



BAIL SLIP

The Petitioner/Accused Viz., Thileepan S/o. Kalaimani was released on bail as per order of this Court dated 25/04/2018 is Crl.M.P.No.6460/2018 in Crl.R.C.544/2018 as per order of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.544 of 2018 and
Crl.M.P.No.3590 of 2022

Thileepan

... Petitioner

Vs.

Kannammal

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the judgment passed in C.A.No.54 of 2016 on the file of the III Additional District and Sessions Judge, Tiruppur at Dharapuram, dated 28.02.2018 modifying the judgment passed in C.C.No.336 of 2009 on the file of the Judicial Magistrate No.I, Udumalpet, dated 20.04.2016.

For Petitioner : Mr.K.Selvakumaraswamy
For Respondent : Mr.B.Gopalakrishnan

ORDER

The respondent filed a private complaint against the petitioner/A2 and A1 in C.C.No.336 of 2009. After full-fledged trial, the petitioner/A2 was convicted by the learned Judicial Magistrate No.I, Udumalpet (trial Court), vide judgment, dated 20.04.2016 in C.C.No.336 of 2009 and sentenced to undergo 6 months Simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Simple Imprisonment for offence under Section 279 of IPC and also sentenced to undergo two years Simple Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 1 month Simple Imprisonment for offence under Section 304(A) IPC. The trial Court acquitted A1 from the case in

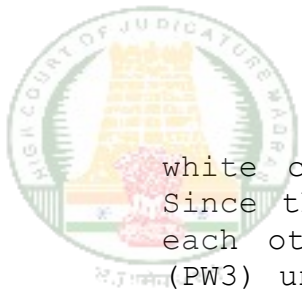


WEB

C.C.No.336 of 2009. Aggrieved against the same, an appeal was preferred by the petitioner/A2 before the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram (lower appellate Court) in C.A.No.54 of 2016. The lower appellate Court, by judgment, dated 28.02.2018, dismissed the appeal confirmed the conviction and sentence for offence under Section 304(A) IPC and set aside the conviction and sentence for offence under Section 279 IPC. As against the judgment of the lower appellate Court, dated 28.02.2018, the present Criminal Revision Case has been filed by the petitioner/A2.

2.The gist of the case is that on 19.04.2007, at about 11.30 p.m., the respondent's son Masilamani, who was working in Palaniyandavar Cotton Mill, had gone out to have tea along with his maternal uncle Patteeswarn. When they attempted to cross Udumalpet-Palani road, a white colour Indigo car bearing registration No.TN 59 M 7636 hit the respondent's son Masilamani from the behind. Due to which, he sustained injuries on his head, right leg, chest and other parts of the body. Immediately, he was taken in ambulance to the Government Hospital, Udumalpet and later, shifted to Coimbatore Medical College and Hospital, Coimbatore, where he was declared dead. After cremation, the respondent came to know that a complaint was lodged by her brother Patteswaran to the Inspector of Police, Udumalpet Police Station (PW3). In the complaint, the particulars of the vehicle, its driver and the manner in which the accident occurred were suppressed. On the complaint of Patteswaran, a case in Crime No.182 of 2007 (Ex.P3) was registered, for offence under Sections 279 and 337 IPC. On getting information from the Coimbatore Medical College and Hospital about the death of the respondent's son Masilamani, the Inspector of Police, Udumalpet Police Station altered the Sections to 279 and 304(A) IPC, visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch, enquired the witnesses present in the scene of occurrence.

3.During investigation, the Inspector of Police, Udumalpet Police Station (PW3) examined one Parameshwaran, ambulance Driver. The said Parameshwaran in his statement recorded under Section 161 Cr.P.C., stated that after the accident, he chased a white colour Maruthi 800 car involved in the accident and could not see the registration number of the car. One Iqbal (PW2) and Pandian, Auto Driver in their statement under Section 161 Cr.P.C., stated that they are eye witnesses to the accident and they saw white colour Indigo car bearing registration No.TN 58 M 7636 involved in the accident. The other eye witnesses Muthu and Marimuthu stated that it was



white colour Maruthi car hit the respondent's son Masilamani. Since the statements of the eye witnesses were contradictory to each other, the Inspector of Police, Udumalpet Police Station (PW3) unable to find out which of the car committed the accident whether it was white colour Maruthi car or white colour Indigo car. Unable to come to definite conclusion, an FIR in Crime No.182 of 2007 (Ex.P3) was closed as 'Undetected' (UN) and closure report in R.C.S.No.81 of 2007 (Ex.P4) was filed before the learned Judicial Magistrate No.I, Udumalpet on 04.11.2007. In the meanwhile, the respondent sent representations to the Superintendent of Police, Udumalpet (Ex.P5), the Director General of Police, Coimbatore (Ex.P7), the District Collector, Tiruppur (Ex.P6) seeking proper investigation and justice for her son's death.

