



BAIL SLIP

The Petitioner/Accused herein Viz., Selvam, S/o.Nagappan was directed to be released on Bail vide Order of this Court dated 22/12/2016 in Crl.M.P.No.13105 of 2016 in Crl.R.C.No.1666 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.1666 of 2016

Selvam

... Petitioner

.Vs.

The State Rep. by
The Inspector of Police,
Tiruvarur Town Police Station,
Tiruvarur Taluk,
Nagapattinam District.
(Crime No.294/2011)

... Respondent

PRAYER:-

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the judgment dated 10.11.2016 made in C.A.No.11 of 2015 on the file of District Sessions Judge, Tiruvarur confirming judgment of conviction dated 23.01.2015 made in C.C.No.12 of 2013 on the file of Chief Judicial Magistrate, Tiruvarur.

For Petitioner : Mr.A.Jotheeswaran
Legal Aid Counsel

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)



O R D E R

This Criminal Revision has been preferred challenging the judgment of the learned District and Sessions Judge, Tiruvarur dated 10.11.2016 made in C.A.No.11 of 2015 which confirmed the judgment of the learned Chief Judicial Magistrate, Tiruvarur dated 23.01.2015 made in C.C.No.12 of 2013.

2. The case of the prosecution is that on 11.06.2011 at about 7.30.a.m the revision petitioner/accused, who is the driver of the bus belonging to the Tamil Nadu State Transport Corporation bearing registration No.TN-49-N-1643, was driving the bus at Tiruvarur-Tanjavur by-pass. When he was coming near a bridge and turning there, he handled the bus in a negligent manner and consequently the bus got capsized. Due to which, one passenger died and five passengers sustained grievous injuries and fifteen passengers sustained simple injuries.

3. On the complaint given by PW1, who was one of the passengers of the bus, PW33-Inspector of Police registered a case in Crime No.294 of 2011 of Tiruvarur Town Police Station under Sections 279, 337(15 counts), 338(5 counts) and 304(A) IPC and prepared FIR (Ex.P37). He took up the case for investigation, went to the place of occurrence, prepared the Observation Mahazar(Ex.P2) and rough sketch (Ex.P38) in the presence of the witnesses. He also went to the hospital and conducted inquest on the body of the deceased. He enquired the witnesses, who got injured and were taking treatment in the hospital and recorded their statements. On 28.06.2011 he arrested the accused and sent him for remand. After examining the rest of the witnesses and the Doctor(PW22), who conducted postmortem and obtaining postmortem certificate (Ex.P33), he went on transfer. Subsequently, PW34-Inspector of Police, who succeeded him, had continued the investigation. He enquired the doctors, who had treated the injured and got wound certificates. After completing the investigation, he filed a charge sheet against the accused for the offences under Sections 279, 337(15 counts), 338 (5 counts) and 304(A) IPC. After the case was taken on file and on being satisfied with the materials available on record, the accused was questioned. Since the accused pleaded innocence, trial was conducted.

4. During the course of trial, on the side of the prosecution 34 witnesses were examined as PW1 to PW34 and 40 documents were marked as Exs.P1 to P40. When the incriminating materials found on the prosecution evidence were put to the accused under Section 313 Cr.P.C, he denied the same. On the side of the defence, no witness was examined and no document was marked.



5. At the conclusion of the trial and on considering the evidence available on record, the learned Trial Judge found the accused guilty and convicted and sentenced him as under:-

Rank of the accused	Charges	Findings of the Trial Court	Punishment
Single Accused	279 IPC	Guilty	To pay a fine of Rs.1000/- in default Simple Imprisonment for one month
	337 (15 Counts) IPC	Guilty	To pay a fine of Rs.300/- for each count (Rs.4500/- in total) in default Simple Imprisonment for one month for each count
	338 (5 counts) IPC	Guilty	To pay a fine of Rs.1000/- for each count (Rs.5000/- in total) in default Simple Imprisonment for three months for each count
	304 (A) IPC	Guilty	To undergo Simple Imprisonment for one year and to pay a fine of Rs.5000/- in default Simple Imprisonment for three months

6. The Criminal Appeal filed by the petitioner/accused in C.A.No.11 of 2015 was also dismissed on 10.11.2016. Aggrieved over that, the petitioner/accused filed the present Criminal Revision.

7. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent. Perused the entire materials available on record.

8. The learned counsel for the revision petitioner submitted that the prosecution has not proved beyond reasonable doubt that it was the accused, who drove the vehicle at the time of the accident; it was also not proved that the bus was driven in a rash and negligent manner; the condition of the road was very bad and these factors were not properly investigated and brought



before the Court. Since the Courts below have not properly appreciated the evidence on record and found the accused guilty, this Criminal Revision should be allowed.

9. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the accused is a Government bus driver and there is no dispute that he was the driver of the bus involved in the accident; the witnesses, who had travelled in the bus have stated clearly that the revision petitioner/accused had driven the vehicle in a negligent manner, while turning it and caused the accident; the Motor Vehicle Inspector, who had inspected the vehicle has certified that there was no mechanical defect found in the vehicle. Hence, the judgment of the Court below does not suffer from any factual or legal infirmity.

10. Point for Consideration:

"Whether the finding of the guilt of the revision petitioner for the offence under Sections 279, 337(15 counts), 338 (5 counts) and 304(A) IPC is fair, proper and legal?"

11. The fact that the revision petitioner is the driver of the Tamil Nadu State Transport Corporation and the bus involved in the accident also belongs to the TNSTC, were not denied. But the contention of the learned counsel for the petitioner is that none of the materials available on the side of the prosecution proved beyond reasonable doubt that it was the accused, who had driven the bus at the relevant point of time. PW8 is the conductor of the bus involved in the accident. Despite he turned hostile, his evidence would reveal that at the time of the accident, the bus was driven by the revision petitioner and at that time PW8 was working as the Conductor.

12. The learned counsel for the revision petitioner further submitted that there is no negligence on his part and it was due to the bad condition of the road, which contributed the accident. However, the Investigation Officers, who were examined as PW33 and PW34 have stated in their evidence that in the place of occurrence, no pits on the road were found. The accident had occurred at a turning and there was no other vehicle, which came either in the opposite side or on the side the vehicle involved in the accident. Since the injured and the deceased were the passengers of the bus there cannot be any negligence on their part to cause the accident. The revision petitioner being the regular driver of the Tamil Nadu State Transport Corporation should have been aware of the road and he should have taken due care while turning the bus in that particular route. The place of occurrence is on the fly over. The ring road below was at 30 feet depth. Hence, while handling the bus at such a risky point,



the driver of the bus ought to have exercised utmost care in order to avert any accident more particularly, to see that the bus does not stop and fall down on the downside road. The accused, being a Government bus driver would have been aware of the features of the road also. Had he exercised due care, the accident would not have happened.

13. In order to prove the rash and negligence, it is not necessary that the driver should have driven the bus in a high speed manner. It is sufficient to prove before the Court that the driver has not exercised reasonable care in a given situation to avoid the accident. In the case on hand, the features of the road and the evidence of the eye witnesses including the evidence of the conductor of the bus would show that it was the revision petitioner, who had driven the bus. It has been already pointed out that no other vehicle had crossed at the time of the accident. The bus was plying on the flyover at a height of 30 feet and because of the negligence of the driver, the bus got slipped and fell at a depth of 30 feet. The learned Trial Judge and Appellate Judge had appreciated the evidence in a proper perspective and rightly convicted the accused. In my view, I do not find any factual or legal infirmity so as to warrant interference.

In the result, this Criminal Revision is dismissed. The judgment dated 10.11.2016 made in C.A.No.11/2015 on the file of District Sessions Judge, Tiruvarur is hereby confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The District Sessions Judge,
Tiruvarur.
2. The Chief Judicial Magistrate,
Tiruvarur.
3. The Inspector of Police,
Tiruvarur Town Police Station,
Tiruvarur Taluk,
Nagapattinam District.



4. The Public Prosecutor,
High Court of Madras,
Chennai - 104.
5. The Judicial Magistrate,
Thiruvarur.
6. The Superintendent,
Central Prison,
Tiruchirapalli.

Copy To:-

The Section Officer,
Criminal Section,
High Court,
Madras - 104.

+1cc to Mr.A.Jotheeswaran, Advocate, S.R.No.5476

CRL.R.C.NO.1666 OF 2016

SSV(CO)
PBS/02/03/2022