

BAIL SLIP

The Accused namely Anthony, S/o.K.J.George was directed to be released on bail as per order of this court dated 22/11/2016 made in CrI.Mp.No.11157 /2016 in CRL.RC.1234/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2022

PRONOUNCED ON : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1234 of 2016

Anthony

... Petitioner

Vs.

The State

Rep by Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai.
Crime No.1559/2006.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for records of the case in CA.No.4 of 2010 on the file of the Sessions Judge at Tiruvannamalai, dated 24.06.2016 confirming the judgment passed in CC.No.16 of 2007 on the file of the Chief Judicial Magistrate Court, Tiruvannamalai 26.05.2010 and set aside the conviction of this petitioner and direct that the petitioner may be set at liberty and acquitting him of the charges.

For Petitioner : Mr.M.Krishnamoorthy for
Mr.R.Babu

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The conviction and sentence passed against the petitioner in C.C.No.16 of 2017, dated 26.05.2010 by the learned Chief Judicial Magistrate, Tiruvannamalai/trial Court are as follows:-

- For offence under Section 337 of IPC, the petitioner to pay a fine of Rs.300/-, in default, to undergo Simple Imprisonment for one month.
- For offence under Section 338 of IPC, the petitioner to pay a fine of Rs.700/-, in default, to undergo Simple Imprisonment for one month.
- For offence under Section 340(A) of IPC, the petitioner to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for one month.

2.As against the judgment of trial Court, dated 26.05.2010, the petitioner preferred an appeal before the learned Sessions Judge, Tiruvannamalai/lower appellate Court in C.A.No.4 of 2010. The lower appellate Court, by judgment, dated 24.06.2016 confirmed the judgment of the trial Court and dismissed the appeal, against which, the present Criminal Revision case.

3.The gist of the case is that on 11.12.2006, at about 10.20 p.m., the defacto complainant/PW1 was riding the bike viz., Hero Honda bearing registration No.TN 25 C 2975 in triples along with his brother/PW5 and one Kumar/deceased and proceeding from Tiruvannamalai to Chengam. At that time, near Emalingam Green New Hotel, the petitioner/accused came in opposite direction in his two wheeler viz., Enfield Motor Cycle bearing Registration No.TN 69 B 7830 in a rash and negligent manner and dashed against PW1's bike. Due to which, all the three threw away and sustained injuries and they were taken to the Government Hospital, Tiruvannamalai, where PW6, the Casualty Medical Doctor gave treatment to them, issued Accident Registers (Exs.P3 to P5) for PW1, PW5 and deceased Kumar. At that time, the deceased Kumar was unconscious. Thereafter, PW1 was sent to the Jipmer Hospital, Puducherry for further treatment, from there information was sent to the respondent Police. PW10, Head Constable had gone to the Jipmer Hospital, Puducherry, received the complaint (Ex.P1) from PW1, registered FIR (Ex.P8), visited the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P9) and examined the witnesses present in the scene of occurrence. On the next day of occurrence, the said Kumar passed away. Thereafter, the investigation was handed over to PW11, Inspector of Police, who filed the Alteration Report (Ex.P10), examined the witnesses further, made arrangement for inquest on the body of the deceased/Kumar, sent

the body for Postmortem and produced the vehicles involved in the accident to PW9, the Motor Vehicle Inspector. On collection of Postmortem Report (Ex.P6) and Motor Vehicle Inspection Report (Ex.P8), PW11 filed the charge sheet before the trial Court.

4. During trial, on the side of the prosecution, 11 witnesses were examined as PW1 to PW11 and 11 documents were marked as Exs.P1 to P11. On the side of the defence, no witness examined and no document marked. The trial Court, on conclusion of trial, passed a judgment of conviction as stated above and the same was confirmed by the lower appellate Court, vide judgment dated 24.06.2016 in C.A.No.4 of 2010.

5. The learned counsel for the petitioner submitted that the occurrence is said to have taken place in main road, but no independent person examined as witness by the prosecution. In this case, PW1 and PW5 along with the deceased/Kumar were proceeding in Hero Honda bike in triples without wearing helmet and without following rules and regulations of traffic. In this case, PW1 is the reason for the accident. PW9/Motor Vehicle Inspector in his report (Ex.P7) clearly stated that the damage to the Hero Honda bike is severe, which confirms the Hero Honda bike came in high speed and in rash and negligent manner and caused the accident. In this case, PW3 and PW9 are witnesses to the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P9), they have not supported the prosecution case, hence, the place of accident is not proved. PW2, who was present at the time of accident, not supported the case of the prosecution, hence, he was treated hostile.

6. The learned counsel further submitted that in this case, there are two eye witnesses viz., PW1, the rider of the bike and his brother/PW5, the pillion. PW5 in his evidence admitted that immediately after the accident, he became unconscious for ten minutes, hence, he was not aware what had happened. PW1 in his evidence stated that he along with his brother/PW5 and the deceased/Kumar were proceeding in Hero Honda bike bearing registration No.TN 25 C 2975 in triples from Tiruvannamalai to Chengam without wearing helmet. Due to triples riding, PW1 lost control and contributed to the accident. This fact is confirmed by the Motor Vehicle Inspector/PW9 by his report (Ex.P7), which fact was not considered by the Courts below. PW6, the Casualty Medical Doctor attached to the Government Hospital, Tiruvannamalai recording in Accident Register (Ex.P4) that one Kumar accompanied PW1, but the said Kumar not examined as witness by the prosecution. PW11, the Investigating Officer conducted

formal investigation and nothing more. Thus, from the evidence available, there is nothing to show that the accident had taken place due to the rash and negligence of the petitioner. Hence, he prayed for acquittal of the petitioner from the all the charges levelled against him.

