



BAIL SLIP

The Petitioner/Accused namely viz Mr.P.Selvam, Male, Aged 58 years, S/o.Palanisamy was directed to be released on bail vide Court order dated 29/10/2015 in MP.Nos.1 & 3/2015 in CrI.R.C.No.1136 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.RC.No.1136 of 2015

P.Selvam

... Petitioner/Accused

Vs.

State Rep.by

Inspector of Police, T.I.W.East

Coimbatore

Crime No.83 of 2013.

... Respondent/Respondent

Prayer: Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order of the District and Sessions Judge, Coimbatore in C.A.No.143 of 2015 against the judgment of the Judicial Magistrate No.VIII, Coimbatore in C.C.No.124 of 2013 by its order dated 27.08.2015 confirming the conviction and sentence to imposed by the learned Judicial Magistrate Court No.VIII Coimbatore for the offence under Sections 279 & 304(A) IPC.

For Petitioner : Mr.K.V.Muthuvisagan

Legal Aid Counsel

For Respondent : Mr.A.Damodaran

Additional Public Prosecutor

O R D E R

This petition has been filed against the order of the District and Sessions Judge, Coimbatore in C.A.No.143 of 2015 against the judgment of the Judicial Magistrate No.VIII,



Coimbatore in C.C.No.124 of 2013 by its order dated 27.08.2015 confirming the conviction and sentence imposed by the learned Judicial Magistrate Court No.VIII Coimbatore for the offence under Sections 279 & 304(A) IPC.

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2. The petitioner/accused was convicted by the Judicial Magistrate No.VIII, Coimbatore in C.C.No.124 of 2013 dated 02.06.2015 under Sections 279 & 304-A IPC and sentenced to pay a fine of Rs.500/- for offence under Section 279 IPC, in default, to undergo Simple Imprisonment for one week and sentenced to undergo one year Simple Imprisonment and to pay a fine of Rs.3,000/-, in default to undergo Simple Imprisonment for a period of three months for offence under Section 304-A IPC. Against the conviction, the petitioner preferred an appeal before the Sessions Court in C.A.No.143 of 2015 before the Principal District and Sessions Judge, Coimbatore. The Appellate Court by the judgment dated 27.08.2015 dismissed the appeal, confirming the conviction and sentence passed by the trial Court, against which, the present Revision has been filed.

3. The gist of the case is that on 30.03.2013 at about 7.40 a.m PW1 was proceeding in his car near by Aravind Eye Hospital, Coimbatore at that time, near Avinashi Road, Coimbatore, CMC Junction, a Motor cycle was proceeding from west to east, the defacto complainant was 50 ft behind a lorry which was coming in a rash and negligent manner from east to west suddenly turn towards right direction and had dashed against the two wheeler. The Driver of the two wheeler was thrown away. The defacto complainant parked his vehicle on the side of the road and went to the rescue of the injurer person. He saw the person with head injury and blood oozing from his left ear and left eye blackened, enquired the injured, found him to be a known person, named Dhandapani. The said Dhandapani was riding his bike with Reg.No.TN-38-BD-1260. The Lorry which caused the accident was bearing Reg.No.TN-38-AR-0076. In the lorry, the name "Puthuar Amman Thunai" was written. Thereafter, the driver's name was found as one Selvam. Thereafter, service of 108 Ambulance service utilized, with the help one Raghu brought the injured Dhandapani to KMCH Hospital. PW1/Subramanian, a driver of the tourist van at that time, after dropping his customers came to KMCH Hospital, where he was informed that the said Dhandapani passed away at 9.30 a.m. Thereafter, they went to the Police Station and lodged a complaint Ex.P1, the same registered at 10.00 a.m., by PW8. In this case, prosecution examined PW1 to PW9 and marked Ex.P1 to Ex.P10. The trial Court on the evidence and materials produced, convicted and sentenced the petitioner. The Lower Appellate Court confirmed the conviction and sentence as stated above.



