

BAIL SLIP

Balamurugan, S/o. Paramasivam, Male, aged about 37/2017, sole accused is released on bail vide order dated 03.11.2017 made in CRL.MP(MD)No.9940/2017 in CRL RC(MD)No.804/2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 19.03.2021

Pronounced On : 07.04.2021

CORAM

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

CRL.R.C. (MD) .No.804 of 2017

Balamurugan : Petitioner /Appellant/ Sole Accused

Vs.

State represented by
The Inspector of Police,
Malli Police Station,
Virudhunagar.

Crime No.79 of 2009. : Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to call for the records and set aside the conviction and sentence imposed by the Court of the Principal District Judge, Virudhunagar District at Srivilliputhur in Crl.A.No.101 of 2010 on 20.02.2017 in confirming the conviction and sentence imposed by the Judicial Magistrate Court No.II, Srivilliputhur in C.C.No.122 of 2009 on 25.08.2010.

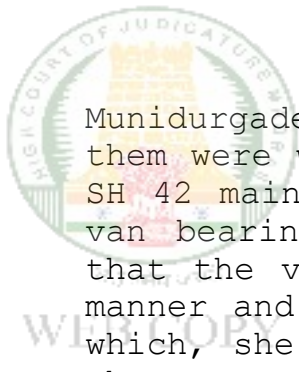
For Petitioner : Mr.G.Marimuthu

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor.

ORDER

The Criminal Revision Case is directed against the concurrent judgments of the conviction passed in Crl.A.No.101 of 2010, dated 20.02.2017 on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and the judgment made in C.C.No.122 of 2009, dated 25.08.2010, on the file of the Court of the Judicial Magistrate No.II, Srivilliputhur.

2.The case of the prosecution is that on 18.04.2009 at about 9.30 am, the defacto complainant Ramar had taken her second daughter

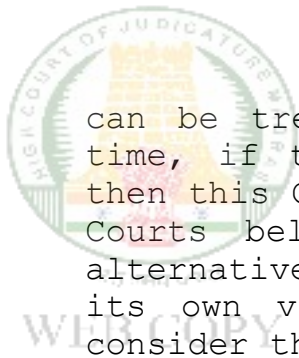


Munidurgadevi, to Malli Bazar for getting a vada, that when both of them were waiting on the northern side of Srivilliputhur to Sivakasi SH 42 main road, to cross the road near Ullorpatti colony, one 407 van bearing registration No. TN-60 A-2661 came from west to east, that the van driver had driven the vehicle in a rash and negligent manner and dashed against the said Munidurgadevi and as a result of which, she sustained serious injuries all over her body and died on the spot itself, that the accident was occurred only due to the rash and negligent driving of the van driver, that based on the complaint preferred by the said Ramar/ defacto complainant, FIR came to be registered in Crime No.79 of 2009 on the file of the respondent police for the offence punishable under Section 304 (A) IPC and after investigation, the respondent police has laid the final report before the Court of Judicial Magistrate No.II, Srivilliputhur and that the same was taken on file in C.C.No.122 of 2009 on the file of the said Court.

3.During trial, the prosecution, in order to prove its case, has examined 9 witnesses as P.W.1 to P.W.9 and exhibited 7 documents as Ex.P.1 to Ex.P.7. The revision petitioner/accused has adduced neither oral nor documentary evidence.

4.The learned Magistrate, upon considering the evidence and on hearing the arguments of both the sides, has passed the judgment on 25.08.2010 convicting the accused for the offence under Section 304 (A) IPC and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for three months. Aggrieved by the said judgment of conviction, the accused has preferred an appeal before the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur in C.A.No.101 of 2010 and the learned Principal Sessions Judge, upon perusing the records and on hearing the both sides, has passed the impugned judgment on 20.02.2017, dismissing the appeal and thereby confirming the judgment of conviction and sentenced passed by the trial Court. Aggrieved by the said dismissal of the criminal appeal, 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. It is pertinent to mention that the jurisdiction exercised by this Court under Section 397 and 401 Cr.P.C, is supervisory jurisdiction, which gives restricted power to test the correctness, legality or propriety of any finding, sentence or order. While exercising the revisional jurisdiction, it would not be appropriate for this Court to re-appreciate the evidence and come to its own conclusion on the same, when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of this Court, which would otherwise tantamount to gross miscarriage of justice. More over, the revisional jurisdiction cannot be equated with the Appellate jurisdiction nor



can be treated as second Appellate jurisdiction. But at the same time, if the appreciation of evidence is tainted with perversity, then this Court can very well interfere with it. More over, since the Courts below have expressed their concurrent views, even if an alternative view is available, this Court has no power to substitute its own view. Bearing the above legal position in mind, let us consider the case on hand.

