



Bail Slip

That the Appellant/Accused namely Venkattasubramanian S/o Krishnan was released on bail as per order of this Court dated 04.12.2017 made in CrI.M.P.No.14892 of 2017 in CrI.R.C No.1495 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2022
DELIVERED ON : 27.05.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1495 of 2017

Venkattasubramanian ... Petitioner/Accused
Versus

State Rep by
Inspector of Police,
Attur Police Station
Salem District.
(Crime No.1016/2014)

... Respondents/Complainant

PRAYER : Criminal Revision petition filed under Section 397 and 401 Cr.P.C. praying to call for the records in C.A.No.21 of 2017 and to set aside the order dated 30.06.2017 on the file of III Additional Sessions Judge, Salem confirming the order in C.C.No.43 of 2015 dated 01.02.2017 on the file of Judicial Magistrate No.I, Attur.

For Petitioner : Mr.R.Prathap Kumar
for Mr.Sanjay Ramaswami

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

O R D E R

This Criminal Revision Case has been filed to set aside the conviction order passed by the learned III Additional Sessions Judge, Salem in C.A.No.21 of 2017 dated 30.06.2017, confirming the order of conviction passed by the learned Judicial Magistrate No.I, Attur in C.C.No.43 of 2015 dated 01.02.2017.



2. The petitioner/accused in C.C.No.43 of 2015 was convicted by the trial Court and sentenced to undergo three months Rigorous Imprisonment and to pay a fine of Rs.750/- for the offence under Section 279 of I.P.C. and 2 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- for the offence under Section 304A of I.P.C. by judgment dated 01.02.2017. Aggrieved against the same, the petitioner had preferred an appeal before the III Additional Sessions Judge, Salem in C.A.No.21 of 2017. The learned Sessions Judge, Salem by judgment dated 30.06.2017 dismissed the appeal confirming the conviction and sentence of the trial Court, against which, the present revision.

3. The gist of the case is that on 25.12.2014 at about 6.30 a.m. one Muthusamy was riding his TVS-50 moped bearing registration No.TN-27-Q-1014 and was proceeding near Salem to Cuddalore main road Attur by-pass near Mullaivadi Uppudai Sandhanagiri division. While he was crossing the by-pass road from North to South, an Innova car driven by the petitioner bearing No.TN-09-AX-1845 was coming from West to East and dashed against the TVS-50, thereby the said Muthusamy was thrown out and sustained grievous injury and died on the spot. P.W.1 was present in the scene of occurrence. He had lodged a complaint to P.W.8, who received the complaint, registered an F.I.R, visited the scene of occurrence, prepared observation mahazar and rough sketch, conducted inquest, send the body for post-mortem and enquired the witnesses in the scene of occurrence. Thereafter, sent both TVS-50 and Innova Car for Motor Vehicle Inspection and after receipt of post-mortem report and other report concluded the investigation in this case and filed a charge sheet.

4. Before the trial Court, eleven witnesses were examined as P.W.1 to P.W.11 and marked eight documents as Exs.P1 to P8. On conclusion of the trial, the trial Court convicted the petitioner and the Lower Appellate Court confirmed the conviction of the trial Court as stated above.

5. The contention of the petitioner is that though 5 witnesses have been projected as witnesses to the occurrence, PW.3-son of the deceased Muthusamy, P.W.4-Son-in-law of the deceased and P.W.5 another Son-in-law of the deceased admit that they came to the scene of occurrence after they were informed about the accident. Now the only available witnesses are P.W.1 and P.W.2. P.W.1 admits that only after hearing the noise, he had seen the accident. P.W.1 confirms that he and P.W.2 were talking with each other on the northern side of the road. At that time, they heard a noise and thereafter, both P.W.1 and



P.W.2 gone to the accident spot. Further they confirmed that the accident spot is 500 meters away from the place where they were standing. The trial Court disbelieved the same for the reason that P.W.1 and P.W.2 were examined in chief on 12.02.2015 and they were cross examined six months thereafter. Hence, their evidence in the cross examination was not considered. The evidence cannot be brush aside without reasons, unless the witnesses are treated as hostile witnesses and confront them with previous statement. The evidence in the cross examination cannot be discarded, as per the Evidence Act. The evidence includes both chief and cross. There is not even an remote suggestion to PW1 and PW2 that they were won over.

