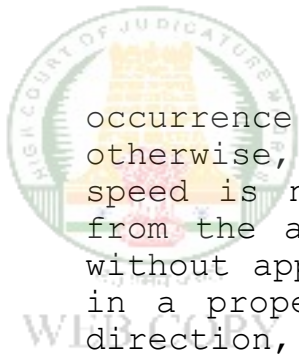
13.Now, turning to the evidences given by P.Ws.1 to 6, in respect of the direction, from which, the lorry was came at the time of occurrence, P.W.1 has admitted in the cross-examination as in the complaint it was stated that while at the time of occurrence, the lorry was coming from West to East. On the other hand, in his chief examination, he has stated when at the time of occurrence, the lorry was proceeded from East to West, the same was dashed against his mother, who was also walking in the road from East to West.

14.Now, on considering the said evidence given by P.W.1, it seems that he gave contradictory evidence in respect of the lorry proceeded at the time of occurrence. Further, the other eye witnesses i.e., P.Ws.2 & 3 gave evidence as while at the time of occurrence, the offending vehicle came from the opposite direction and dashed against the deceased. Per contra, P.Ws.4 & 5 have narrated the occurrence that the lorry was proceeded from East to West and dashed against the deceased, who was also proceeded from East to West.

15.Therefore, cull out the entire evidence which reveals the fact that in respect to the direction, from which, the lorry was proceeded at the time of occurrence, the eye witnesses examined on the side of the prosecution gave a different version and the same created a doubt whether they were seen the occurrence as alleged by the prosecution.

16.Apart from that, all the eye witnesses have given evidence as during the time of occurrence, the offending vehicle was driven by its driver in a high speed. In otherwise, in respect to the negligence or rashness, they have not stated as at the time of occurrence, the driver of the lorry with rashness and negligent manner drove the same and dashed against the deceased. Therefore, in the absence of any evidence in respect to the negligence or rashness act of the accused, this Court is not in a position to hold during the time of occurrence, the accused herein drove the lorry in a negligent manner and dashed against the deceased and thereby, he committed an offence under Section 304(A) of IPC.

17.The evidence given by the Investigating Officer would go to show that in the occurrence place, road is a wider road, obvious, the driver, who drove the vehicle in the



occurrence place, may drive his vehicle in a high speed. In otherwise, it is a settled law that driving the vehicle in a high speed is not an offence under Section 304(A) of IPC and thereby, from the above, I am of the considered view that the Courts below without appreciating the evidence given by the prosecution witnesses in a proper perspective manner, particularly, in respect to the direction, wherein, the lorry was proceeded at the time of occurrence, came to the conclusion that the accused herein committed an offence. This is erroneous one.

18.In the result, this Criminal Revision is allowed and the conviction and sentence imposed on the revision petitioner by the Courts below is set aside and the revision petitioner is acquitted. Fine amount, if any, paid by him, shall be refunded to him. Bail bond if any shall stand cancelled.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

To:-

- 1.The Additional District and Sessions Judge,
Presiding Officer, Special Court for EC and NDPS Act Cases,
Pudukkottai.
- 2.The Judicial Magistrate, Pudukkottai.
- 3.The Inspector of Police,
Gandarvakottai Police Station,
Pudukkottai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

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

+1 CC to M/s.M.MALATHY, Advocate (SR-30399[F] dated 27/09/2021)

Crl.R.C. (MD) No.597 of 2017
23.09.2021

NSN(CO)/RS (08.10.2021) 5P 8C

<https://hcservices.ecourts.gov.in/hcservices/>