



BAIL SLIP

The Petitioner / Accused Kannan, male aged 42 years S/o.Mani was directed to be released on bail vide order dated 08.12.2014 Crl.M.P.No.1 of 2014 in Crl.R.C.No.1258 of 2014 on file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.1258 OF 2014

Kannan

...Petitioner

Versus

The State Represented by
The Inspector of Police,
Nagore Police Station,
Nagapattinam.

Crime No.255 of 2007

...Respondent

Criminal Revision Petition filed under Section 397 read with Section 401 of Criminal Procedure Code, to call for the records from the Lower Appellate Court and set aside the conviction and sentence passed in C.A.No.58 of 2013 dated 06.08.2014 on the file of the District and Sessions Judge, Nagapattinam it is confirmed Judgment passed in C.C.No.23 of 2010 dated 27.04.2010 on the file of the Chief Judicial Magistrate, Nagapattinam.

For Petitioner : Mr.K.Pragadeesh Kumar

For Respondent : Mr.L.A.J.Selvam
Government Advocate (Crl.side)

ORDER

This Criminal Revision in R.C.No.1258 of 2014 is filed by the petitioner/accused aggrieved by Judgment of the learned Chief Judicial Magistrate, Nagapattinam dated 27.04.2010 in C.C.No.23 of 2010, thereby convicting the petitioner/accused for the offences under Section 279 of IPC and imposing fine of Rs.500/- in default, to undergo one month simple imprisonment and under Section 304A of IPC, to undergo two years rigorous



imprisonment, and the Judgment of the learned District and Sessions Judge, Nagapattinam dated 06.08.2014 in C.A.No.58 of 2013, thereby dismissing the appeal preferred by the petitioner/accused and confirming the conviction and sentence passed by the learned Chief Judicial Magistrate, Nagapattinam.

2. On 11.05.2007, P.W-1 namely Anbalagan went to the Nagore Police Station and lodged a complaint stating that on 11.05.2007 at about 10.30 am, he and his grand father namely Kannaian were returning home after taking treatment for his grand father at the Government Hospital, Nagapattinam and when they were near the house of one Dhanapal, Son of Kannaian in Perumal Keezha Veethi, even while his grand father was walking along with left hand side of the road, a lorry bearing Registration No.TN-45-J-5151 was suddenly taken reverse in a rash and negligent manner without any horn or precaution and the rear wheel of the lorry ran over his grand father and his body was crushed on the spot and he died.

3. On the said complaint, P.W-9 Selvi Caroline, the Sub-Inspector of Police registered a case in Crime No.255 of 2007 for the offences under Sections 279 and 304A of IPC. Thereafter, P.W-10 Karunanithi, the Inspector of Police, took up the case for investigation, completed the investigation and filed a final report dated 19.05.2007 proposing the petitioner/accused guilty of the offences.

4. The case was taken on the file of the learned Chief Judicial Magistrate, Nagapattinam in C.C.No.23 of 2010 and upon issuance of summons to the petitioner/accused, upon furnishing the copies as per Section 207 of Cr.P.C, upon questioning the petitioner/accused denied the charges and stood trial. Thereafter, the prosecution examined P.W-1 to P.W-11 and marked Ex.P1-Ex.P7.

5. Upon being questioned about the adverse evidence and incriminating circumstances on record, the petitioner/accused denied the same as false under Section 313 of Cr.P.C. Thereafter, no oral or documentary evidence was let in on behalf of the defence. The Trial Court therefore proceeded to hear the Additional Public Prosecutor on behalf of the prosecution and the learned counsel for the petitioner and by its Judgment dated 27.04.2010, upon considering the evidence of eye witnesses namely P.W-1 and P.W-3 and considering the evidence of the owner of the lorry namely P.W-11 held that the accident happened on the rash and negligent driving of the petitioner/accused inasmuch as he reversed the lorry in a high speed without any horn or precaution whatsoever and hit the deceased/victim and caused the accident. Thereafter, the Trial Court proceeded to consider the medical evidence and found that the deceased/victim



died on account of the crush injuries caused due to the accident and therefore found the petitioner/accused guilty of the offences under Sections 279 and 304A of IPC and sentenced as aforesaid.

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6. Aggrieved by the same, the petitioner/accused preferred an appeal in C.A.No.58 of 2013 on the file of the District and Sessions Court, Nagapattinam. The First Appellate Court by its Judgment dated 06.08.2014 after considering the evidences of P.W-1 and P.W-3 held that the eye witnesses have clearly spoken about the incident. The Motor Vehicle Inspector also has given a certificate and the same was marked as Ex.P-3 and upon the consideration whereof, there was no mechanical defect in the lorry and considering the charge of the prosecution that the petitioner/accused drove the vehicle in high speed and in a rash and negligent manner and caused the crush injuries, the First Appellate Court confirmed the conviction and sentence imposed by the Trial Court and dismissed the appeal. Aggrieved by the same, the present Criminal Revision Case is laid before this Court.

7. Mr.K.Pragadeesh Kumar, learned counsel appearing for the petitioner would submit that in this case, the findings of the Trial Court as well as the First Appellate Court are perverse in nature because, they failed and omitted to consider the artificial nature of the evidences of P.W-1 and P.W-3.