5.1. Apart from that, the trial Court failed to look into the fact that Ex.P6-observation Mahazar and Ex.P7-rough sketch both prepared in the presence of P.W.9 and P.W.10. Both the witnesses admit that they had signed in the blank paper and they are not aware its content and what is written in it. Further, Ex.P7-rough skech marked through the investigation officer P.W.11. In view of the same, it may not be conclusively held that observation mahazar, rough sketch are proved in the manner known to law. The trial Court placing heavy reliance on Ex.P7-rough sketch is not proper. Further, the trial Court is not clear with regard to the directions in which the vehicles proceeded and where P.W.1 and P.W.2 were standing. From the rough sketch it is clear that the victim Muthusamy had crossed the by-pass road without taking precautions before crossing. The Motor Vehicle Inspector/P.W.6 confirmed that driving license and the documents to the TVS-50 not produced. Further, P.W.1 and P.W.2 not stated that the petitioner had driven the car in a rash and negligent manner. It is admitted that it is a Salem-Cuddalore by-pass road and the deceased was crossing the road in the said by-pass. Normally in the by-pass road there are two lanes on each direction. The vehicles can ply any of the lanes according to the road condition and requirement, Lower Appellate Court finding that the petitioner ought to have travelled only on the left edge of the road, is not proper. It is not the case that the petitioner crossed the center median and dashed against the TVS-50 on the wrong side, on the other hand TVS-50 had cut across the Bye pass road.

5.2. Further from the Motor Vehicle report/Ex.P3 of Innova car, it is seen that there is a damage to the wind screen glass, front bonnet and radiator, which would go to show that the petitioner had taken all precautions and applied the brake on the sudden crossing of the deceased by TVS-50, sudden application of brake caused the wind screen glass crack.



Likewise, the damage is only to the bonnet and radiator, had the car been driven in a rash and negligent manner with high speed, the damage to the vehicle would be much more. In Ex.P2-the Motor Vehicle report for the two wheeler, it is seen that there is a damage in rear wheel mud guard and rear brake light. The other damages in handle bar, right side pedal and head light are due to the fall of the vehicle. Thus the deceased had contributed to the accident by suddenly crossing the by-pass road without following the rules and had been the cause for the accident. Since the rider of the TVS-50 died, and it is a light vehicle compared to the Innova car. The petitioner is falsely implicated for the purpose of accident claim. The Lower Appellate Court placing reliance on P.W.1, P.W.11 and Ex.P7-rough sketch, is not proper. The Lower Appellate Court failed to independently consider the evidence and materials, mechanically dismissed the appeal.

6. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of this Court in Criminal Revision No.190 of 2007 for the proposition that rough sketch regarding the scene of occurrence cannot be taken as substantial proof as to the rash and negligent driving. Further relying in the case of V. Manju Vs. State, rep. by Sub-Inspector of Police, Mehendramangalam Police Station, Dharmapuri District reported in 2011 (3) MWN (Cr.) 110 for the proposition that where an essential ingredient of the offence is rash and negligence, it is for the prosecution to establish that the negligence must be culpable or gross and not merely based upon an error of judgment. He further relied upon the judgment of the Hon'ble Apex Court in Syad Akbar Vs. State of Karnataka reported in (1980) 1 SCC 30 for the proposition that in a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution, as every man is presumed to be innocent. Further for liability under the criminal Law "a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied, 'reckless' most nearly covers the case". In the case of Ambalal D. Bhatt Vs. The State of Gujarat reported in (1972) 3 SCC 525 for the proposition that in a prosecution for an offence under Section 304A, the mere fact that an accused contravenes certain rules or regulations in the doing of an act which causes death of another, does not establish that the death was the result of a rash or negligent act. Further, relied on the case of Sushil Ansal and Others Vs. State through CBI and Others reported in (2014) 6 SCC 173 for the doctrine of Causa-Causans, wherein it is clearly held that the accident and death must have been the causa-causans, it is



