



BAIL SLIP

The Petitioner/Accused Viz., Mani, Male, Aged about 22 years, Son of Krishnappa was directed to be released on Bail vide Order dated 30/08/2017 in Crl.M.P.No.10761 of 2017 in Crl.R.C.No.1131 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

ORDERS RESERVED ON 08.03.2022	ORDERS PRONOUNCED ON 17.03.2022
----------------------------------	------------------------------------

CRL.R.C.NO.1131 OF 2017

Mani

... Petitioner

.Vs.

The State Rep. by
The Inspector of Police,
Traffic Investigating Wing,
Hosur, Krishnagiri District.
[Crime No.360 of 2012]

... Respondent

PRAYER:-

Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records on the file of the learned Principal District and Sessions Judge, Krishnagiri, Vellore District in Crl.A.No.22 of 2017 by judgment dated 18.08.2017 and confirming the judgment and sentence passed by the learned Judicial Magistrate, No.II, Hosur, Krishnagiri District in C.C.No.44 of 2013 dated 07.02.2017 and set aside the same.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



ORDER

The petitioner was convicted by the learned Judicial Magistrate No.II, Hosur and sentenced to undergo three months Simple Imprisonment for offence under Section 379 IPC and to undergo one year Simple Imprisonment for offence under Section 304(a) IPC, by judgment dated 07.02.2017 in C.C.No.44 of 2013. As against the judgment of the trial Court, an appeal was preferred by the petitioner in C.A.No.22 of 2017 before the learned Principal Sessions Judge, Krishnagiri/lower appellate Court. The lower appellate Court, by judgment, dated 18.08.2017 dismissed the appeal confirming the conviction and sentence of the trial Court. Against which, the present Criminal Revision Petition is filed.

2. The gist of the case is that on 25.12.2012 at about 10.30 a.m., the petitioner/accused was driving the vehicle, TATA Ace bearing registration No.KA-51-A-7666 in a rash and negligent manner proceeding towards Hosur in Kothur, Hosur Road, dashed Mani from behind, who was walking ahead, due to which he sustained injuries on his head, legs and hands, thereafter he was taken to the Government Hospital, Hosur, where he was referred to NIMHANS, Bangalore and thereafter, brought back to Ashoka Hospital, Hosur. On 26.12.2012 at about 8.00 a.m the said Mani succumbed to the injuries. Based on the complaint given by the defacto complainant/P.W.1, the brother of the deceased Mani, P.W.2 who was walking behind his brother, a case was registered for the offences under Sections 279 and 304A IPC. The prosecution on its side examined P.W.1 to P.W.7 and marked Ex.P1 to Ex.P7. The defence neither examined any witnesses nor marked any documents. The Trial Court on conclusion of the trial convicted the petitioner which was confirmed by the Lower Appellate Court and sentenced the petitioner as stated above.

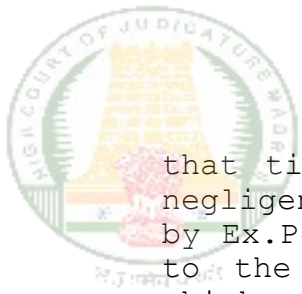
3. The contention of the petitioner is that except the relatives of the deceased, no private individual examined in this case. P.W.1, P.W.2, P.W.4 are brothers and P.W.3 is the wife of the deceased Mani. P.W.1 admits that it was P.W.2 who informed him about the accident and thereafter, he reached the scene of occurrence. Further, P.W.1 admits that he is not aware that on whose negligence, the accident took place. P.W.2, the brother of P.W.1 states that he was walking behind his brother/deceased Mani, at that time, the accident occurred, since the vehicle came from the behind, he is not certain as to whether the vehicle driven in a rash and negligent manner by the petitioner. P.W.3, wife of the deceased states about accompanying the deceased to the hospital and she admits that only after the accident, she was informed. P.W.4, another brother of the deceased is the witness for the observation mahazar, Ex.P2. P.W.5 is the Sub-Inspector of Police, who



