



Bail Slip

The Petitioner/Accused viz Mahendran S/o. Chinnaya Gounder, was released on bail as per order of this Court dated 24.02.2017 in CrI.M.P. No. 2034/2017 in CrI.R.C.No.183/2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.183 of 2017

Mahendran

...Petitioner/Appellant/Accused

Vs.

State represented by,
Inspector of Police,
Kadathur Police Station,
Erode District.
(Cr.No.134/2010).

...Respondent/Respondent/Complainant

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the judgment and convicted dated 22.8.2016 and made in C.A.No.32/2016 on the file of III Additional District and Sessions Judge, Gobichettipalayam, partly modifying the judgment and conviction dated 11.1.2016 and made in C.C.No.132/2010 on the file of Judicial Magistrate No.2, Gobichettipalayam.

For Petitioner : Mr.R.T.Doraisamy

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner was convicted and sentenced by the learned Judicial Magistrate No.II, Gobichettipalayam/trial Court in C.C.No.132 of 2010, dated 11.01.2016, for offence under Section 279 IPC to pay a fine of Rs.500/-, in default to undergo one week Simple Imprisonment; for offence under Section 337 IPC, the petitioner to pay a fine of Rs.500/-, in default to undergo one



week Simple Imprisonment; for offence under Section 304(A) IPC, the petitioner to undergo six months Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one week Simple Imprisonment; for offence under Section 3 r/w 181 of the Motor Vehicles Act, the petitioner to pay a fine of Rs.300/-, in default to undergo one week Simple Imprisonment. As against the judgment of conviction and sentence of the trial Court, the petitioner preferred an appeal before the learned III Additional District and Sessions Judge, Gobichettipalayam/lower appellate Court. The learned III Additional District and Sessions Judge, Gobichettipalayam, by judgment, dated 22.08.2016 in C.A.No.32 of 2016 modified the sentence of the trial Court in so far as the offence under Section 304(A) IPC that the petitioner to undergo three months Rigorous Imprisonment instead of five months and to pay a fine of Rs.5,000/-, in default to undergo one month Simple Imprisonment and confirmed rest of the conviction and sentence, against which the petitioner is before this Court.

2.The case of the prosecution is that on 29.04.2010, at about 10.20 p.m., near the house of PW2, the petitioner has driven the tractor bearing registration No.TN 37 AD 2641 in rash and negligent manner and dashed against the two wheeler of the deceased bearing registration No.TN 38 B 4097. Due to the accident, the deceased Vijayakumar, who is the rider of the bike sustained head injury and later, died. PW1, who is the pillion in the bike driven by the deceased, sustained simple injury. Hence, a complaint was lodged by PW1 to the respondent Police, which was registered in FIR in Crime No.134 of 2010, for offence under Sections 279, 337 & 304(A) IPC and Section 3 r/w 181 of the Motor Vehicles Act. On completion of investigation, the charge sheet was filed before the trial Court and it was taken on file as C.C.No.132 of 2010. On completion of trial, the petitioner was convicted and sentenced as stated above.

3.During trial, on the side of the prosecution 16 witnesses were examined and 11 documents were marked. On the side of the defence, no witness and no document was marked.

4.The learned counsel for the petitioner submitted that the case of the prosecution is not supported by the evidence and witnesses collected during investigation. The deceased Vijayakumar is the brother of PW1. PW1 is said to be a pillion rider. It was her brother (deceased), who has driven the motor cycle in a rash and negligent manner and dashed against the tractor of the petitioner. It is the admitted case that the Motor Vehicle Inspector/PW9 during inspection of the petitioner's tractor, found damage in rear side and not on the



front side. He further submitted that the evidence of PW2 and PW3, who are said to be eye witnesses to the scene of occurrence, are contrary to the evidence of PW1. The other witnesses in this case are relatives of the deceased and PW1, Doctors/PW13, PW15, Motor Vehicle Inspector/PW9 and the Investigating Officer/PW16. According to the evidence of the Motor Vehicle Inspector/PW9, it is confirmed that there was damage in rear side of the petitioner's tractor and not on the front side as projected by the prosecution. These facts have not been properly appreciated by the trial Court as well as the lower appellate Court. Hence, he prayed for setting aside the judgments of the Courts below.

5. On the contrary, the learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, the presence of the injured witness PW1 is not in dispute. PW1 was pillion rider (deceased) of the motor bike bearing registration No. TN 37 AD 2641. In the cross examination of PW1, nowhere it is seen that the points now raised by the petitioner are put forth to the witnesses. In the chief examination, some of the witnesses stated that since the accident had taken place during night hours, it could not be witnessed. PW1 in her evidence has stated that at about 10.20 p.m., on the fateful day, when she was riding along with her brother/deceased in two wheeler near Sundakkampalayam Junction from east to west direction, the tractor driven by the petitioner came in a rash and negligent manner on the opposite side and dashed against the two wheeler on the right side. Due to which, PW1's brother sustained head injury and died on the spot. The accident took place near the house of one Sarasu/PW2.

6. He further submitted that in this case, PW1 was treated by PW15 Doctor. In the Accident Register (Ex.P9) the injuries sustained by PW1 recorded. Further, the evidence of PW1 is in conformity to the evidence of PW15 and other witnesses. At the time of occurrence, the petitioner was not a license holder to drive the tractor. Hence, the Courts below rightly convicted the petitioner and prayed for dismissal of the revision.

7. This Court considered the rival submissions and perused the materials available on record.

8. During trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined, 11 documents were marked.



9. On reading the evidence of PW1, it is seen that the petitioner has driven the tractor bearing registration No. TN 37 AD 2641 in a rash and negligent manner and dashed against the right side of the deceased two wheeler. Due to the incident, the deceased sustained grievous injury and PW1 sustained simple injury. The Doctors (PW13 & PW15) who gave treatment to the deceased and PW1 have stated about the injuries sustained by them and issued Accident Registers (Exs. P5 & P9), which is in conformity to the evidence of PW1.

10. Thus, the Lower Appellate Court, being a fact finding Court has correctly re-appreciated the entire evidence and materials and confirmed the judgment of the trial Court.

11. It is well settled that the scope of the criminal revision is very limited, unless there is any illegality or any perversity in the appreciation of evidence by the Courts below.

12. On reading of the entire materials, this Court does not find any illegality or perversity or infirmity in the judgment of the trial Court and the lower appellate Court and the same are, hereby, confirmed.

13. In the light of the above discussion, the criminal revision is not sustainable and, is liable to be dismissed and accordingly, dismissed.

s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

vv2

To

1. The III Additional District and Sessions Judge
Gobichettipalayam.

2. The Judicial Magistrate Court No. II,
Gobichettipalayam.

3. The Chief Judicial Magistrate
Erode (for information)



4.The Inspector of Police,
Kadathur Police Station,
Erode District.

5. The Superintendent, Central Prison
Central Jail, Coimbatore.

6.The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer
Criminal Section
High Court, Madras 104.

Cr1.R.C.No.183 of 2017

KG(CO)
SP(28/03/2022)