



BAIL SLIP

The Petitioner/Accused Viz., Murugan, S/o.Raju, was directed to be released on bail as per the Order of this Court dated 20/08/2014 in CrI.M.P.No.1 of 2014 in CrI.RC.No.827/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.827 of 2014

Murugan

... Petitioner/Accused

Versus

State rep. By

The Inspector of Police,

GNT Traffic Madhavaram Police Station

Thiruvallur District.

... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the judgment, dated 30.07.2014 made in C.A.No.108 of 2013 on the file of the Principal Sessions Court, Thiruvallur, confirming conviction and sentence passed on them by the learned Judicial Magistrate No.II, Ponneri in C.C.No.52 of 2011, dated 03.12.2013 and set aside the same.

For Petitioner : Mr.R.Sasikumar

For Respondent : Mr.L.A.J.Selvam

Government Advocate  
(Criminal Side)

ORDER

This Criminal Revision in CrI.R.C.No.827 of 2014 is filed by the petitioner/accused, aggrieved by the judgment of the learned Judicial Magistrate No.II, Ponneri in C.C.No.52 of 2011, dated 03.12.2013, thereby, convicting him for an offence under Section 279 of Indian Penal Code and imposing a fine of Rs.1000/-, in default of payment of fine, to undergo two weeks Simple Imprisonment; under Section 337 (12 counts) and imposing a fine of Rs.500/- for each count, in all totally Rs.6000/-



towards fine and in default of payment of fine, one week Simple Imprisonment for an offence under Section 304-A of Indian Penal Code and imposing one year Simple Imprisonment in each count; for the offence under Section 304-A (5 counts) of Indian Penal Code, imposing one year Simple Imprisonment in each count; for the offence under Section 113 r/w 194(i) of the Motor Vehicles Act, a fine of Rs.2000/-, in default, to under two weeks imprisonment and the judgment of the learned Principal Sessions Judge, Tiruvallur in Crl.A.No.108 of 2013, dated 30.07.2014, thereby, dismissing the appeal and confirming the judgment and conviction passed by the learned Judicial Magistrate No.II, Ponneri.

2. On 17.08.2009, upon receipt of the information about the accident at about 2.40 A.M, one Jayaprakasam, Sub-Inspector of Police went to the spot and thereafter, upon seeing the bodies of the dead persons and after sending the injured persons to the hospital, went to the hospital and recorded the statement of one Sivaranjani, P.W.1. She stated that all of them are residing in Nochikuppam village and the relatives and some of the families joined together and decided to visit Periyapalayam temple and for that purpose, they have hired Mahendra Van bearing No.TN07 AS 7336, driven by the petitioner/accused and they went to the Periyapalayam temple and were returning to Nochikuppam on 17.08.2009 at about 230 A.M, the petitioner/accused who was driving the van drove in a very high speed and in a rash and negligent manner and hit against the lorry, bearing No.TN59 C 3033, which was proceeding in the direction of North to South in front of the Van and thus, five persons traveling in the Van died on the spot and the others were grievously injured. On the said statement, a case in Cr.No.422/GNT11/2009 was recorded by the Inspector of Police, Traffic Police Station, G.N.T road under Sections 279, 337 and 304-A of Indian Penal Code. P.W.21, the Inspector of Police took up the case for investigation and after completion of the investigation, laid a final report before the learned Judicial Magistrate No.II, Ponneri proposing the accused guilty of the offences under Sections 279, 337 (12 counts), 304-A (5 counts) and 113 read with 194(i) of Motor Vehicles Act.

3. The case was taken on file as C.C.No.52 of 2011 and upon issuance of summons and furnishing of copies under Section 207 of Code of Criminal Procedure, the accused denied the charges upon questioning and stood trial. Thereafter, the prosecution examined P.Ws.1 to 21 and marked Exs.P-1 to P-41. Upon being questioned about the adverse evidence on record under Section 313 of Code of Criminal Procedure, the



petitioner/accused denied the same as false. Thereafter, no evidence was let in on behalf of the defence. The Trial Court proceeded to hear the learned Assistant Public Prosecutor-Grade-II, on behalf of the prosecution and the learned Counsel for the accused and by its judgment, dated 03.12.2013, found that P.W.1 had clearly deposed about the fact that they were returning home on 17.08.2019 at about 2.30 A.M, when their vehicle was on the G.N.T road in Red Hills near R.T.O office, when it was being driven from North to South, it hit against the lorry, which was standing in the same direction and caused the death of five persons, injury to 12 persons. Further, the Trial Court considered all the other injured victims' evidences and after considering report of the Motor Vehicle Inspector and the medical report and the inquest report and post-mortem reports of the deceased persons, considering the manner in which the accident happened and relying on the maxim res ipsa loquitur, held that the prosecution proved the offence beyond any doubt and sentenced the petitioner as aforesaid.

4. Aggrieved by the same, the petitioner/accused preferred Crl.A.No.108 of 2013 on the file of the learned Principal Sessions Judge, Thiruvallur. By a judgment, dated 30.07.2014, the Appellate Court, after considering the evidence of P.Ws.1 to 5 and considering Ex.P-8, the Motor Vehicle Inspector's Report revealing the damages to the Mahindra Van and the damages caused to the lorry on the rear side and considering the place of impact and damages to the Mahindra Van and lorry, coupled with the medical evidence on record held that the prosecution has proved the rash and negligent driving of the accused and confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present Revision is laid before this Court.

5. Heard Mr.R.Sasikumar, learned Counsel for the petitioner and Mr.L.A.J.Selvam, learned Government Advocate (Criminal Side) on behalf of the prosecution.