WEB COPY

received the complaint from P.W.1 and registered the FIR/Ex.P3. P.W.6 is the witness to the rough sketch/Ex.P2, he was unable to give details he identifies his signature alone. P.W.7 is the Investigating Officer who conducted further investigation, examined the witnesses, prepared observation mahazar and rough sketch, conducted inquest, sent the body for post mortem and the vehicle for inspection. Ex.P6/Motor Vehicle Inspection Report and Ex.P7/Post mortem report marked. Since Motor Vehicle Inspector and Post Mortem Doctor not examined as witness, Ex.P6 and Ex.P7 not proved in the manner known to law. It is further submitted that the presence of P.W.2 is highly doubtful since P.W.2 not stated anything about the presence of P.W.1. Further, P.W.1 and P.W.3 admit that after the accident, they received information and they reached the scene of occurrence, hence, P.W.2 is only the material witness. P.W.2 admits that he along with his brother/deceased Mani were walking on the left edge of the road, the accident took place from behind, he could not have seen whether the Tata Ace van came in a rash and negligent manner. In this case, P.W.4 and P.W.6 are the witnesses for observation mahazar and rough sketch. It is further submitted that from the observation mahazar, the spot of accident is not properly recorded. It can be seen that the accident had taken place in the middle of the road and not on the left edge, as spoken to by P.W.2, hence presence of P.W.2 is highly doubtful. The finding of the Courts below that the wind screen of the vehicle broken and it could have happened only due to rash and negligence cannot be accepted. Further, the Trial Court placed heavy reliance on rough sketch/Ex.P4 by stating that the accident took place on the left edge of the road which confirm that the petitioner was driving the vehicle in a rash and negligent manner and dashed the pedestrian Mani, cannot be accepted. It is further submitted that in this case, the deceased was taken to various Hospitals, died nearly after 24 hours of the accident, the reason for the death could have been for various other reasons and hence, the non-examination of Doctor who conducted post mortem is fatal to the prosecution case. In support of his contention, the petitioner relied upon the decision of this Court in the case of Arumugam vs. State by Sub-Inspector of Police, Uthkkuli Police Station, Erode reported in (2001) 2 LW(Crl.) 773.

4. The learned Additional Public Prosecutor submits that on the complaint/Ex.P1 of P.W.1, a case was registered by P.W.5, P.W.7, the Investigating Officer took up further investigation, visited the scene of occurrence, prepared the observation mahazar, rough sketch in the presence of P.W.4 and P.W.6. P.W.1 and P.W.3 fairly admit that they reached the scene of occurrence after the accident, P.W.2 who was walking along with the deceased, clearly state that he along with the deceased was walking on the left edge of the road assigned to pedestrian, at



that time, the vehicle driven by the petitioner in a rash and negligent manner hit the deceased from the back which is proved by Ex.P4/observation mahazar and Ex.P2/rough sketch. The damage to the vehicle recorded in Ex.P6/Motor Vehicle report, from which, it is seen that the wind screen of the vehicle broken into pieces which confirms that the vehicle was driven in a rash and negligent manner. Further, the post mortem report/Ex.P7 confirms that "The deceased would appear to have died of shock and heamorrhage of injury to vital organs [brain]". It is also submitted that since the marking of documents Ex.P6 and Ex.P7 was not objected by the petitioner during trial, now he cannot raise such objection. Further, Ex.P6 and Ex.P7 marked under Section 294 Cr.P.C. In support of his contention, the learned Additional Public Prosecutor relied upon the decision in the case of K.K.Mani vs. The State, rep. by the Sub-Inspector of Police, Thalaivasal Police Station, Salem District reported in 2009 [2] MWN[Cr.] 399, wherein it is held that non-examination of Motor Vehicle Inspector and the Doctor who conducted post mortem are not fatal, in the absence of objections being made when the documents are marked and when no suggestion was made in this regard during cross examination now cannot raise objection. Further, when the petitioner was examined under Section 313 Cr.P.C., no such objections made. Therefore, it is submitted that the accident took place only due to the rashness and negligence of the petitioner. The conviction and sentence imposed by the trial Court is confirmed by the Lower Appellate Court. Hence, he sought for dismissal of the criminal revision petition.

5. This Court firstly consider the petitioner's contention that non-examination of Motor Vehicle Inspector and Post Mortem Doctor and marking of Ex.P6/Motor Vehicle Inspection Report and Ex.P7/Post Mortem Report. Reliance was placed on the judgment of this Court in the case of Arumugam vs. State by Sub-Inspector of Police, Uthkkuli Police Station, Erode reported in (2001) 2 LW(Crl.) 773, wherein it was held that documents marked without examining the author of the document and it is objected by the petitioner, it is to be taken the documents are marked without consent under section 294 Cr.P.C., further for marking documents under Section 29 Cr.P.C., G.O.Ms.No.258 [Courts-V] dated 08.02.1993 describing the proforma, stating the documents can be marked only in the form mentioned in the Government Order to be followed, not following the procedure and if marking of documents are objected, marking of documents in such petition is illegal and the Court cannot look into the document as the contents of the documents are not proved by the prosecution.

6. Countering the same, the prosecution relied on the judgment of this Court in the case of K.K.Mani vs. The State, rep. by the Sub-Inspector of Police, Thalaivasal Police Station,



Salem District reported in 2009 [2] MWN[Cr.] 399, wherein it is submitted that marking of documents - non-raising of objection- it amounts to admitting genuineness of document within the meaning of Section 294 Cr.P.C.

