



Bail Slip

The Petitioner/Accused viz., Dharanidevan S/o.Muthusamy be and hereby was directed to be released on bail as per the order of this Court, dated 25.10.2016 and made in Crl.M.P.No.11241 of 2016 in Crl.RC.No.1251 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1251 of 2016

Dharanidevan

... Petitioner/Accused

Vs.

The State rep. by
The Inspector of Police,
Sirkali Police Station,
Nagapattinam District.

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records and set aside the judgment of the Sessions Judge, Fast Track Mahila Court, Nagapattinam District made in Crl.A.No.19 of 2011 dated 08.12.2015 confirming the judgment passed by the Judicial Magistrate, Sirkali on 29.04.2011 in C.C.No.750 of 2007 in connection with Crime No.462 of 2007 on the file of the respondent herein.

For Petitioner : Ms.A.Sasikala
Legal Aid Counsel

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner/Accused in C.C.No.750 of 2007 was convicted by the learned Judicial Magistrate, Sirkali by judgment dated 29.04.2011 for the offence under Section 304-A IPC and sentenced



to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal before the Sessions Court. The learned Sessions Judge, Fast Track Mahila Court, Nagapattinam District in C.A.No.19 of 2011 by judgment dated 08.12.2015 dismissed the appeal confirming the conviction and sentence of the Trial Court. Against which, the present revision petition is filed.

2.The gist of the case is that on 04.06.2007 at about 5.15 p.m., the defacto complainant/victim was walking near the Government Hospital, Sirkali, at that time, an Ambassador car bearing registration No.TN-41-1842 came in a rash and negligent manner without hooting horn, dashed against the defacto complainant Chandra. She was immediately taken to the Government Hospital, Srikali. On getting information, P.W.6/Head Constable went to the hospital, recorded the statement of the victim, received complaint/Ex.P4 and registered FIR/Ex.P5. Thereafter, P.W.6 visited the scene of occurrence, prepared observation mahazar/Ex.P1 and rough sketch/Ex.P6. In the meanwhile, the defacto complainant was taken to a hospital in Chidambaram and thereafter to the Government Hospital, Pondicherry where she died on the next day early morning at about 2.00 a.m. Thereafter, the case was altered and further investigation carried out by Mr.Marimuthu/Inspector of Police, who sent the body for Postmortem. After obtaining the Post mortem report, P.W.7/Inspector of Police took up further investigation, examined the Motor Vehicle Inspector, Post mortem Doctor, obtained the reports and filed charge sheet in this case. During the trial, P.W.1 to P.W.7 examined and Ex.P1 to Ex.P6 marked. On conclusion of the trial, the Trial Court convicted the petitioner as above which was confirmed by the Lower Appellate Court as stated above.

3.The contention of the petitioner is that in this case, three persons were projected as eye witnesses, namely, P.W.1 to P.W.3. P.W.1 is the husband of the deceased Chandra, who is said to have been walking behind his wife along with P.W.2 and at that time, he witnessed the accident. According to the eye witnesses, the victim was walking from north to south cutting across the road, which was a curve bend, the Ambassador car driven by the accused was proceeding from east to west in a rash and negligent manner and dashed against the victim, who was thrown away, fell in the gutter and sustained grievous injuries. Thereafter, she was taken to the hospital and later she succumbed to the injuries. It is submitted that the presence of P.W.1 to P.W.3 are highly doubtful as there is no reference in the complaint/Ex.P4 that P.W.1 and P.W.2 were walking behind the victim and their presence in the scene of occurrence. P.W.3 is running a cycle shop near the scene of occurrence. P.W.2 and