4.Two months thereafter, when she was crying near the scene of occurrence thinking about her son's death, Iqbal (PW2) came there and enquired her. She informed that she is helpless and nobody came forward to disclose truth about the accident. PW2 informed her that he saw the accident along with Pandian, Auto Driver. Despite the respondent giving particulars about the vehicle involved in the accident is white colour Indigo car, belongs to Srimathi/A1, the petitioner's mother and the ambulance Driver was one Chinnadurai, the Police, for the reasons best known, was not taken any proper action against them. Hence, the respondent filed a private complaint before the trial Court. The trial Court had taken the complaint on file, recorded the statement of the witnesses, examined 6 witnesses as PW1 to PW6 and marked 7 documents as Exs.P1 to P7.

5.PW1 is the respondent, the mother of the deceased; PW2 is one Iqbal, who is the eye witness to the accident; PW3 is the Inspector of Police, Udumalpet Police Station, who conducted the investigation and closed the case in Crime No.182 of 2007 (Ex.P3) as 'Undetected' (UN); PW4 is the wife of the deceased; PW5 is the sister of PW1 and PW6 is the Postmortem Doctor. Ex.P1 is the Postmortem Certificate of the deceased Masilamani; Ex.P2 is his Death Certificate, Ex.P3 is the FIR in No.182 of 2007; Ex.P4 is the closure report in R.C.S.No.81 of 2007; Exs.P5 to P7 are representations given to the Superintendent of Police, Udumalpet, the District Collector, Tirupur and the Director General of Police, Coimbatore respectively. After conclusion of trial, the petitioner was convicted and sentenced as stated above.



6.The learned counsel for the petitioner submitted that admittedly, the respondent is not an eye witness to the accident, which had taken place on 19.04.2007. The only eye witness examined in this case on the side of the respondent is PW2. PW2 admitted in his evidence that he was having tea inside the shop nearer to the scene of occurrence, only after hearing the noise, he came out and found the deceased Masilamani was hit by a car. He further admitted that he made arrangement to sent him to hospital for treatment in Ambulance. PW2 further stated that he did not make any complaint or inform the Police about the accident. The learned counsel further submitted that after 1½ months from the date of occurrence, PW2 disclosed the vehicle number of the car involved in the accident. The other witness Pandian, Auto Driver, who said to have been along with PW2, was not examined as witness in this case. All the witnesses examined by PW3, the Investigating Officer, during earlier investigation stated that they were not sure about whether it was white colour Maruthi car or white colour Indigo car involved in the accident. Since PW3, the Investigating Officer unable to find out the car, which was involved in the accident, he closed the FIR in Crime No.182 of 2007 as 'Undetected' (UN) and filed the closure report (Ex.P4) in R.C.S.No.81 of 2007 before the learned Judicial Magistrate No.I, Udumalpet. None of the witnesses examined either during the Police investigation or during trial Court, have identified the petitioner was the driver of the car and he has driven the car on the date of the accident.

7.The learned counsel for the petitioner further submitted that since the petitioner being son of the owner of Indigo car, he is shown as accused in this case. Initially, the complaint was given by one Patteeswaran, who is none other than the maternal uncle of the deceased Masilamani. The said Patteeswaran categorically stated that at the time of occurrence, he was along with the deceased, but he was unable to give any particulars of the car involved in the accident. Had Patteeswaran was present in the scene of occurrence, he would have definitely disclosed the vehicle number of the car and name of the driver in the complaint. Later as an after thought, for the purpose of motor accident claim, the petitioner/A2 and his mother/A1 falsely implicated in this case. The trial Court failed to consider these facts. The lower appellate Court failed to independently consider the evidence and materials and mechanically dismissed the appeal. He further submitted that in this case, there have been vital contradictions in the manner of accident which had taken place on 19.04.2007. The presence of PW2 in the scene of occurrence is highly doubtful. Hence, he



prayed for acquittal.

8.He further submitted that without prejudice to his contention on merits, now compromise arrived between the parties. The petitioner voluntarily came forward to pay a sum of Rs.5,00,000/- (Rupees five lakh only) to the family member of the deceased Masilamani on humanitarian consideration. The petitioner and the respondent filed the consent affidavits separately along with Joint Compromise Memo, wherein the petitioner, respondent, wife of the deceased and his legal heirs viz., Kanagaraj (son) and Nivetha (daughter) are signed.

