



BAIL SLIP

The Appellant/Accused Namely, Radhakrishnan S/o.Veerasamy was directed to be released on bail by the order of this court dated 12.01.2016 and made in CrI.MP.No.431/2016 in CrI.R.C.No.65 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.RC.No.65 of 2016

Radhakrishnan

... Petitioner/Accused

Vs.

STATE: Represented by

Sub Inspector of Police Arni Town Police Station

Crime No.05 of 2008

Thiruvannamalai District

... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, to set aside the Judgment pronounced by the Sessions Judge, Tiruvannamalai made in C.A.No.3 of 2015 dated 30-11-2015, confirming the Judgment pronounced by the Judicial Magistrate, Arni made in C.C.No.177 of 2008 dated 06.01.2015 by allowing the Revision.

For Petitioner : Mr.A.Praveen Kumar

For Respondent : Mr.A.Damodaran

Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the Judgment pronounced by the Sessions Judge, Tiruvannamalai made in C.A.No.3 of 2015 dated 30-11-2015, confirming the Judgment pronounced by the Judicial Magistrate, Arni made in C.C.No.177 of 2008 dated 06.01.2015 by allowing the Revision.



2. The petitioner/accused was convicted by the Judicial Magistrate, Arni by Judgment dated 06.01.2015 for the offence under Sections 279 & 304(A) of IPC and sentenced him to six months Rigorous Imprisonment and to pay a fine of Rs.5,000/- with a default sentence of one month Rigorous Imprisonment. Aggrieved against the same, he has preferred an appeal to the Sessions Judge, Tiruvannamalai in CrI.A.No.3 of 2015. The Sessions Judge, by Judgment dated 30.11.2015 had dismissed the appeal, confirming the conviction and sentence.

3. The case of the prosecution is that on 06.01.2008, at about 4.05 p.m. near Arni New Bus stand, the deceased Samundeeswari was walking on the corner of the road. The petitioner who is the State Transport Corporation driver of bus bearing Registration No.TN-21-N- 0901, had driven the bus in the rash and negligent manner. While taking a turn into the bus stand, he had hit the deceased on her shoulder, where she had fallen down and later ran over her head and she died on the spot. In this case, the prosecution had examined P.W.1 to P.W.19 and marked exhibits Ex.P1 to Ex.P7. On the appreciation of evidence, the trial Court had convicted the petitioner, which has been confirmed by the Lower Appellate Court as stated above.

4. The contention of the petitioner is that, in this case PW1, who is the complainant of Ex.P1/complaint, is not an eye witness. He has gone to the scene of occurrence after getting information from the PW2, his Village Assistant. PW1 & PW2 are not eye witnesses. PW3, PW4 & PW5 are projected as eye witnesses. All the three persons are car drivers standing from the taxi stand, which is opposite to the accident spot and from there, the accident spot is not visible. PW7, PW8 & PW9 are car drivers who were playing volley ball behind the bus stand. After hearing the noise, they came to the scene of occurrence. The other witnesses are PW13 & PW14, who identified the deceased. The Lower Court had held that PW13 accompanied the deceased and while they were walking together, the accident took place. He further submitted that the PW11 is the Motor Vehicle Inspector who examined the vehicle. PW10 is the witness for Observation Mahazar. PW12 is the Post-Mortem Doctor. PW15 is the photographer. PW18 is the Head Constable. He submitted that PW3, PW4 & PW5 could not have seen the accident, further they admit that road is only 20 feet wide and it was turning, from where the bus is to enter the bus stand. In view of the same, there is no possibility of any rash and negligent driving. Further submitted that none from the Transport Corporation Department examined to prove that the petitioner had driven the vehicle on that day. Likewise, the conductor or any other passengers of the bus examined to show that the petitioner was the driver and the vehicle was driven in a rash and negligent manner. PW4, in his evidence had stated that the road is full of potholes and it was bumpy. The deceased might have had a



fall due to the potholes, got entangled into the rear tyre of the bus. These facts not considered by the trial Court or the Lower Appellate Court.