P.W.3 are close friends of P.W.1 and all the three gave contradictory version about the manner in which the accident took place. It is further submitted that all the three eye witnesses admit that it is a busy area, nearby there are Schools, hospital, lot of movement of vehicles and persons and there is no possibility of driving the car in rash and negligent manner, it was the victim who suddenly crossed the road and it was a blind bend, due to which accident took place. Further, in this case the petitioner is from the nearby locality, the petitioner was arrested only after four months from the date of accident and thereafter only, the vehicle was sent for inspection. Further, P.W.1 in his cross examination admits that his wife was proceeding from north to south confirming that she was crossing the road in the blind curve. P.W.2 admits that it was a curve bend and the car took a turn in a rash and negligent manner, but in his cross examination, he admits that he does not know the directions. Thus, the directions stated by P.W.1 to P.W.3 are contradictory to the direction recorded by P.W.6 in the complaint. Thus, the presence of P.W.1 to P.W.3 are highly doubtful.

4.It is further submitted that P.W.4/Motor Vehicle Inspector admits that there is no damage found in the vehicle. Further, in this case one Marimuthu/Inspector of Police who conducted the major portion of the investigation, for the reasons best known not examined as witness. It is further submitted that the prosecution suppressed the vital fact, not produced the accident register and failed to examine one Dhanalakshmi, wife of Selvam, who accompanied the injured Chandra to the Government Hospital, Sirkali. Further, the Doctor who treated the injured in the Government Hospital, Sirkali and the Doctor treated the injured in the Chidambaram hospital not examined as witnesses.

5.In support of his contentions, the learned counsel for the petitioner relied upon the following decisions:

- (i)Renugopal vs. State rep. by Inspector of Police, Vishnu Kanchi Police Station, Kancheepuram reported in 2016 SCC Online Mad 30704 for the proposition that there cannot be any presumption of rashness or negligence by invoking the maxim res ipsa loquitor in the absence of any evidence;
- (ii)Sankara Pandian vs. State by The Inspector of Police, Kancheepuram District reported in CDJ 2019 MHC 5962 for the proposition that the inter se contradictions between the evidence of P.W.1 to P.W.3 would not inspire any consequences.
- (iii)P.Venkatesh Kanna vs. State by The Inspector of Police, Dindigul Taluk Police Station, Dindigul in CrI.RC(MD).No.926 of 2010 for the proposition that



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- the rough sketch and observation mahazar are contrary to the evidence of alleged eye witnesses;
- (iv) A.Pandi vs. The Inspector of Police, Nilakottai Police Station, Dindigul in CrI.RC.(MD).No.433 of 2014 for the proposition that there is contradictory statement with regard to the place of occurrence.
- (v) Srinivasan vs. Inspector of Police, Kadampuliyur Police Station, Cuddalore District in CrI.RC.No.1090 of 2010 for the proposition that there is nothing to show that the petitioner had driven the vehicle in a rash and negligent manner.

6.The learned Additional Public Prosecutor on the other hand submitted that in this case the victim who got injured given a statement, wherein she had stated that the Ambassador car bearing registration No.TN-41-1842 is the reason for the accident. The accident took place at 5.15 p.m., within 15 minutes P.W.6 reached the hospital, recorded the statement of the victim, registered FIR, visited the scene of occurrence, prepared observation mahazar and rough sketch. In the meanwhile, the victim was taken from Government Hospital, Sirkali to Chidambaram hospital and thereafter to Government Hospital, Pondicherry, where she died on the next day at 2.00 a.m. Thereafter, the case records were placed before Mr.Marimuthu, Inspector of Police, who conducted further investigation. P.W.7, the subsequent Inspector arrested the accused, sent the vehicle for inspection, obtained the Motor vehicle report and Post mortem report, examined the mahazar witnesses and filed charge sheet. The Trial Court on the evidence of P.W.1 to P.W.7 and documents Ex.P1 to Ex.P6 finding that the evidence of P.W.1 to P.W.3 are corroborative with the medical records convicted the petitioner which was confirmed by the Lower Appellate Court as stated above. Hence, prayed for dismissal of the revision petition.