8. According to him, a perusal of the inquest report clearly reads as follows:-

".....லாரி டிரைவர் இருக்கையின் வலது பின் பக்க வீல் கண்ணையன் மீது ஏறி தலையைத்தவிர உடல் முழுவதும் நகங்கி சிதைந்து இறந்துள்ளார் என்று அவரது பேரன் அன்பழகன் என்பவரால் கண்டுபிடிக்கப்பட்டது."

9. Therefore, the inquest report being the earliest document would clearly show that P.W-1 Anbalagan was not accompanying the deceased/victim. This apart, in the FIR as well as the date of chief examination, P.W-1 has deposed that he was walking behind the deceased/victim in some distance. Whereas, in the cross examination he has deposed that he came in a cycle, these contradictions are material in nature and the other eye witness namely P.W-3 deposed that P.W-1 was coming behind the deceased victim. Therefore, both the evidence of P.W-1 and P.W-3 are artificial in nature and inspite of pointing out these grave deficiencies, the Trial Court and the First Appellate Court omitted to consider the defence of the petitioner/accused and therefore grievous erred in returning the finding of guilt on the basis of the eye witnesses.

10. Per contra, the learned Government Advocate (Crl. Side) would submit that in this case, not only P.W-1 and P.W-3 but



also the owner of the lorry was examined as P.W-11. He has confirmed the fact that his vehicle was involved in the accident and he has deposed that a person had come and fell in his lorry while the goods were being unloaded. He had further confirmed the fact that it is the petitioner/accused who was on duty in the said vehicle. The Inspector of Police/Investigating Officer has promptly arrested the petitioner/accused and he was enlarged on bail and his presence in the spot has been duly confirmed. If the petitioner had reversed the vehicle in a normal speed, even if he had not taken precaution, there would not be such a grave crush injury, which would have happened to the deceased/victim.

11. The medical evidence in this case reveal that the entire abdomen and chest have been crushed and brain also popped out of the head. The manner of accident categorically by itself proves the culpable negligence on the part of the petitioner/accused and therefore he would submit that the conclusions of the Trial Court as well as the First Appellate Court cannot be found fault with.

12. I have considered the submissions of Mr.K.Pragadeesh Kumar, learned counsel appearing for the petitioner and Mr.L.A.J.Selvam, learned Government Advocate (Criminal Side) for the respondent. I have also gone through the material evidence on record.

13. Though I am in agreement with the learned counsel for the petitioner that the evidence of P.W-1 and P.W-3 eye witnesses have to be discarded for the above said piece of evidence, in the inquest report coupled with the contradictions as to whether he came by walking or by bicycle, still in this case, even discarding evidence of P.W-1 and P.W-3, the evidence of P.W-11 coupled with the evidence of P.W-10 Inspector of Police/Investigating Officer, the arrest of the petitioner/accused, the observation mahazar and the rough sketch proves the accident, proves the fact that it was the petitioner/accused who drove the vehicle at the time of accident and further the manner of accident clearly entails the prosecution to invoke the maxim res ipsa loquitur and the manner in which the crush injuries has been caused to the deceased/victim while the vehicle came in reverse by itself proves the speedy and negligent manner in which the vehicle was reversed by the petitioner/accused and therefore even though the learned counsel for the petitioner was successful in discrediting/dislodging the evidence of P.W-1 and P.W-3, still the finding of guilt by the Trial Court and the First Appellate Court cannot be upturned for the said facts alone. Therefore, I hereby confirm the conviction of the petitioner/accused for the offences under Sections 279 and 304A of IPC.



14. Now, coming to the question of sentence, the learned counsel appearing for the petitioner would submit that on the date of accident i.e., on 11.05.2007, the petitioner/accused was 36 years of age. Now, 15 years have since passed by. The petitioner/accused is presently aged about 51 years, he has not been convicted in any other offence either prior to the occurrence or subsequent to the occurrence. He has got 2 girl children who aged about 15 and 10 years of age. He has since shown remorse to the incident and was also arrested and released on bail on the same day. He has appeared before the Trial Court and the Appellate Court and also is complying with the conditions after this Court suspended the sentence.

15. Considering the above, I am inclined to reduce the sentence of imprisonment imposed for both the offences from a period of two years rigorous imprisonment and one month simple imprisonment respectively to a period of fifteen days simple imprisonment for both the offences. The sentence shall run concurrently. The fine amount is confirmed as such.

16. This Criminal Revision Case is partly allowed as indicated above.

Sd/-
Assistant Registrar (CS-III)

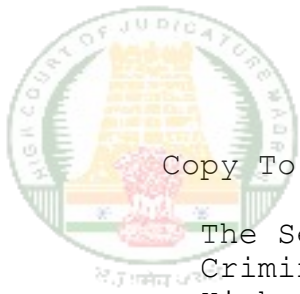
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Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate Court,
Nagapattinam.
2. The District and Sessions Court,
Nagapattinam.
3. The Judicial Magistrate No. II,
Nagapattinam.
4. The Inspector of Police,
Nagore Police Station,
Nagapattinam District.
5. The Public Prosecutor,
High Court,
Madras.



Copy To

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

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+1cc to Mr.K.Pragadeeshkumar, Advocate Sr.No.5326

Cr1.R.C.No.1258 of 2014

MT (CO)
RVM(08/02/2022)