



BAIL SLIP

The Petitioner/Accused namely Rajesh, S/o.Kupuswamy, was directed to be released on bail by order of this Court dated 05.03.2015 made in CrI.MP.No.1/2015 in CrI.R.C.No.247 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.247 of 2015

Rajesh
S/o Kupuswamy

.. Petitioner/Accused

Vs.

State by Inspector of Police
Sevvapet Police Station

.. Respondent/Complainant

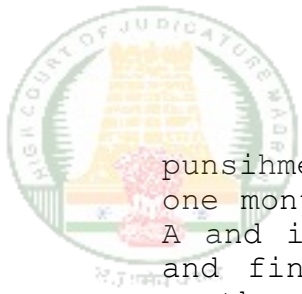
Prayer: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to set aside the order dated 26.02.2015 in C.A.No.43/2013 on the file of the I - Additional Sessions Judge, Thiruvallur, confirming the order passed by the Judicial Magistrate-II, Thiruvallur in C.C.No.187 of 2005 dated 19.06.2013, and allow this Criminal revision petition and thus render justice.

For Petitioners: Mr. R. Alvin Manoj Raj
Legal Aid Counsel for Petitioner

For Respondent : Mr.L.Arvi
Government Advocate for Respondent

ORDER

This Criminal Revision in Criminal R.C.No.247 of 2015 is filed by the petitioner accused, aggrieved by the judgment of the Judicial Magistrate No.2 Trivallaur in CC.No.187 of 2005 dated 19.06.2013, thereby convicting the petitioner accused of offences under Section 279 of Indian Penal Code and imposing the



punishment of fine of Rs.750/- and in default of payment of fine one month simple imprisonment, for an offence under Section 304-A and imposing the punishment of six months simple imprisonment and fine of Rs.3000/- and in default of payment of fine, one month simple imprisonment and the judgment of the first default Sessions Judge at Trivallaur dated 26.08.2015 in Criminal No.43 of 2013, thereby confirming the conviction and sentence imposed by the Trial Court.

2. On 09.12.2014 PW-1 appeared before the Shevapet Police Station and lodged a complainant stating that on 08.12.2004 at 10:45 AM when his father was walking along the Avadi to Tiruvallur CTH Road, towards Veppampattu, the Hyundai Car bearing No.TN20M9946 was driven in a rash and negligent manner and hit him from the back and his father Sankarayya suffered injuries on the leg and head in the same car he was transported to Shri Ramchandra Medical Hospital and he was admitted for treatment. On the said complaint a case in Crime No.558 of 2004 was registered for the offence under Section 279 read with Section 337 of the Indian Penal Code. Subsequently, the victim succumbed to the injuries and therefore, the case was altered as to one under Section 304-A of the Indian Penal Code and PW-9 took up the case for investigation and laid a charge-sheet proposing the petitioner/accused guilty for the offenses under Section 279 and 304 A of Indian Penal Code.

3. The case was taken on file as CC No.187 of 2005 on the file of the Judicial Magistrate No.2 Trivallaur and upon summoning the accused and furnishing the copies as per Section 207 of the Criminal Procedure Code, the accused denied the charge and stood trial. Thereafter, the prosecution examined PW1 to PW9 and marked Ex.A1 to A7 and rested its case. Upon being questioned about the adverse evidence and circumstances on record under Section 313 of the Code of Criminal Procedure the accused denied the same as false. Thereafter, no evidence was let in on behalf of the defense. The Trial Court therefore, proceeded to hear the Learned Assistant public prosecutor on behalf of the prosecution and learned counsel appearing on behalf of the accused and by a judgment dated 19.06.2013, found that evidence of PW2 to PW5, witnessing the accident and identifying the petitioner accused as the person who drove the vehicle, categorically proved that the Hyundai Car was driven in high speed and hit the deceased from behind the back and from the medical evidence on record it was clear that the deceased succumbed to the head injuries he suffered and therefore, held the prosecution proved the offences under Section 279 and 304 A of the Indian Penal Code beyond doubt. The Trial Court rejected the argument of the defense that merely because an observation



mahazar was not drawn in this case and merely because the Sub-Inspector of Police who registered the FIR and the IO initially conducted the case and the Doctor who conducted the postmortem were all not examined, the same would not in any manner entitle the petitioner for an acquittal as the prosecution has otherwise proved the case.

