



BAIL SLIP

The Petitioner/Accused Namely, Suresh @ Yuvaraj aged 28 Years S/o.Chandran was directed to be released on bail by the order of this court dated 02.03.2016 and made in CrI.MP.No.1/2015 in CrI.R.C.No.1094 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY
CrI.R.C.No.1094 of 2015

Suresh @ Yuvaraj,
S/o.Chandran

... Petitioner

Versus

The State Represented by,
The Sub-Inspector of Police,
Vennandur Police Station,
Namakkal District.

... Respondent

(Crime No.474 of 2010)

Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the Judgment dated 10.06.2015 passed in C.A.No.21 of 2014 on the file of the Principal Sessions Court, Namakkal, confirming the Judgment dated 23.04.2014 passed in C.C.No.64 of 2011 on the file of the Judicial Magistrate Court, Rasipuram.

For Petitioner : Mr.Jayan
for M/s.W.Camyles Gandhi

For Respondent : Mr.L.A.J.Selvam
Government Advocate (CrI.side)

ORDER

This Criminal Revision in R.C.No.1094 of 2015 is filed by the petitioner/accused aggrieved by Judgment of the learned Judicial Magistrate, Rasipuram dated 23.04.2014 in C.C.No.64 of 2011, thereby convicting the petitioner for the offences under Section 279 of IPC and imposing fine of Rs.500/- in default, to undergo one month simple imprisonment and under Section 304A of IPC and imposing fine of Rs.3,000/- in default, to undergo one year simple imprisonment and under Section 185 of Motor Vehicles Act, 1988 and imposing fine of Rs.1,000/- in default, to undergo one week simple imprisonment for the offence under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 imposing fine of Rs.500/- in default, to undergo simple imprisonment for a period of one week and the Judgment of the learned Principal Sessions Judge, Namakkal dated 10.06.2015 in C.A.No.21 of 2014, thereby dismissing the appeal preferred by the petitioner/accused and confirming the conviction and sentence passed by the learned Judicial Magistrate, Rasipuram.



2. On 10.10.2020, P.W-1 went to Vennandur Police Station and lodged a complaint stating that on the same date at about 7.00 pm at Vellaipillaiyar Kovil Nadar Street, her younger son namely Elango aged about five years who was taken out by her mother-in-law for defecation and when the child was defecating in the western side margin of the road, the petitioner/accused who was riding a motor cycle bearing Registration No.TN-27-W-5333, drove the same in a rash and negligent manner, hit the child and the child suffered severe head injuries and upon taken to hospital, the child was pronounced as "brought dead".

3. Upon the said complaint, P.W-13 Inspector of Police/Investigating Officer registered a case in Crime No.474 of 2010 and completed the investigation and made a final report before the learned Judicial Magistrate, Rasipuram proposing the petitioner/accused guilty of the offence under Sections 279, 304A of IPC and Sections 185, Section 3 read with Section 181 of the Motor Vehicles Act, 1988. The learned Judicial Magistrate, Rasipuram took the case on file as C.C.No.64 of 2011 and upon the issuance of summons and furnishing of copies as per Section 207 of the Criminal Procedure Code, the petitioner/accused denied the charges and stood for trial. Thereafter, the prosecution examined P.W-1 to P.W-13 and marked Exs.P-1 to P-10.

4. Upon being the question about adverse evidence and circumstances on record, under Section 313 of the Criminal Procedure Code, the petitioner/accused denied the same as false evidence. Thereafter, no oral or documentary evidence was let in by the defence.

5. The Trial Court thereafter proceeded to hear the learned Additional Public Prosecutor on behalf of the prosecution and the learned counsel for the petitioner/accused and by a Judgment dated 23.04.2014, found that the evidences of P.W-2, P.W-3 and P.W-7, who witnessed the accident coupled with the evidence of P.W-13 Inspector of Police/Investigating Officer and the Certificate of P.W-11 Doctor certifying that the petitioner/accused was not in inebriated condition coupled with the evidence of P.W-1 who is the complainant and the Motor Vehicle's Inspector Report, found that the petitioner/accused was guilty of the offences and accordingly, sentenced him as aforesaid.

6. Aggrieved by the same, the petitioner/accused preferred an appeal in C.A.No.21 of 2014 before the learned Principal Sessions Judge, Namakkal and by Judgment dated 10.06.2015, after independently appraising the evidences of the witnesses including P.W-1, P.W-2, P.W-3 and P.W-7 and the



certificate of drunkenness coupled with the evidences of the eye witnesses which proved that the petitioner/accused drove the vehicle in a rash and negligent manner and therefore confirmed the conviction and sentence imposed by the Trial Court and dismissed the appeal. Aggrieved by the same, the present Revision has been made before this Court.

7. Mr. Jayan, learned counsel appearing for the petitioner would submit that firstly in this case, the very factum as to the drunkenness of the petitioner/accused stands not proved. Because, P.W-13 Inspector of Police/Investigating Officer had deposed before the trial Court in his evidence that only on the next date i.e., on 11.10.2010 afternoon he took the petitioner/accused to the hospital to check his condition. If that being so, there was no scope at all for the Doctor to ascertain and determine his drunkenness of the petitioner/accused who consumed alcohol in the previous night i.e., on 10.10.2010.

8. He would also point out that this apart, the Doctor's evidence is contradictory inasmuch as he says that he examined the petitioner/accused on 10.10.2010 night itself and found that he was in drunken state. As per the evidence of P.W-13 Inspector of Police/Investigating Officer, he commenced investigation itself only on the next date, this evidence of the Doctor is highly doubtful. In any event, in the cross examination, the Doctor has categorically admitted that he did not follow the mandatory procedure of collecting the blood samples to determine the percentage of alcohol for testing the intoxication of the petitioner/accused.

