

Bail Slip

The Revision Petitioner/Sole accused D.THİYAGARAJAN, S/O, DURAISAMY male, was directed to be released on bail order of this court dated 18.08.2017 and made in Crl.MP.(MD).No.7447 of 2017, in Crl.RC.(MD).No.657 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On : 01.09.2021
Judgment Delivered On : 14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**
Crl.R.C. (MD)No.657 of 2017

D.Thiyagarajan : Petitioner/Appellant/
Accused

Vs.

State of Tamil Nadu,
Rep. By the Inspector of Police,
Traffic Investigation Wing,
Kottar, Kanyakumari District. : 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 records and to set aside the order, dated 25.01.2017 made in Crl.A.No.264 of 2005 on the file of the Fast Track Court (Mahalir), Nagercoil, wherein the conviction and sentence awarded in S.T.C.No.870 of 2003 on the file of the Judicial Magistrate No.III, Nagercoil, dated 07.11.2005 is modified and allow the Criminal Revision Case.

For Petitioner : Mr.T.Selvakumaran
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, dated 25.01.2017 made in Crl.A.No.264 of 2005, rendered by the learned Sessions Judge Fast Track Court (Mahalir), Nagercoil, wherein, the judgment, dated 07.11.2005 made in S.T.C.no.870 of 2003 rendered by the learned Judicial Magistrate No.III, Nagercoil was modified.

2. The revision petitioner is the sole accused in S.T.C.No.870 of 2003 on the file of the learned Judicial Magistrate No.III, Nagercoil. Before the trial Court, the respondent police



filed a final report alleging that the appellant committed the offences under Sections 279, 338 (2 counts) and 304(A) of IPC.

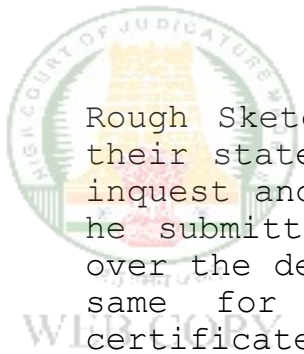
3. After full-fledged trial, the learned trial Judge found the revision petitioner/accused guilty for the offences under Section 338 (2 counts) and 304(A) of IPC. After concluding as above, the trial Court has convicted the accused under Section 338 of IPC (2 counts) and sentenced to undergo Rigorous Imprisonment for 1 year and to pay a fine of Rs.1,000/- each, in default, to undergo Simple Imprisonment for 3 months (Totally a sum of Rs.2,000/-. Further for an offence under Section 304(A) of IPC the accused was sentenced to undergo Rigorous Imprisonment for 2 years and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for 6 months. The sentences are run consecutively. Further, it was ordered from the total fine amount of Rs.7,000/-, Rs.1,000/- has to be paid to P.W.2 and Rs.5,000/- has to be paid to P.W.3 as a compensation.

4. Challenging the said conviction and sentence, the revision petitioner preferred an appeal in C.A.No.264 of 2005 before the Fast Track Court (Mahalir), Nagercoil. The learned Fast Track Judge (Mahalir), Nagercoil, by judgment, dated 25.01.2017 affirmed the findings arrived at by the trial Court as the appellant is guilty under Section 338 (2 counts) and 304 (A) of IPC. However, he modified the sentence by confirming the fine and compensation awarded by the trial Court under Section 338 (2 counts) of IPC and further modified the sentence awarded by the trial Court in respect to the offence under Section 304(A) of IPC from 2 years Rigorous Imprisonment to 6 months Simple Imprisonment, confirmed the fine and compensation amount. Aggrieved over the said modified conviction and sentence, the petitioner is before this Court with the present Criminal Revision Case.

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

(i) On 20.09.2002 around 04.00 p.m., the deceased Susila riding the Motorcycle bearing Registration No.TN-74-B-3899, wherein her daughter viz., Anu, who is aged about 10 years, is the pillion rider. When at the time, they reaches the Suresh Electrical Shop, a Tipper Lorry bearing Registration No.TN-04-E-5248, came behind them (i.e.,) North to South in a rash and negligent manner and dashed against the Motorcycle, in which, the deceased was travelled. Due to the said accident, the said Susila sustained a fatal injuries, died on the way to Hospital, her daughter Anu and one Priya sustained grievous injuries.