4. Aggrieved by the same the petitioner accused preferred C.A.No.43 of 2015 on the file of the first defaultal Sessions Judge at Trivallaur and by a judgment dated 26.02.2015 after independently appraising the evidence, considering the evidence of PW 2, 3, 4 & 5 who have clearly deposed that it was only the petitioner who drove the vehicle and the manner of accident the vehicle being driven by the accused in a rage and negligent manner, the accused is guilty of the offences. The lower Appellate Court also held that it is the defense of the petitioner accused that at the time of accident he was not driving the vehicle and therefore, the burden of proving the said fact asserted by him lies only on him and except for the contradictory statement of PW1 in the FIR, there was nothing else on record to infer, that the accused had not driven the car and therefore, rejected the defense and confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same the present revision is laid before this Court.

5. Heard the learned legal Aid counsel appearing on behalf of the petitioner and the learned Government Advocate (Criminal side) on behalf of the prosecution. The learned counsel appearing for the petitioner would submit that the FIR being the earliest document, clearly states that it was only one Rajesh who drove the vehicle and therefore, that arises a needle of suspicion as to whether the petitioner drove the vehicle or not. However, to substantiate the said defense, the person who registered the FIR was not examined, otherwise if cross-examined the defence would have established the fact that after clearly knowing about the fact of driving PW 1 has mentioned the name of Rajesh in the FIR. Therefore, the accused has been put to prejudice by non-examination of the relevant witnesses. This apart, the learned counsel would submit that the manner of accident has to be proved by the prosecution. In this case there is no other positive evidence as to whether or not it was the fault of the pedestrian crossing the road and therefore, on this score also benefit of doubt is to be given to the petitioner/accused.

6. Per Contra the learned Learned Government Advocate (criminal side) would submit that PW 2,3,4 & 5 have



categorically deposed about the manner of accident and the manner in which the deceased was hit from behind and then he fell on the bonnet and even the windshield of the car was broken, cumulatively established the high speed and rashness in which the car was driven. As a matter of fact, in the case the PW 5 also accompanied and the deceased was taken to the hospital. Therefore, the evidence of PW2 to PW5 and the manner of impact and the dents and the windshield damage to the car, all cumulatively and categorically establish the manner of accident and therefore it is the petitioner who is guilty and therefore, there is nothing in this case to interfere by this Court in the revision.

7. I have considered the rival submissions made on both sides. I have gone through the material evidence on record. I am inclined to accept the submission of the Learned Government Advocate (criminal side) that in the prosecution even though certain witness were not examined because they were not available as may have gone abroad, otherwise by the other witnesses and the documents on record the prosecution has cogently and clearly established the guilt of the petitioner/accused. As a matter of fact, PW 5's deposition is categorical to the effect that it was only the petitioner/accused who drove the vehicle. PW1 in the chief examination as well as the cross-examination has clearly stated that because Mr. Rajesh telephoned him about the accident he thought he was driving the car and he actually did not know who drove the car. Therefore, the said contradiction in the FIR has been clarified by the prosecution in the evidence. There is absolutely nothing to point out that the petitioner accused did not drive the vehicle and therefore, his only defence fails. This apart from the deposition of PW1 to PW5 the prosecution has proved the manner of accident and therefore one can safely hold that it was due to rash and negligent driving of the petitioner/accused the accident happened and under these circumstances no fault can be found and conclusion of the Trial Court as well as the first Appellate Court and accordingly I found no infirmity in the finding of the guilt.

8. Coming to the sentence imposed by the Trial Court considering the fact that the accident happened in the year 2004 and at that time the respondent/accused is aged about 32 years and now about 18 years of time have gone and the petitioner/accused is now being aged about 50 years and since he was not involved in any other offense thereafter, I am inclined to reduce the sentence imposed by the Trial Court in respect of the offense under Section 304-A from six months simple imprisonment to that of two months simple imprisonment. The



other fine amounts shall remain the same. The Criminal Revision is partly allowed accordingly.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The I - Additional Sessions Judge,
Thiruvallur.
2. Do Through, The Principal Sessions Judge,
Thiruvallur.
3. The Judicial Magistrate-II,
Thiruvallur.
4. The Chief Judicial Magistrate,
Thiruvallur District (for information)
5. The Superintendent,
Central Prison,
Puzhal, Chennai - 66.
6. The Inspector of Police
Sevvapet Police Station.
7. The Public Prosecutor,
Madras High Court.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.247 of 2015

GPL(CO)
SU(07/02/2022)