9.The learned counsel for the respondent submitted that in this case, a pitiable mother, who was running from pillar to post seeking justice for her son's death. On the fateful day, the deceased Masilamani had gone out to have tea. While he was crossing Udumalpet-Palani road, the petitioner, who came in a white colour Indigo car bearing registration No.TN 59 M 7636 in rash and negligent manner, dashed the respondent's son Masilamani. Immediately, PW2-Iqbal and Pandiyan, Auto Driver took steps to send the injured/deceased to the hospital. At that time, the ambulance driver chased the car involved in the accident. On seeing the same, the petitioner had taken away the car and escaped from the accident spot. Thereafter, the ambulance Driver returned to the spot and took the deceased to the Government Hospital, Udumalpet. The respondent made enquiry with the hospital authorities and found that the ambulance driver did not provide any particulars to the hospital authorities and even not collected transportation charge. On suspicious, the respondent made enquiry through her brother with regard to the driver of the ambulance and found that it was one Chinnadurai, who was the ambulance driver. During enquiry, the said Chinnadurai gave contradictory version. The said Chinnadurai stated that immediately after the accident, he chased the car involved in the accident. The driver of the car requested the ambulance driver to take injured to the hospital and he informed that he was going to the Police Station to inform the accident. Despite the same, the Inspector of Police, Udumalpet Police Station (PW3) not conducted proper investigation with the said Chinnadurai. Finding that the Inspector of Police, Udumalpet Police Station (PW3) deliberately not conducted proper investigation, the respondent sent representations to the Superintendent of Police, the Director General of Police and the District Collector, Tiruppur. Then to, no action taken. On the other hand, PW3 closed the case in Crime No.182 of 2007 (Ex.P3) as 'Undetected' (UN) and filed the closure report in R.C.S.No.81 of 2007 (Ex.P4). Hence, the



respondent filed the private complaint before the learned Judicial Magistrate No.I, Udumalpet. The trial Court took the complaint on file, issued summons to the accused and proceeded with the trial. During trial, 6 witnesses examined as PW1 to PW6 and 7 documents marked as Exs.P1 to P7. The trial Court, on the evidence and materials, finding that PW2 is the eye witness in this case, who clearly identified the car involved in the accident, had convicted and sentenced the petitioner as stated above and the same was confirmed by the lower appellate Court. There is no infirmity or illegality to interfere with the finding of the Courts below.

10.The learned counsel for the respondent fairly submitted that compromise was arrived between the parties. The petitioner has come forward to pay a compensation of Rs.5,00,000/- without prejudice to his case. The petitioner and respondent appeared before this Court and confirmed the receipt of Rs.5,00,000/- and the same is confirmed by the respective counsel. The petitioner and the respondent filed the consent affidavits separately along with Joint Compromise Memo, wherein the petitioner, respondent, wife of the deceased and his legal heirs viz., Kanagaraj (son) and Nivetha (daughter) are signed.

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

12.It is seen that in this case six witnesses were examined, on the side of the prosecution, during trial. Admittedly, PW1, the mother of the victim, is not an eye witness to the occurrence as well as the other witnesses PW4, wife of the deceased and PW5, the sister of PW1. The only eye witness to the occurrence is PW2. PW2 admitted that 1½ months after the accident, he saw PW1 weeping near the accident spot, he enquired her and informed that the car number involved in the accident as TN 59 M 7636, a white colour Indigo car. It could be seen from the evidence of PW2 that he does not give any particulars with regard to the identity of the driver of the car bearing registration No.TN 59 M 7636. More so, in this case, no witness or document produced to substantiate that on 19.04.2017, the petitioner drove the car bearing registration No.TN 59 M 7636 in a rash and negligent manner and caused the accident.

13.It is to be seen that there is some confusion in the investigation conducted by PW3 in Crime No.182 of 2007 (Ex.P3) whether it was white colour Maruthi car or white colour Indigo car involved in the accident. From the evidence of PW2 and PW3, the Investigating Officer, it is certain that a white colour



Indigo car involved in the accident. PW2 clearly identified the car involved in the accident is white colour Indigo car bearing registration No.TN 59 M 7636. PW1, the mother of the deceased Masilamani lost her son and desperately seeking justice through her relatives and others and had taken all steps to identify the white colour Indigo car bearing registration No.TN 59 M 7636. Later, the respondent found the car bearing registration No.TN 59 M 7636, which was parked in front of the house of the petitioner and the car belongs to the petitioner's mother/A1. Thus, in this case, the involvement of white colour Indigo car was conclusively proved. As regards the driver of the white colour Indigo car is concerned, there is some infirmity in the evidence adduced on the side of the prosecution and there is no conclusive proof that the petitioner had driven the white colour Indigo car and committed the accident.

14.From the available evidence and materials, it would not be conclusively held that the petitioner has driven the car bearing registration No.TN 59 M 7636 on the date of occurrence.

15.Thus, by giving benefit of doubt, the petitioner is acquitted from all the charges. The judgments of the Courts below are liable to be set aside and, are set aside.

16.In the result, this Criminal Revision Case is allowed. Fine amount, if any, paid shall be refunded. Bail bond, if any, executed shall stand cancelled. Consequently, the connected Criminal Miscellaneous Petition is ordered.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

vv2

To

- 1.The III Additional District and Sessions Court,
Tiruppur at Dharapuram.
- 2.The Chief Judicial Magistrate,
Tiruppur(For information)
- 3.The Judicial Magistrate Court No.I,
Udumalpet.



Copy to:

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

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Selvakumaraswamy, Advocate SR.No.20085

Cr1.R.C.No.544 of 2018

SVI (CO)
CB(11/04/2022)