7.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that in this case the complaint/Ex.P4 was given by the victim, in which, she had not mentioned about the presence of P.W.1 and P.W.2, her husband and his friend. Had they been 10 feet behind the victim, the same would have been mentioned by the victim. Further, in this case one Dhanalakshmi, wife of Selvam, who took the victim to the hospital immediately as could be seen from the accident register. In the normal circumstances, if P.W.1 and P.W.2 were available near the accident spot, they would have rushed the injured to the hospital, but in this case it is not so. Further, P.W.2 state that he was in the hospital along with the injured and at that time, statement of P.W.1 and P.W.2 was recorded in the hospital. P.W.6/Head Constable, who received the complaint from the injured, registered FIR state that



statement of witnesses P.W.1 to P.W.3 was recorded near the accident spot. Hence, the presence of P.W.1 and P.W.2 at the time of accident is highly doubtful. P.W.3 admits that he has a cycle shop near the scene of occurrence, there was a curvature in the road and from his shop, the accident spot cannot be viewed. P.W.2 and P.W.3 admit that after hearing the sound, they went to the accident spot. Thus, the evidence of P.W.1 to P.W.3 are contradictory, does not inspire confidence and their presence in the scene of occurrence is highly doubtful.

8. Now the only evidence available material is that of the deceased who lodged a complaint. The deceased clearly state that the Ambassador car bearing registration No. TN-41-1841 dashed against her. It is seen from the rough sketch and the evidence that the car was proceeding from east to west and the deceased was proceeding from north to south confirming deceased was crossing the road. It was a blind curve without any visibility. It is also admitted that it is a busy place, where schools, hospital are situated, lot of vehicles pass through and it is not possible for driving the car in a rash and negligent manner. Further in the complaint there is no mention about the rash and negligence. The victim suddenly crossing the road had contributed to the accident. Further in the Motor Vehicle Inspector report/Ex.P2, it is seen that there is no damage to the car. In the rough sketch, the width of the road and the accident spot are not clearly mentioned. P.W.3 is the witness for Ex.P1 and Ex.P6, he has not given any details except for stating that in his presence, the same was recorded. There is no reason as to why Dhanalakshmi, wife of Selvam who accompanied the injured to the hospital not examined and why the Doctor from Government Hospital, Sirkali and Chidambaram Hospital were not examined in this case and no statement recorded. The place of occurrence confirms that there is no possibility of driving the car in a rash and negligent manner in that curve, that too, a busy road. Further, there is no evidence that the petitioner had driven the car in a rash and negligent manner. Thus, the prosecution had not proved the case beyond all reasonable doubt that the petitioner drove the Ambassador car with high speed in a rash and negligent manner and caused the accident. In view of the same, this Court is inclined to allow the revision petition setting aside the conviction of the petitioner in C.C.No.750 of 2007 by the learned Judicial Magistrate, Sirkali dated 29.04.2011, confirmed in C.A.No.19 of 2011 by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam by judgment dated 08.12.2015. The petitioner is acquitted from all the charges levelled against him.

9. In the result, the judgment, dated 29.04.2011 in C.C.No.750 of 2007 passed by the learned Judicial Magistrate, Sirkali which was confirmed by the judgment dated 08.12.2015



passed by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam in C.A.No.19 of 2011 is hereby set aside. Accordingly, this Criminal Revision Petition stands allowed.

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10. This Court places on record the thorough preparation and effective submissions made by the Legal Aid Counsel Ms.A.Sasikala in arguing this revision petition.

Sd/-

Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Nagapattinam.
2. The Judicial Magistrate,
Sirkali.
3. The Inspector of Police,
Sirkali Police Station,
Nagapattinam District.
4. The Public Prosecutor,
High Court, Madras.
5. The Secretary,
Legal Service Authority,
High Court, Madras.
6. The Superintendent,
Central Prison,
Trichy.

Cr1.R.C.No.1251 of 2016

PA (CO)
GMY (25/05/2022)