



BAIL SLIP

The Petitioner / Accused namely Muthumari, S/o.Packiam, Male was released on bail as per order of this Court, dated 09/08/2017 made in Crl.MP(MD)NO.7060/2017 in Crl.RC(MD).619/2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C. (MD)No.619 of 2017

Muthumari : Petitioner/Petitioner/
Accused (sole)
Vs.

State through
The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai District.
(Crime No.14/2010)

: Respondent/Respondent
Complainant

PRAYER: The Criminal Revision Petition 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 14.07.2017 in C.A.No.100/2016 on the file of the learned District and Sessions Judge, Sivagangai confirming the conviction and sentence made in C.C.No.71/2010, dated 09.12.2016 on the file of the learned Judicial Magistrate No.2, Sivagangai and set aside the same by allowing this Revision and pass such further or other orders.

For Petitioner : Mr.M.Kannan
For Respondent : Mr.M.Muthumanikkam
Counsel for Government of
Tamil Nadu (Crl.side)

ORDER

The present Criminal Revision Case has been filed to check the correctness of the judgment rendered by the learned District and Sessions Judge, Sivagangai in C.A.No.100/2016, dated 14.07.2017, wherein, the judgment rendered by the learned Judicial Magistrate No.2, Sivagangai in C.C.No.71/2010, dated 09.12.2016 was confirmed.

2. The revision petitioner is the sole accused in the above referred case. Before the trial Court, the respondent police filed a final report alleging that the appellant committed an



offence under Section 304(A) of IPC.

3. After full-fledged trial, the learned trial Judge found the revision petitioner guilty for an offence under Section 304(A) of IPC and accordingly, he has been convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for one month.

4. Challenging the said conviction and sentence, the revision petitioner preferred an appeal in C.A.No.100/2016 before the learned District and Sessions Judge, Sivagangai. The learned District and Sessions Judge, Sivagangai by judgment, dated 14.07.2017 affirmed the findings arrived at by the trial Court and dismissed the appeal. Therefore, the petitioner is before this Court with the present Criminal Revision Case.

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

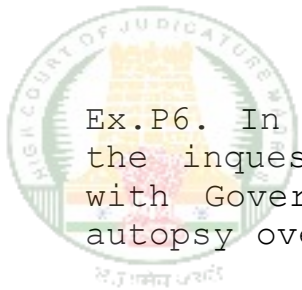
(i) The deceased Rahul is a student studied in Nehruji Central Higher Secondary School, situated at Melur. On 17.08.2010 around 09.15 a.m., when the deceased Rahul and other children, who are studying in the same school, while walking to get into the class room, the revision petitioner herein, being the driver, without seeing the children, who are walking on the backside of the van, drove the van bearing Registration No.TN 63 L 1812 in a rash and negligent manner, in the reverse gear and dashed against the deceased.

(ii) The said incident was witnessed by P.W.4-Balammal and one Kanchana and informed to the Principal. P.W.3-Angayarkanni, who is the Principal of Nehruji Central Higher Secondary School, after got information, informed the same to P.W.1-Sagunthala, who is the mother of the deceased Rahul.

(iii) Upon receipt of information, P.W.1 went to the occurrence place and after seeing the dead body of her son, lodged the complaint before the police under Ex.P1.

(iv) P.W.6-Balaji, the then Inspector of Police, Sivagangai Taluk Police Station, on 17.08.2010, while he was on duty, around 10.30 a.m., received the complaint from P.W.1 and registered a case against the revision petitioner in Crime No.141/2010 under Section 304 (A) of IPC. The printed FIR was marked as Ex.P3. Immediately, after the registration of the case, he rushed to the scene of occurrence and in the presence of witnesses, he prepared an Observation Mahazar under Ex.P4. He drawn the Rough Sketch and the same has been marked as Ex.P5. He examined the witnesses and recorded their statements.

(v) He held inquest and prepared an inquest report under



Ex.P6. In continuation of investigation, after the preparation of the inquest, he submitted a requisition to the Doctor attached with Government Hospital, Sivagangai requesting to conduct an autopsy over the dead body of the deceased Rahul.

(vi) Upon the receipt of the requisition given by P.W.6, P.W.5-Dr.Kiruthika, on 17.08.2010 around 01.40 a.m., conducted an autopsy and issued a postmortem certificate under Ex.P2 with opinion that the deceased would appear to have been died due to the multiple injuries sustained in the road accident.

(vii) In continuation of investigation, P.W.6 sent a requisition to the Motor Vehicle Inspector for inspecting the offending vehicle. In turn, the Motor Vehicle Inspector, Sivagangai, examined the offending vehicle and issued a certificate as the occurrence had not happened due to the mechanical defect of the offending vehicle. The said certificate was marked as Ex.P7. After receipt of the report from the doctor and the Motor Vehicle Inspector, he came to the positive conclusion that the revision petitioner is liable to be convicted for an offence punishable under Section 304(A) of IPC. He filed a final report accordingly.

6. Based on the above materials, the trial Court examined the accused in terms of Section 251 of Cr.P.C., for which, the accused pleaded not guilty. Hence, in order to prove their case, on the side of the prosecution, 7 witnesses have been examined as P.W.1 to P.W.7 and 8 documents were marked as Ex.P1 to Ex.P8.

(i) Out of the above said witnesses, P.W.1-Sagunthala, who is the mother of deceased, speaks about the receipt of information from the School in respect to the death of her son and about the lodging of a complaint.