6. The learned Counsel for the petitioner, taking this Court through the oral evidence, submitted that all the eye witnesses, namely P.Ws.1 to 5, have partly admitted that they woke up only upon hearing of the sound and therefore, they cannot be considered as eye witnesses. Secondly, even as per the account of these witnesses, they have deposed that the lorry was standing on the road while the charge against the accused was the lorry was proceeding in the same direction on the left hand side and while attempting to overtake, the petitioner/accused caused the accident. If the lorry was



standing on the G.N.T road, which is not permitted without any proper signage, then the driver of the lorry is also guilty of the culpable negligence and therefore, the entire investigation, which from the beginning to end proceeded as if only the petitioner alone is guilty, is faulty and therefore, the finding of the conviction is liable to be interfered with.

7. The learned Counsel would further submit that there are also the glaring defects in the investigation in this case, namely the lorry driver, who is the important witness is not at all examined to prove the vital facts. As a matter of fact, the Motor Vehicle Inspector even mentions the name of the driver of the lorry as one Nataraj, but, however, prosecution has not chosen even to examine him. The investigating officer was also cross-examined on the charge of overload and without any further confirmation by gathering evidence, based on the number of persons who suffered injuries alone, the investigating officer has laid charge sheet. As a matter of fact, in his cross-examination, the investigating officer has accepted several defences of the accused that he did not examine the driver of the lorry; that if the six persons had not traveled in the vehicle the offence under Motor Vehicles Act will not be made out; that he did not examine any other witnesses who happened to be on the spot; and therefore, he would submit that the entire prosecution case is with several infirmities and in spite of the defence cross-examining each and every witness and establishing their case the Trial Court and the first Appellate Court simply brushed aside the defence and convicted the petitioner.

8. Opposing the above said submissions, Mr.L.A.J.Selvam, learned Government Advocate (criminal Side) would submit that this is a case of gruesome accident. Five persons died. 12 persons suffered grievous injuries. The death happened only due to the accident has been clearly brought on record by medical evidence, namely post-mortem reports and inquest reports. The grievous nature of the injuries have been brought on record by marking the necessary wound certificates and examining the Doctor, who gave the treatment. In such a case, the petitioner/accused is not only guilty of overloading vehicle, when he was driving in the earlier hours of the night i.e., at 2.30 A.M without taking any adequate precaution whatsoever, he has driven the vehicle in a very high speed and negligent manner and dashed against the lorry. He would submit that the discrepancy in the evidence that the lorry was slowly moving on the left hand side or that the lorry was static is not material contradiction. Given the nature of impact on the lorry as well as the Mahendra Van, and he would submit that the Trial Court as



well as the lower Appellate Court have rightly convicted the petitioner.

9. I have considered the rival submissions made on behalf of both sides. I have gone through the entire evidence on record. Though I am in agreement with the learned Counsel for the petitioner that P.Ws.1 to 5 cannot be taken as eye witnesses and that there is contradiction regarding the manner of accident also, but, however, considering the evidence of P.W.9, Motor Vehicle Inspector and the account of the injured witnesses P.Ws.1 to 5 only regarding the manner in which the injuries had happened, coupled with Exs.P-7 and P-8, the Motor Vehicle Inspection report, the nature of damages to the Mahendra Van as well as the lorry and the place of the accident as mentioned in the rough sketch, in respect of the infirmities in the prosecution, I am of the view that the invoking of the maxim *res ipsa loquitur* by the Trial Court in this case is justified and therefore, dehors the infirmities pointed out by the defence and the contentions made regarding the nature of eye witnesses in this case, on the principle of *res ipsa loquitur*, the Trial Court as well as the Appellate Court were right in finding the accused guilty of the offence mentioned therein.

10. However, alternatively, the learned Counsel for the petitioner/accused submitted that considering his above submissions on merits, in consonance with the circumstances of this case i.e., the accident happened 13 years ago in the year 2009 and the petitioner/accused, who was aged 35 years at that time and is now aged 48 years, and that he is no more in the profession of driving and that he has gone back to Vellore and is working as an agricultural Coolie and that there is no other bad antecedent and he not was involved in any other offence either prior to the accident or after the accident and have shown remorse to the incident and was in jail for a period of 28 days and have also paid all the fine amounts and requested this Court to take a correct view of sentencing policy in the matter, considering all the above.

11. The learned Government Advocate (Criminal Side) would also confirm the facts that the accused is in Vellore now and that there are no other antecedents in respect of the accused and that he was in jail for a period of 28 days.

12. Considering the submissions made on either side, considering the nature of the accident and that it happened in the middle of the night and the age and other factors of the accused, I am inclined to modify the sentence of imprisonment



for a period of one year, in respect of the offence under Section 304-A of Indian Penal Code to that of the period already undergone. The fine amount shall remain the same.

13. The Criminal Revision Case is partly allowed as above. Consequently, Crl.M.P.No.8370 of 2021 is closed.

Sd/-  
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

grs

To

- 1.The Principal Sessions Court,  
Thiruvallur.
- 2.The Judicial Magistrate No.II,  
Ponneri.
- 3.The Chief Judicial Magistrate,  
Thiruvallur( for information).
- 4.The Superintendent,  
Central Prison,  
Puzhal, Chennai.
- 5.The Inspector of Police,  
GNT Traffic Madhavaram Police Station  
Thiruvallur District.
- 6.The Public Prosecutor,  
High Court of Madras.

Crl.R.C.No.827 of 2014

GSM(CO)  
GN(15/02/2022)