9. The learned counsel for the petitioner submitted that the findings of the Trial Court as well as the Lower Appellate Court are merely based on the fact that the petitioner/accused was found in a drunken state and the evidence of P.W-2, P.W-3, P.W-4 and P.W-7 being the eye witnesses also confirmed that the petitioner/accused drove the vehicle in a rash and negligent manner only on that basis. Thus, the findings of the Trial Court as well as the First Appellate Court that the petitioner/accused drove the motor cycle in a rash and negligent manner, therefore would be perverse.

10. The learned counsel for the petitioner further submitted that it was in the month of October and the witnesses have also deposed that it was already dark by the time when the accident had happened and he also requested this Court to go through the geographical topography and submitted that, it is negligent on the part of P.W-4 grand mother who have made the child to sit in the road which resulted in the accident and therefore he would pray this Court to acquit the petitioner/accused in total.



11. Opposing the prayer, Mr.L.A.J.Selvam, learned Government Advocate (Crl.Side) would submit that this is a case where the young child aged about five years died on the spot on account of the front wheel of the motor cycle hitting him on his head. On top of it, the petitioner/accused was also in a drunken state. He would further submit that it is common feature of the villagers that their children defecating along with the road margin and the rider of the motor cycle should be vigilant and drive carefully and only because the petitioner/accused drove the motor cycle in high speed and in a rash and negligent manner, he could not stop the vehicle and therefore the evidence of eye witnesses proved that it is the petitioner/accused who drove the motor cycle in a rash and negligent manner with high speed coupled with the evidence of the Motor Vehicle Inspector's Report which proved that the petitioner/accused drove the vehicle in a rash and negligent manner and caused the accident and therefore, he would submit that the petitioner/accused has been rightly convicted and imposed the sentence by the trial Court and rightly confirmed the same by the First Appellate Court, which warrants no interference by this Court and therefore, he prays that this Revision may be dismissed.

12. I have heard both the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent. I have also gone through the records in this case.

13. At the outset, I agree with the learned counsel appearing for the petitioner that in this case, the offences under Section 185 and Section 3 read with Section 181 of the Motor Vehicles Act, 1988 were not proved by the prosecution for the very fact that any person who is suspected to be in a drunken state and is taken to the hospital to collect the blood samples and concluded about the percentage of alcohol and determine whether he was in inebriated condition or not.

14. This being the case, P.W-11 Doctor had failed to follow the mandatory procedure prescribed as admitted by him in the cross examination and therefore the prosecution has miserably failed to establish the fact that the petitioner/accused was in a drunken state on the date of accident. The evidence of P.W-13 Inspector of Police/Investigating Officer and P.W-11 Doctor are also contradictory in this regard as to the time of examination of the petitioner/accused also. Taking note of the facts and circumstances of the case, cumulatively I find that the findings of the Trial Court in respect of the offences under Section 185 and Section 3 read with Section 181 of the Motor Vehicles Act, 1988 are perverse in nature, without considering



the glaring evidence of P.W-11 Doctor and therefore the petitioner/accused is acquitted of the offences under Section 185 and under Section 3 read with Section 181 of the Motor Vehicles Act, 1988.

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15. However, as far as the offences under Section 279 and 304A of IPC are concerned, even assuming that the petitioner/accused was not in an inebriated condition, considering the rough sketch, the topography of the place of accident, the evidences of eye witnesses namely, P.W-2 to P.W-4 and P.W-7, it is clear that the child was aged only 5 years and no fault can be attributed to the child. Therefore, it is the lack of care on the part of the petitioner/accused which lead to the accident. This lack of care, given nature of injuries, the place of accident and the version of P.W-2 to P.W-4 and P.W-7 makes it culpable in nature. When there is culpable rashness, then it becomes punishable under Section 279 of IPC and since it has resulted in death of the child which becomes punishable under Section 304A of IPC and even though the learned counsel for the petitioner was successful in dislodging few conclusions of the Trial Court as well as the First Appellate Court, ultimately finding of guilt under Sections 279 and 304A of IPC and cannot be found fault with and cannot be interfered with by this Court in exercise of the revisional jurisdiction as it is based on record and evidence.

16. Now, considering the fact that the petitioner/accused was aged about 22 years on the date of accident, he did not flee the spot, he was arrested and released on bail by the respondent police, either prior to the accident or subsequently he is not involved in any other offence and the fact that he is presently aged about 34 years and employed as a daily wager in a chilli/flour mill, still unmarried and leading a law abiding life and has shown remorse for his conduct, instead of sentencing the petitioner/accused, I deem it fit and proper to enlarge the petitioner on probation of good conduct in exercise of powers under Section 360 of Criminal Procedure Code on condition that the petitioner/accused shall appear before the learned Judicial Magistrate, Rasipuram within a period of fifteen (15) days from the date of receipt of this Judgment and execute a bond for a sum of Rs.20,000/- (Rupees Twenty Thousand only) and also undertake that for a period of one year he will keep up good behaviour and will not involve in any offence, of any nature and in any event he fails to keep his undertaking, the petitioner/accused shall appear before this Court to take the sentence.



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17. This Criminal Revision Case is partly allowed as indicated above.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

arb

To

- 1.The Principal Sessions Court, Namakkal.
- 2.The Judicial Magistrate Court, Rasipuram.
- 3.Do through the Chief Judicial Magistrate,Namakkal.
- 4.The Sub-Inspector of Police,
Vennandur Police Station,
Namakkal District.
- 5.The Public Prosecutor, High Court, Madras.

Copy to:

The Section Officer,Criminal Section,
High Court,Madras

+1 cc to M/s.W.Camyles Gandhi, Advocate Sr.NO. 4153

CrI.R.C.No.1094 of 2015

MT(CO)
A.SK(09.02.2022)