(ii) P.W.2-Revathi is the sister of P.W.1. She has given evidence in support of the evidence given by P.W.1.

(iii) P.W.3-Angayarkanni, who was the Principal in the School, claims that the witnesses P.W.4-Balammal and Kanchana, who are the staffs working in the school, reported that the accused negligently drove the vehicle and due to the same, back wheel of the bus was ran over on the head of the deceased.

(iv) P.W.4-Balammal the alleged eye witness to the occurrence gave evidence before the trial Court as on the date of occurrence around 9.15 a.m., when she was in class room, some of the teachers came there and informed that the deceased met with an accident.



(v) P.W.5-Dr.Kiruthika, speaks about the injury sustained by the deceased and about the issuance of post mortem certificate.

(vi) P.W.6-Balaji, the then Inspector of Police, Sivagangai speaks about the receipt of complaint and about the filing of final report.

(vii) P.W.7-Kannan, who is residing in the occurrence Village, speaks about the investigation as during the relevant point of time, the police officer came to the occurrence place and prepared an Observation Mahazar.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, he did not chose to examine any witness nor mark any document on his side.

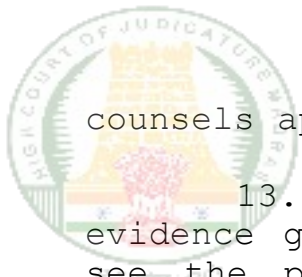
8. Having considered all the above materials placed before him and after considering the arguments advanced by the learned counsels appearing on either side, the learned Judicial Magistrate No.2, Sivagangai convicted and sentenced the revision petitioner as stated above. Further, in the appeal preferred by the accused in C.A.No.100 of 2016, the learned District and Sessions Judge, Sivagangai confirmed the findings arrived at by the trial Court and dismissed the appeal.

9. I have heard Mr.M.Kannan, learned counsel appearing for the revision petitioner and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the respondent. I have also perused the records carefully.

10. The learned counsel appearing for the revision petitioner would contend that before the trial Court, though it was alleged that P.W.4-Balammal and Kanchana had seen the occurrence, the said Balammal had not given any evidence in support of the case of the prosecution. Further, the other witness namely Kanchana has not been examined as a witness and thereby, the witnesses examined on the side of the prosecution did not speaks about the occurrence. Therefore, it would be decided that the judgment rendered by the Courts below is erroneous one.

11. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent would submit that the evidence given by the prosecution is sufficient to hold that the alleged occurrence had happened as alleged by the prosecution. According to him, interference of this Court in the findings arrived at by the Courts below does not require.

12. I have considered the rival submissions made by the



counsel appearing on either side.

13. Initially, before entering into the merits of the evidence given by the occurrence witnesses, it would be relevant to see the postmortem report issued by the Doctor and the Motor Vehicle Inspection report issued by the Motor Vehicle Inspector. Before the trial Court, the postmortem report issued by P.W.5 was marked as Ex.P2. In the said certificate, the doctor, who conducted an autopsy, gave an opinion that the death would occur due to the multiple injuries sustained by the deceased.

14. In the said circumstances, in respect to the injury stated in the postmortem certificate, there was no denial on the side of the accused that the same could not be caused due to the alleged road accident. Therefore, it should be acknowledged that the injuries sustained by the deceased would happen only due to the road accident as alleged by the prosecution.

15. Secondly, Ex.P7 the Motor Vehicle Inspector report reveals the fact that the alleged accident is not due to the mechanical defect of the offending vehicle. In this aspect also, there is no denial on the side of the accused.

16. Finally, on going through the evidence given by P.W.1, who is the person who set the law in motion, it appears that only upon the information received from the Principal of the School, she went to the school and thereafter, lodged a complaint. Similarly, P.W.3, who is the Principal of the School is a competent person to say the occurrence, gave evidence before the trial Court as on the date of occurrence one Balammal and Kanchana, who are the teachers, came to her office and reported the occurrence. In the said situation, the said Balammal while at the time of giving evidence as P.W.4 has not given any evidence in support of the case of the prosecution as she saw the occurrence.

17. Therefore, all the witnesses examined on the side of the prosecution did not say about the rash and negligent act of the revision petitioner. Mere filing of the certificate, in respect of the reasons for death, is not sufficient to hold that during the relevant point of time the revision petitioner drove his vehicle in a rash and negligent manner and committed the offence. The Courts below without going into the evidence given by the prosecution witnesses in a correct perspective manner, came to the conclusion that the accused is found guilty. Therefore, I am of the opinion that the said findings arrived at by the trial Court and the appellate Court is nothing but erroneous one.

18. In the light of the above discussions, I am of the considered opinion that the conviction and sentence awarded by the



Courts below is liable to be set aside. Accordingly, it is set aside. The bail bonds executed by the revision petitioner shall stand terminated. The fine amount, if any, paid by the appellant, is directed to be refunded to him.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am/csm

To

- 1.The Judicial Magistrate No.2,
Sivagangai.
- 2.The Chief Judicial Magistrate,
Sivagangai.
- 3.The District and Sessions Judge,
Sivagangai.
- 4.The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai District.
- 5.The Superintendent,
Central Prison,
Madurai.
- 6.The Additional Public Prosecuto,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.KANNAN, Advocate (SR-28029[F] dated 03/09/2021)

Crl.R.C. (MD) No.619 of 2017
01.09.2021