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

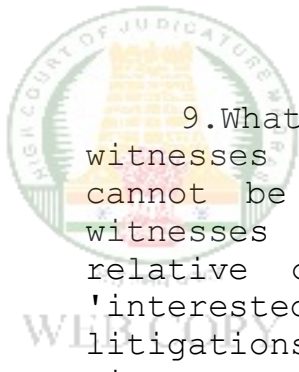
(i) The prosecution has not offered any explanation for the delay in lodging the complaint to the police. Though the alleged occurrence took place on 18.04.2009 at 07.00 hours, despite the fact that the police station is situated at a distance of 500 meters from the scene of occurrence, the complaint was lodged at about 09.00 hours - the delay remained unexplained.

(ii) The witnesses P.W.1 to P.W.3 are relatives hailing from the same village and are interested witnesses. The prosecution has not examined any other independent witnesses. The Courts below have failed to consider the discrepancies in the evidence of P.W.1 to P.W.3 eye witnesses.

(iii) P.W.1 to P.W.3 have deposed that the van driver had driven the vehicle in high speed, but they have not deposed that the accused had driven the vehicle in a rash and negligent manner.

7.Regarding the delay in lodging the police complaint, according to the prosecution, the accident was allegedly occurred at 07.00 O' clock in the morning on 18.04.2009 and the father of the deceased lodged a complaint at 09.00 am on that day. As rightly contended by the learned Additional Public Prosecutor, it is hard and difficult to visualise the shock and trauma suffered by a father in witnessing the accident and death of his daughter in front of him. Moreover, it is settled position of law that the delay in lodging the complaint with the police is not by itself fatal to the prosecution case and the defence has to show the prejudice caused to them by the said delay. In the present case, it is not the case of the defence, that the accused was prejudiced by the said delay. As rightly pointed out by the prosecution, the trial Court has rightly dealt with the issue and decided that the explanation given by the defacto complainant was acceptable.

8.The prosecution has examined P.W.2 and P.W.3 as occurrence witnesses. No doubt, P.W.3 would admit that he is related to P.W.1 but, P.W.1 and P.W.2 would say that they would go to work jointly. During the cross examination of P.W.2, it was not even suggested by the defence that he was related to P.W.1. It is not known as to how the revision petitioner in the revision memorandum has alleged that P.W.1 to P.W.3 are relatives.



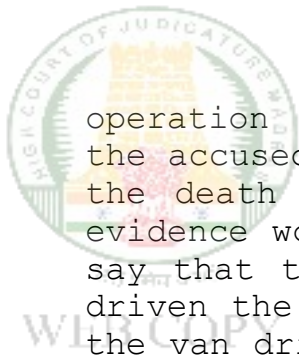
9. Whatever it is, it is settled law that merely because the witnesses are related to the victim or complainant, their evidence cannot be thrown out. It is settled law that the evidence of witnesses cannot be discarded merely on the ground that he is a relative or interested witness, that a witness may be called 'interested' only when he derives some benefits from the result of a litigation or in seeing the accused person punished and that a witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. Hence the relative witnesses cannot be equated with the interested witnesses. No doubt, the evidence of interested witnesses is to be scrutinized with care and caution. It is also settled law that in case, if the evidence of the relative witnesses are cogent, credible and trust worthy, the same can be relied on. In the case on hand, P.W.2 and 3 before the trial Court would depose about the manner of the accident, reiterating the version of P.W.1 /defacto complainant. Both of them P.W.2 and P.W.3 during their cross examination would deny the suggestion specifically that they had not witnessed the accident. P.W.1 to P.W.3 would say that after the accident, P.W.1 after requesting P.W.3 to remain in the occurrence place, had taken P.W.2 to Malli Police Station and gave a complaint.