WEB COPY

7. On the contention of the learned Additional Public Prosecutor, this Court perused the judgment relied in K.K.Mani case, though on the face of it, apparently the head note appears to sound so, on reading of the judgment, it is seen that in paragraph No.23, the judgment in Arumugam case is referred, no contra view expressed. On the other hand, held that marking of Motor Vehicle Inspector Report and Post Mortem Doctor Report without examining the Doctor and the Motor Vehicle Inspector, and Prosecution Agency ignoring the significance of Section 294 Cr.p.C. was strongly condemned.

8. The Hon'ble Apex Court in the case of Akhtar and others vs. State of Uttaranchal reported in [2009] 13 SCC 722, wherein it is held as follows:

"21.It has been argued that non-examination of the medical officers concerned is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post-mortem examination reports before the trial Court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 Cr.P.C. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-section (3) of Section 294 Cr.P.C. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined."

9. At this juncture, it would be beneficial to extract Section 294 Cr.P.C., which reads as follows:

294. No formal proof of certain documents. (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.



WEB COPY

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

10. From the above, it is clear that marking of documents where no formal proof is required, there is a prescribed procedure, as far as our State is concerned, G.O.Ms.258 [Court-V] dated 08.02.1993, is issued giving the proforma by which the documents ought to be marked. Though it is only a procedure code, in view of the significance and importance Section 294 Cr.P.C. plays an important role in the trial, it is proper that the same is to be strictly followed, merely recording that the document is marked under Section 294 Cr.P.C. is not sufficient.

11. Considering further submissions and on perusal of the materials placed before this Court, it is seen that P.W.1, P.W.2 and P.W.3 are projected as eye witnesses to the accident. P.W.1 admits that he was informed about the accident by P.W.2, his brother. P.W.3 admits that she reached the accident spot later and she is not an eye witness, the witness to the observation mahazar and rough sketch are P.W.4 and P.W.6. In this case, P.W.1 to P.W.4 are brothers except P.W.3 who is the wife of the deceased Mani. The only witness to the accident is P.W.2. P.W.2 admits that he was walking 15 ft. behind his brother. The accident spot is 10 ft. inside the road. The place of his brother Mani work spot is 10 ft. on the opposite direction. From the observation mahazar, nothing can be understood with regard to the accident spot and the width of the road. On examination of observation mahazar along with rough sketch, it is seen that the road is of 80 ft. width., accident taken place within 15 ft. from the left edge of the road, hence accident had taken place almost near the middle of the road. P.W.7, Investigating Officer admit the same. P.W.4 and P.W.6, the observation mahazar and rough sketch witnesses unable to give details. P.W.2 admits 10 ft. within the road is the accident spot. Since the accident had taken place from behind, rashness and negligence cannot be seen and attributed to the petitioner. The accident could have happened due to deceased walking into the road 10 or 15 ft. from the edge. Further, there is no mud path shown in the rough sketch. Further in the complaint/Ex.P1 nothing is provided as regards the name and descriptive features of the Driver of Tata Ace bearing registration No.KA-51-A-7666,



strangely in FIR/Ex.P3, the name of the petitioner as Driver is recorded. It is to be seen that the complaint/Ex.P1 is computer typed which creates doubt about its genuineness. The Motor Vehicle Inspector report confirm that except for breakage of wind screen glass, no damage to vehicle. This breakage could have been due to instant and sudden application of break, due to abrupt crossing of the road negligently by the deceased Mani. The accident spot as found in rough sketch confirms the same, further P.W.2 and P.W.7 confirm that accident took place inside the road 10 to 15 ft. from the left edge. Hence the deceased is the cause and contributor to the accident.

12. Thus, from the above, it cannot be conclusively held that the accident had occurred due to rashness and negligence of the petitioner. Hence, the prosecution has failed to prove its case, beyond reasonable doubt and the petitioner is acquitted of his charges, setting aside the conviction and sentence imposed by the Trial Court, which was upheld by the Lower Appellate Court.

13. In the result, the judgment, dated 07.02.2017 in C.C.No.44 of 2013, passed by the learned Judicial Magistrate No.II, Hosur and the judgment dated 18.08.2017 passed by the learned Principal Sessions Judge, Krishnagiri in C.A.No.22 of 2017 are set aside and the revision is, accordingly, allowed. The petitioner is acquitted of all the charges levelled against him.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Principal District and Sessions Judge,
Krishnagiri, Vellore District.
2. The Judicial Magistrate, No.II,
Hosur, Krishnagiri District.
3. The Chief Judicial Magistrate,
Krishnagiri. (For Information)



4. The Superintendent,
Central Prison,
Salem.
5. The Inspector of Police,
Traffic Investigating Wing,
Hosur, Krishnagiri District.
6. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.E.Kannadasan, Advocate, S.R.Nos.12470 & 18304

CRL.R.C.NO.1131 OF 2017

PMK (CO)
PBS/29/03/2022