7.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, there are two injured witnesses viz., PW1 and PW5. PW1 and his brother/PW5 along with the deceased Kumar were proceeding in two wheeler viz., Hero Honda bearing registration No.TN 25 C 2975 in triples, from Tiruvannamalai to Chengam on the fateful day. From the Rough Sketch (Ex.P9), it is seen that the road is of 15 feet width and the accident had taken place 7 feet from the southern side, which confirmed that the two wheeler viz., Enfield Motor Cycle had treadled beyond the halfway of the road and caused the accident. PW3 and PW4 are co-workers along with the petitioner, hence, they did not support the case of the prosecution. From the evidence of PW1 and PW5, it is seen that it was the two wheeler viz., Enfield Motor Cycle driven by the petitioner caused the accident. As could be seen from the report of the Motor Vehicle Inspector (Ex.P7), the damage to the Enfield bike driven by the petitioner is minimum and the Hero Honda sustained severe damage. The trial Court had given a reason for the damage that the Enfield bike driven by the petitioner being heavy with more horsepower, the Hero Honda sustained maximum damage. In this case, the eye witnesses to the occurrence viz., PW1 and PW5 have clearly stated about the accident. The trial Court placing reliance on the evidence of PW1, PW5, PW6, PW7, PW9, PW10 and PW11, had rightly convicted the petitioner and the same was confirmed by the lower appellate Court. Hence, there is no reason to interfere with the concurrent finding of the Courts below.

8.This Court considered the rival submissions and perused the materials available on record.

9.In this case, on the fateful day, at about 10.20 p.m., the defacto complainant/PW1 was riding the bike viz., Hero Honda bearing registration No.TN 25 C 2975 along with his brother/PW5 and one Kumar/deceased and proceeding from Tiruvannamalai to Chengam. At that time, near Emalingam Green New Hotel, the petitioner/accused came in opposite direction in Enfield Motor Cycle bearing Registration No.TN 69 B 7830 and dashed against PW1's bike. Due to which, the rider of the bike/PW1 and his brother/PW5 sustained injuries and the other pillion Kumar succumbed to death despite giving treatment.

10. In this case, other than injured witnesses/PW1 & PW5, no independent person was examined as witness by the prosecution. The eye witness to the occurrence viz., PW2 not supported the case of the prosecution. Likewise, PW3 and PW4, the witness to the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P9) stated they only signed in the blank papers. The Casualty Medical Doctor/PW6 in the Accident Register (Ex.P4) of PW1 recorded PW1 was accompanied by one Kumar, but the prosecution failed to examine the said Kumar as witness.

11. It is seen that PW9, the Motor Vehicle Inspector conducted inspection on the vehicles involved in the accident and gave his report (Ex.P7) and confirmed that the damage to the Hero Honda bike driven by PW1 is severe and to the Enfield bike driven by the petitioner is minimum. Had the momentum of Enfield bike was greater, the damage to the Enfield bike could have been severe after the impact. The reason given by the trial Court that due to heavy weight and more horsepower of Enfield bike, the damage to the Hero Honda bike is severe, is not acceptable. In this case, PW5 not stated about rashness and negligence of the petitioner while riding his bike. Immediately after the accident, PW5 was unconscious for ten minutes, hence, he was unable to give details about the accident. From the evidence of PW1, it could be seen that PW1 drove the Hero Honda bike without wearing helmet and not following the rules by riding the bike in triples. The probability of losing balance is possible. Except for PW1 stating that the petitioner was coming in the opposite direction in high speed, had not stated about the petitioner coming in rash and negligent manner. Added to it, the accident had taken place at night hours. It was not possible for PW1 and PW5 to see the bike coming in the opposite direction with high speed. The Rough Sketch (Ex.P9) confirmed that there was no light available near the accident spot.

12. In this case, there is no material or evidence to show that the petitioner drove his bike in a rash and negligent manner and caused the accident. The evidence of PW1 and PW5 are contrary to each other and does not inspire confidence. From the evidence and materials, it cannot be conclusively held that the petitioner is the reason and cause for the accident.

13. On the above facts and circumstances and from the available evidence, this Court finds the prosecution failed to establish the guilt of the petitioner beyond all reasonable doubt. Hence, the judgments of the Courts below are liable to be set aside and, are set aside and the petitioner is acquitted from all the charges.

14.In the result, this Criminal Revision Case is allowed.
Fine amount, if any, paid shall be refunded.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Sessions Court,
Tiruvannamalai,
- 2.The Chief Judicial Magistrate Court,
Tiruvannamalai.
- 3.TheInspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai.
- 4.The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.1234 of 2016

RK(CO)
GN(08/06/2022)