not enough that it may have been the causa sine qua non. Further, in the case of Mohammed Aynuddin Vs. State of Andhra Pradesh reported in (2000) 7 SCC 72, it has been held that it is a wrong proposition that for any motor accident negligence of the driver should be presumed. Further in the case of Vijayendran Vs. State reported in MANU/TN/2939/2016, for the proposition that merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. Further relied upon the case of Balamurugan Vs. State reported in 2013 (3) Crimes 624 (Mad.) for the proposition that an adverse interference against the prosecution to be drawn for non examination or withholding of witnesses.

7. Without prejudice to his submissions, the petitioner had voluntarily come forward and paid a sum of Rs.75,000/- to each legal heirs of the deceased Muthusamy in the above case as mentioned below:

Demand Draft dated 17.03.2022 drawn on HDFC Bank in favour of:

- i) Kolinchi T - D.D.No.012191 - Rs.75,000/-
- ii) R Vasantha - D.D.No.012192 - Rs.75,000/-
- iii) M Nadanasabapathi - D.D.No.012193 - Rs.75,000/-
- iv) Poomathi A - D.D.No.012194 - Rs.75,000/-
- v) Selvam M - D.D.No.012195 - Rs.75,000/-
- vi) Sarasu Muthusami - D.D.No.012196 - Rs.75,000/-

The proof of the same is also filed.

8. The learned Additional Public Prosecutor submitted that on the complaint/Ex.P1 of P.W.1, P.W.8/The Sub Inspector of Police registered the F.I.R/Ex.P5 in Crime No.1016 of 2014 under Sections 279, 304(A) of I.P.C. Thereafter, he had proceeded to the scene of occurrence, prepared a observation mahazar and rough sketch, examined the witnesses in the scene of occurrence. In this case, P.W.1 and P.W.2 are the eye witnesses, who have seen the occurrence on that day. Both P.W.1 and P.W.2 were standing on the northern side of the road, talking to each other. At that time, they have seen the deceased Muthusamy crossing the main road in his TVS-50 moped. They have also seen the Innova Car driven by the petitioner coming from West to East direction in a high speed and dashed against the deceased Muthusamy, thereby, he was thrown away from the vehicle and died on the accident spot. P.W.3 to P.W.5, who are the son and sons-in-law coming to know about the accident, took the victim to the hospital. P.W.6 is the Motor Vehicles Inspector, who examined both the vehicles TVS-50 and Innova Car and given a report



stating that the accident was not due to any mechanical defect. The said reports were marked as Exs.P2 and P3. P.W.7/Doctor conducted post-mortem and issued post-mortem report/Ex.P4 confirming that the death was due to the injury sustained in the accident. P.W.9 and P.W.10 are the witnesses to the observation mahazar/Ex.P6 and rough sketch/Ex.P7. P.W.11 is the investigating officer, who took up investigation from P.W.8 thereafter, examined the witnesses, collected the documents and filed a charge sheet in this case. The trial Court after perusal of the evidence and materials produced, had analysed all the materials and rightly convicted the petitioner by a detailed judgment. The Lower Appellate Court confirmed the conviction of the petitioner. Both the Courts below had given concurrent finding and there is no reason for this Court to interfere with the finding of the Courts below. Further, in support of his contention, the learned Additional Public Prosecutor relied upon the decision of the Hon'ble Apex Court in the case of Amit Kapoor Vs. Ramesh Chander and another reported in (2012) 9 SCC 460, wherein, the Apex Court had held that the revisional jurisdiction of the higher Court is a very limited one and it cannot be exercised in a routine manner.

9. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent/Police and perused the materials available on record.