5. The learned Additional Public Prosecutor submitted that the petitioner driven the bus in a rash and negligent manner. PW3, PW4 & PW5 are the eye witnesses to the accident. They have clearly deposed about the accident and the petitioner being the driver, who driven the bus on that day had caused the accident. PW1 is the Village Administrative Officer, who lodged the complaint. On his complaint, PW19, the Inspector of Police registered the First Information Report, visited scene of occurrence, prepared observation mahazar, examined witnesses present in the scene of occurrence namely PW1 to PW5, PW8 and PW9, as regards to the accident. PW10 is the Observation Mahazar witness. PW11 is the Motor Vehicle Inspector, who gave Motor Vehicle report Ex.P3. PW12 is the Post-Mortem Doctor, who had given Post-Mortem report Ex.P4. From the Motor vehicle report, it is seen that the vehicle was in good condition, the Post-Mortem report, confirm the deceased died due to the run-over of the bus on her head. PW13, PW14 & PW17 identified the deceased. PW19 is the Inspector of Police who registered the case and investigated. PW16 is the Investigating Officer, who completed the investigation and filed the final report under Sections 279, 304(A) of IPC. The Lower Court, on the evidence of the witnesses and materials produced, convicted the petitioner for offences under Sections 279 & 304(A) of IPC and sentenced the petitioner for offence under Section 304(A) of IPC, no separate sentence given for offence under Section 279 of IPC. The Lower Appellate Court analysed the evidence and materials independently and confirmed the conviction and sentence.

6. Considering the submissions and on perusal of the materials, it is seen that in this case crucial witnesses are PW3, PW4 and PW5. All the witnesses have stated that the accused had driven the vehicle and the deceased died due to run over, of the rear wheel of the Transport Corporation Bus. All the three witnesses state that they were present in the scene of the occurrence. These witnesses though stated about the accident and the run over of the bus, none of these witnesses identified the petitioner as the driver of the vehicle who had driven the bus on that day. In fact PW3 during the cross examination admits that after hearing noise of the accident, he had gone to the scene of occurrence. He admits that they were sitting on the left edge of the road adjoining Sub-Jail. Likewise, PW4 admits that place of occurrence is of narrow width and road was with potholes. PW5 confirms that only after hearing noise he had gone to the scene of occurrence and also confirms that the width of the road is narrow. These witnesses have not stated that it was the petitioner who driven the vehicle on that day. The Lower Court observed and gave a finding that the accident is not denied by the petitioner, further petitioner not produced any



witnesses to prove that on that day he was not the driver of the Transport Corporation bus. The Investigating Officer not given any reason why none from the State Transport Corporation examined duty roster produced, to confirm that it was the petitioner who was on duty for the said bus on that day. Strangely, in this case, conductor or any passengers travelled in the bus not examined. In this case, though Observation Mahazar prepared and marked through Investigating Officer/PW19, no independent witnesses examined. PW19 admits that the accident had taken place near a turning and it was a narrow turn. He also admits that no vehicle can turn at the high speed in the accident spot since the width of the road was too narrow. The witness to the Observation Mahazar/PW10 states that he is not aware of the recordings made in it, further confirms he just affixed the signature and not aware of its content. These vital facts has been lost sight by the trial Court and the Lower Appellate Court. The eye witness PW3, PW4 and PW5 admit that they were on the other side of the road, from that point the accident spot cannot be seen. Hence, PW3, PW4 and PW5 witnessing the accident is highly doubtful.

7. The prosecution had failed to prove that the petitioner was the driver of the vehicle and due to his rashness and negligence the accident has taken place. On the contrary, positive evidence available to show that it was a narrow curve and the place was with potholes and the vehicle cannot be driven in a rash and negligent manner.

8. Thus the prosecution had failed to prove the case against the petitioner beyond all reasonable doubts. In view of the above, this Court is inclined to allow this Criminal Revision Petition, setting aside the judgment of the trial Court confirmed by the Lower Appellate Court. The petitioner accused is acquitted from all charges.

9. With the above direction, this Criminal Revision Petition is allowed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dna/mdl
To

- 1.The Sessions Judge, Thiruvannamalai.
- 2.The Principal Sessions Judge, Tiruvannamalai.



3.The Judicial Magistrate, Arni.

4.Do through the Chief Judicial Magistrate, Thiruvannamalai.

5.The Sub Inspector of Police
Arni Town Police Station
Thiruvannamalai District
Crime No.05 of 2008.

6.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

+1 cc to Mr.P.Anabarasan, Advocate Sr.NO. 12699

Crl.RC.No.65 of 2016

NMI (CO)

A.SK(14/03/2022)