(ii) In respect to the same, after receipt of the complaint given by P.W.1-Durairaj, P.W.12-Thiru.M.Chandrapal, the then Inspector of Police, Vadaseri Police Station, registered a case in Cr.No.102 of 2002 under Sections 279, 338 and 304(A) of IPC. He visited the scene of occurrence and in the presence of P.W.4 and P.W.5 conducted an Observation Mahazar under Ex.P2. He drawn the



Rough Sketch under Ex.P9. He examined the witnesses and recorded their statements. On the dead body of the deceased Susila, he held inquest and prepared an inquest report under Ex.P10. Thereafter, he submitted an application to the doctor for conducting autopsy over the dead body. He recovered the offending vehicle and sent the same for inspection. Finally, after receipt of the wound certificate pertains to the injured and after collecting the post mortem certificate, he filed a final report against the accused under Sections 279, 338 and 304(A) of IPC.

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, 13 witnesses have examined as P.W.1 to P.W.13 and 10 documents were marked as Ex.P1 to Ex.P10.

(i) Out of the above said witnesses, PW1-Durairaj, who lodged a complaint, has stated that he had heard the news and thereafter, he lodged a complaint before the respondent police.

(ii) P.W.2-Priya, who is the injured, speaks about the occurrence as during the relevant point of time when she was going to Yusuf shop for purchasing the bag, a lorry came on her back side and dashed against her.

(iii) P.W.3-Anu, who is also a one of the eye witness, travelled along with the deceased, speaks about the occurrence as during the time of occurrence, the offending vehicle was driven by its driver in a rash and negligent manner and dashed on the back side of the vehicle, wherein, both herself and her mother deceased Susila were travelled.

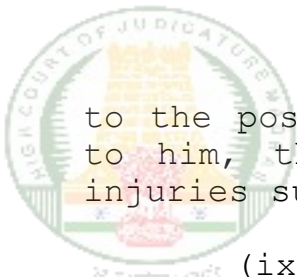
(iv) P.Ws.4 & 5 gave evidence as the Investigating Officer had prepared an Observation Mahazar in their presence.

(v) P.W.6-Saravanababu working as Sub Inspector in the Tamil Nadu Fire Rescue Department speaks about the occurrence as during the relevant point of time, after receipt of the information, he went to the occurrence place along with his team and rescued the injured, who are all found inside the damaged offending vehicle, and sent them for treatment.

(vi) P.W.7-Dr.Devasahayam speaks about the examination of injured Anu and about the injuries sustained by her. According to him, the injuries sustained by P.W.3 is grievous in nature.

(vii) Similarly, P.W.8-Dr.Thiraviyam gave evidence in respect to the treatment given to P.W.2. He has issued a certificate under Ex.P4 stating that the injuries sustained by injured Priya are grievous in nature.

<https://hcservices.ecourts.gov.in/hcservices/PW.9-Dr.Sivakumar> speaks about the details in respect



to the postmortem conducted on the dead body of Susila. According to him, the deceased would appear to have died due to multiple injuries sustained in the road accident.

(ix) P.W.10- Thangaraj is the Head Constable, identified the dead body of the deceased Susila to the doctor.

(x) P.Ws.11,12 & 13 are the police officers speaks about the receipt of complaint, registration of the case, details of investigation and about the filing of final report.

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 or 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.III, Nagercoil convicted and sentenced the revision petitioner as stated above. Further, in the appeal preferred by the revision petitioner in C.A.No.264 of 2005, the learned Fast Track Court (Mahalir), Nagercoil confirmed the findings arrived at by the trial Court and modified the sentence awarded by the trial Court as stated above.

9. I have heard Mr.T.Selvakumaran, 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 the evidence given by P.Ws.2 & 3, who are the occurrence witnesses, is having lot of contradictions in respect of the negligent act alleged to be committed by the revision petitioner. The courts below without appreciating the same in a correct perspective manner found the accused guilty and the said findings needs interference in this Court.

11. Per Contra, the learned Government Advocate (Crl.side) appearing for the respondent would contend that before the trial Court, the evidence given by P.Ws.2 & 3 in respect to the occurrence has not been disputed by way of cross-examining the said witnesses. Therefore, the non-disputing of the said evidence is amounts to admits the evidence given by P.Ws.2 & 3 and therefore it cannot be held that the evidence given by P.Ws.2 & 3 is having a lot of contradictions. 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
<https://hccservicescourtsapp.in/hccservices/> on either side.