10. As rightly pointed out by the prosecution, P.W.1 in his evidence before the trial Court would say that while himself and his daughter were standing on the northern side of Srivilliputhur to Sivakasi Road at about 07.00 am, one 407 van, which came in good speed had dashed against his daughter, that his daughter had sustained injuries all over her body and died on the spot itself and that the accident was occurred only due to the rash and negligent driving of the van driver.

11. P.W.2 and P.W.3 in their evidence would say that they were proceeding from west to east direction at Srivilliputhur to Sivakasi road, that P.W.1 and his daughter were standing on the northern side of the road and that 407 van driven by Balamurugan came from west to east and dashed against the daughter of P.W.1. Though P.W.1 to P.W.3 were cross examined, nothing was elicited by the defence in their favour.

12. The next contention of the learned counsel for the revision petitioner is that there was no evidence to show that the accused had driven the vehicle in a rash and negligent manner. The basic element of Section 304(A) IPC are negligence and rashness and the above Section allows the criminality of a matter inspite of the absence of *mens rea*.

13. 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. But at the same time, there may be cases where both the rashness and negligence 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 someone. In the present case, no doubt, P.W.1 in his evidence would say that the van came in good speed and he would also say that the van driver was responsible for the accident as he had driven the vehicle negligently. P.W.2 in his evidence would say that the van driver Balamurugan drove the van from west to east in a rash and negligent manner and dashed against the daughter of P.W.1. No doubt, P.W.3 would say that the van driver Balamurugan had driven the van with high speed and dashed against the daughter of P.W.1. P.W.1 and P.W.2 are doing centring work in the construction of building and P.W.3 is a driver.

14.As rightly contended by the learned Additional Public Prosecutor, we cannot expect, the people like P.W.1 to P.W.3 to depose using the necessary and apt words, so as to attract the offence with which, the accused was charged with. No doubt, the vehicle driven by the accused with high speed does not by itself constitute an offence under Section 304(A) IPC. As already pointed out P.W.1 and P.W.3 would say that the van was driven with high speed and P.W.2 would say that the accused has driven the vehicle rashly and negligently.

15.More over, it is evident from Ex.P.3/ rough sketch that the width of the main road is shown at 22 feet. It is the specific case of the prosecution that the accident was occurred on the northern end of the east - west main road and as per the evidence of the occurrence witness, the van came from west to east. Even assuming for arguments sake, that the deceased girl had suddenly attempted to cross the road, as put forth by the defence, the van driver, on seeing the movement of the girl could have very well stopped the van or diverted the van towards the other side of the road.

16.It is nobody's case that some other vehicles were moving at that time. Considering the evidence of P.W.1 to P.W.3 and also the manner in which the accident was occurred, the finding of the trial Court as well as the Appellate Court that the accident was occurred only due to the negligence of the accused, cannot be find fault with.

17.Considering the above, it is clear that the Appellate Court has re-assessed the entire evidence and gave its finding concurring with the learned Magistrate. The Courts below have rightly appreciated the evidence and arrived at correct findings. The revision petitioner/accused has not shown any other reason or ground to impugn the judgments of conviction made by the Courts below.

18.Regarding the punishment imposed, as already pointed out, the trial Court has sentenced the accused to undergo one year simple imprisonment and pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment and the same was confirmed by the learned



appellate Judge. The revision petitioner has not shown any special reason or mitigating circumstances to modify the punishment imposed. 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 is dismissed and 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

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. THE PRINCIPAL DISTRICT JUDGE,
VIRUDHUNAGAR DISTRICT.

2. THE JUDICIAL MAGISTRATE COURT NO.II,
SRIVILLIPUTHUR.

3. THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR AT SRIVILLIPUTHUR.

4. THE INSPECTOR OF POLICE,
MALLI POLICE STATION,
VIRUDHUNAGAR.

5. 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. (Soft Copy)

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-15394[F] dated 07/04/2021)

CRL.R.C. (MD) .No.804 of 2017
07.04.2021

das

AM/29.04.2021/6P/7C