4. The contention of the petitioner is that the accident said to have been taken place in a public road, main junction Coimbatore, no public witnesses examined. Admittedly, PW1 claims to be the friend of the deceased Dhandapani. PW2 is another friend. PW3 is the son of deceased. All the other witnesses are close relatives to the deceased, viz., PW4, the brother of the deceased and PW5, another son of the deceased. PW6 & PW7 are the observation mahazar and rough sketch witnesses. PW8 is the Sub-Inspector of Police who registered the First Information Report. PW9 is the Investigating Officer. He further submitted that two eye witnesses projected are PW1 & PW2, whose evidence contradictory to each other. PW1 states that he was behind the deceased, who was riding his bike. After the accident, he had gone to police station lodged the complaint. He states that one Raghu/ PW2 was known to him who was found near the accident spot and the said Raghu took the injured Dhandapani to the hospital. From the AR copy Ex.P6 it is seen that one Vijay Anand is said to have taken the injured Dhandapani to the Kovai Medical Centre and Hospital. The said Vijay Anand has not examined as witness. He further submitted that PW1 admits that he informed the Traffic Police Constable present near the signal junction about the accident. In this case, no Traffic Police Constable was examined from the accident spot. He further submitted that PW1 not stated anything about the presence of Raghu in his evidence. PW2/ Raghu is the friend of PW3, PW3 is the son of the deceased. In his evidence, he states that he was following the two wheeler, at that time, the accident took place. PW1 does not mention anything with regard to Raghu riding bike on the scene of the accident. PW2 states that he along with PW1 saw the injured person. PW1 does not say anything about these aspects. PW2 further states that he had taken the injured in Ambulance to the Government Hospital and he does not say anything about the said Vijay Anand. In this case, admittedly the Causality Doctor one K.Sathish Kumar of KMCH Hospital not examined as witness. Likewise, the Post-Mortem Doctor of, Coimbatore Medical College Hospital not examined. From the Motor Vehicle Inspector who inspected both the two wheeler and lorry had given his reports Ex.P8 and Ex.P9. Ex.P8 pertains to the Lorry in which "scratch marks on the rear left outer tyre" found and recorded. From the Motor Vehicle Inspector's report Ex.P9 for the two wheeler it is mentioned that the "handle bar bend, head light assembly damaged, front body damaged, fork bend and both side rear view mirror broken." The Motor vehicle Inspector's report confirms that the lorry had scratch on left rear tyre. He further submitted that from the rough sketch Ex.P4 it is seen that the width of the road, Avinashi from the center median is 40



ft, the accident taken place is 25 ft away from the median. Infact that lorry has crossed the road more than 20 ft, the accident has taken place almost middle of the road, It was the bike which had overshoot the signal and dashed on the rear tyre of the lorry. These factors not considered by the trial Court as well as the Lower Appellate Court.

5. The learned Additional Public Prosecutor submits that in this case, PW1 is a natural witness, who was driving his car, seen the accident. Immediately after the accident, went to rescue the injured person, at that time, the injured person found to be known to him. In his complaint, the presence of PW2 is recorded. PW1 & PW2 found injuries on Dhandapani. PW2 took injured person to the KMCH Hospital for further treatment, thereafter, the death was informed by death intimation report Ex.P5. Thereafter, the First Information Report was registered which was marked as Ex.P3. On registration of the First Information Report PW9, the Sub-Inspector of Police, went to the accident spot, prepared the observation mahazar and rough sketch, obtained signatures from the witnesses present in the scene of occurrence, conducted inquest and sent the body for Post-Mortem, thereafter, sent the vehicles, i.e., two wheeler and lorry for inspection. The Motor Vehicle Inspector, Coimbatore inspected both the vehicles given reports Ex.P8 and Ex.P9. The Post-Mortem Doctor gave opinion that the deceased would have appear to have died of "Multiple Injuries and its Complications." From the rough sketch Ex.P4 it could be seen that the lorry taken right direction suddenly and dashed against the two wheeler. Due to which, the deceased who was riding the two wheeler sustained injury which was witnessed by PW1 and later died. These witnesses are not created witnesses against the petitioner. They are natural witnesses happened to be near the accident spot. The points raised by the petitioner already considered by the Courts below and the same was rejected. The trial Court as well as the Lower Appellate Court had given well reasoned judgment, which needs no interference. He further submitted that the Motor Vehicle Inspector's report and the Post-Mortem certificate marked under Section 294(2) Cr.P.C., without any objection. Once documents are marked under Section 294 (2) Cr.P.C., the petitioner cannot question the veracity and authenticity of the documents now. Hence, he opposed this petition.