13. Primarily, being the reason that this Criminal Revision Case has been filed under Section 397 of Cr.P.C., it is necessary to see the scope and ambit of Section 397 of Cr.P.C. The jurisdiction under Section 397 of Cr.P.C., could be exercised only when the decision under challenge is grossly erroneous; non-compliance with the provisions of law; finding of fact affecting the decision is not based on evidence; non-consideration of the material evidence and that the lower Court has exercised the discretion arbitrarily or perversely and acted in excess of its jurisdiction or abused its power resulting in failure of justice.

14. In the said situation, now on go through the story projected by the prosecution, it seems that when at the time of occurrence, the revision petitioner herein drove his Tipper Lorry, bearing Registration No.TN-04-E-5248, in a rash and negligent manner and dashed against the motorcycle, in which, the deceased was travelled. Due to the same, the death would occur to the deceased. Further, P.W.2 was the pillion rider sustained a grievous injury. Similarly, the said tipper lorry dashed against P.W.3 and as a result of which, she was also sustained grievous injury.

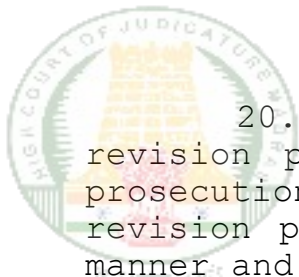
15. In order to prove the death and the nature of the injuries sustained by P.Ws.2 & 3, wound certificates pertains to P.Ws.2 & 3 and the postmortem certificate pertains to the deceased are all marked as Ex.P3 to Ex.P5 respectively.

16. In respect of the cause of death, the opinion given by the Doctor, in the postmortem certificate, has not been denied on the side of the accused. Further, there was no suggestion on the side of the accused is that those documents are not related to the deceased and the P.Ws.2 & 3. Accordingly, before the trial Court, the prosecution has proved that due to the alleged accident, P.Ws.2 & 3 sustained grievous injuries and one Susila had been died.

17. In this occasion, it is also necessary for the prosecution to prove that the alleged accident had not happened due to the mechanical defect of the offending vehicle which involved in the alleged accident.

18. In this regard, there was no evidence produced on the side of the prosecution that after the accident the vehicle involved in the accident have been recovered by the Investigation Officer and produced the same before the Motor Vehicle Inspector. In fact, Motor Vehicle Inspection Report alleged to be given by the said officer has not been exhibited.

19. Accordingly, the prosecution has failed to prove, that the alleged accident had happened not due to the mechanical defect of the offending vehicles.



20. Yet another thing, which is necessary to decide in this revision petition is that before the Trial Court it is for the prosecution to prove that during the time of occurrence, the revision petitioner has drove the vehicle in a rash and negligent manner and committed the offence. In this regard, on go through the evidence given by P.Ws.1 to 3 it appears that none of the witnesses have not identified the accused as he alone drove the vehicle at the time of accident. Before the trial Court, P.W.1 has given evidence stating that only after hearing the news from others, he went to the occurrence place and lodged a complaint. Therefore, it is quite clear that P.W.1 has not seen the occurrence.

21. Secondly, on go through the evidence of P.W.2, who is one of the injured in the alleged occurrence, she specifically stated that she has not seen the accused.

22. Similarly, P.W.3 has also gave an evidence as he did not know who drove the lorry at the time of occurrence. Therefore, on cull out the evidence given by P.Ws.1 to 3 with the other factors, it appears that, before the trial Court, the prosecution failed to show that the revision petitioner alone drove the vehicle in a negligent manner and committed this offence.

23. In this aspect, the courts below without appreciating the evidence given by the witnesses in a perspective manner and concluded as the revision petitioner was guilty under Section 338 and 304(A) of IPC. The said findings arrived at by the Courts below is purely erroneous and cross-injustice.

24. In fine, this Criminal Revision Petition is allowed and the conviction and sentence imposed on the revision petitioner, by the learned Judicial Magistrate No.III, Nagercoil, made in S.T.C.No.870 of 2003, dated 07.11.2005 and the same was modified by the learned Fast Track Court (Mahalir) Nagercoil, made in C.A.No.264 of 2005, dated 25.01.2017, are set aside and the revision petitioner is acquitted of all the charges. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the revision petitioner shall stand cancelled.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Judge, The Fast Track Court (Mahalir), Nagercoil
2. The Judicial Magistrate No.III, Nagercoil,.
3. The Chief Judicial Magistrate, Kanyakumari District at Nagercoil.
4. The Inspector of Police,
Traffic Investigation Wing,
Kottar, Kanyakumari District.
5. 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.

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-29140[F] dated 15/09/2021)

CrI.R.C. (MD) No. 657 of 2017
14.09.2021

RD(1.10.2021) 7P 9C