10. Considering the submissions and on perusal of the material, it is seen that in this case, P.W.1 and P.W.2 are the only eye witnesses to the occurrence. P.W.3 to P.W.5 are son and sons-in-law of the deceased Muthusamy, who all admit that they came to the accident spot after hearing the news. P.W.6 is the Motor Vehicle Inspector, who examined both the TVS-50 of the deceased and the Innova car of the petitioner/accused, gave his report/Exs.P2 and P3, it is seen that the TVS-50 Moped damaged on the rear side wheel mud guard, rear side brake light. The other damages to the handle bar, right side pedal and head light are due to the fall of the vehicle. Likewise the damages to the car is on the front bonnet, radiator and the crack to the wind screen. From the perusal of Ex.P7/rough sketch, it is seen that it is the Salem to Cuddalore main road Attur by-pass near Mullaivadi Uppudai Sandhanagiri division. The accident had taken place in an intersection, wherein the deceased had attempted to cut, across the by-pass road in his TVS-50 Moped and was proceeding from North to South. The Innova car was coming from West to East in the by-pass road. The accident spot



is beyond the middle of the road. Ex.P7 has been marked through the investigating officer P.W.11, it is not prepared in the presence of any independent witness. P.W.9 and P.W.10 are the witnesses for observation mahazar. They confirm that they signed in the blank paper and they are not aware of its content and writing in the observation mahazar. Thus, Exs.P6 and P7 had not proved in the manner known to law. Added to it, P.W.11, the investigating officer admit that initially the case was registered by P.W.8 thereafter he had visited the scene of occurrence, prepared observation mahazar, rough sketch, examined the witnesses and sent the body for post-mortem and thereafter he had gone on special duty, on the instructions of the superior officer and it was P.W.8, who had further continued the investigation and later filed charge sheet. P.W.1 and P.W.2, the eye witnesses have categorically state in this case that after hearing the noise they had gone to the accident spot. P.W.1 even in the chief examination confirms the same. Further admit that both P.W.1 and P.W.2 were 500 meters away from the accident spot. It is also admitted by P.W.1 and P.W.2 that they were talking with each other, at that time the accident had taken place. Both have not stated anything about the Innova car driven in rash and negligent manner. Admittedly, the accident took place in the middle of the by-pass road. The vehicles plying by pass road are expected to move freely at reasonable speed. The fact that the deceased Muthusamy crossed the by-pass road, is not denied. The only reason given by the Courts below is that the car ought to have gone on the left extreme of the road and no explanation is given for what reason the accident had taken place in the right and middle of the road.

11. In view of Exs.P6 and P7 not being proved in the manner known to law and no witnesses had stated that the car had been driven beyond the middle of the road and dashed against the TVS-50 on the wrong side. PW1 and PW2, the only eye witnesses, admit they had heard the noise thereafter gone to the accident spot. Both PW1 and PW2, not stated anything about rash and negligence of Innova Car. The trial Court on its own had substituted and come to conclusion that the petitioner had driven the car in a rash and negligent manner and thereby caused the accident, which is contrary to the evidence and material available on record. It is for the prosecution to prove the case beyond all reasonable doubt, that the petitioner had committed the offence as stated above. The Apex Court as well as this Court, time and again had reiterated this principle, further on the facts and circumstances of the case, it cannot be said that the petitioner had driven the vehicle in a rash and negligent manner and caused the accident. On the contrary, it is seen that the deceased had



crossed the main road without following the rules and regulations and contributed to the accident and is the reason for the accident. In view of the same, this Court is inclined to set aside the conviction and sentence passed by the trial Court.

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12. In the result, this Criminal Revision Case is allowed. The judgment of conviction and sentence passed by the learned III Additional Sessions Judge, Salem in CrI.A.No.21 of 2017 dated 30.06.2017, confirming the order of conviction passed by the learned Judicial Magistrate No.I, Attur in C.C.No.43 of 2015 dated 01.02.2017 are set aside and the revision petitioner is acquitted of the charges under Sections 279 and 304(A) of I.P.C.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

rsi
To

- 1.The Judicial Magistrate No.I,
Attur.
- 2.-Do- Thro The Chief Judicial Magistrate,
Salem.
- 3.The III Additional Sessions Judge,
Salem.
- 4.The Inspector of Police,
Attur Police Station,
Salem District.
- 5.The Public Prosecutor,
High Court, Madras.

CrI.R.C.No.1495 of 2017

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