6. Considering the submission and on perusal of the materials, it is seen that PW1 & PW2 are projected as eye witnesses in this case. PW1 states that he was proceeding 50 feet behind the bike, at that time, the lorry from the east to west direction, in a rash and negligent manner dashed against the



motor cycle driven by Dhandapani. PW1 states that he was 50 feet behind and he does not mention about PW2, who is said to be have followed the said Dhandapani's Bike. Further, PW1 admits that he had informed the Traffic Police Constable present near accident spot. In this case, no Traffic Police Constable was examined. Thus the Traffic Police Constable present near the signal is a right person to speak about what was the signal position at the time of accident and which vehicle had over shot the signal and caused the accident. The signal are programmed with timings which can confirm the timing of the signal. The pocket book maintained by the Traffic Police Constable, would show any such accidents occurred, its time and nature of the accident. In this case, the prosecution has failed to examine the said Traffic Police Constable and failed to mark any such document. Further PW2 though states that he had accompanied, the injured Dhandapani to the Hospital, in the Accident Register Ex.P6 the name of one Vijay Anand recorded as the person who accompanied the injured. Strangely, the Causality Medical Doctor of KMCH Hospital not examined as witness. Further, from the Motor Vehicle Inspector's report Ex.P8, it is seen that except a scratch mark on the rear left outer tyre there is no other damage found in the lorry. From the inspection of two wheeler Ex.P9 it is seen that the handle bar bend, head light assembly damaged, front body damaged, fork bend and both side rear view mirror broken. The accident could not have taken place as projected by PW1 & PW2. The evidence of PW1 & PW2 are contradictory to each other. PW1 is the friend of the deceased, PW2 is the friend of PW3 the son of the deceased. In this case, no independent witnesses was examined from the scene of occurrence. The accident happened in a public road, junction of a signal point. PW1 & PW2 as well as the Investigating Officer admit that the accident spot is a main road busy with public movement at plying of vehicle. From the Post-Mortem certificate Ex.P10 it is seen that the injuries were not on peritoneal region, but the death was due to multiple injuries sustained by him, due to slip and fall. These vital aspects not considered by both the trial Court as well as the Lower Appellate Court. Thus, this Court finds that presence of PW1 & PW2 in the scene of occurrence is highly doubtful. The Motor Vehicle Inspector's report and Medical Post-Mortem report is helpful to the petitioner's case, which was not considered by the Courts below.

7. In view of the same, this Court is inclined to allow the Revision petition. This Court set asides the conviction and sentence of the trial Court confirmed by the Lower Appellate Court. The accused is acquitted of all charges levelled against him.



8. With the above direction, this Criminal Revision is allowed.

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9. This Court places its appreciation for the efforts taken and submissions made by the Legal Aid Counsel Mr.K.V.Muthuvisagan who had taken efforts in preparation, by perusing the original records, and made effective submissions. Bail bond, if any, executed shall stand cancelled. Fine amount, if any, paid shall be refunded.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

dna

To

- 1.The District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate No.VIII,
Coimbatore.
- 3.The Inspector of Police
Coimbatore
Crime No.83 of 2013.
- 4.The Secretary,
Legal Service Authority,
High Court, Chennai-104.
- 5.The Public Prosecutor,
High Court, Madras.

Crl.RC.No.1136 of 2015

SKM(CO)
CB(18/04/2022)