



Bail Slip

The Petitioner/Accused namely M.Sridhar S/O. Muthuraman, was released on bail by the order of this Court dated 22/03/2017 was made in Crl.R.C.No.255/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 25.02.2022	Orders Pronounced On 08.03.2022
----------------------------------	------------------------------------

Crl.R.C.No.255 of 2017

M.Sridhar

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
Kodavasal Police Station,
[Crime No.276 of 2014]

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed in Crl.Appeal No.12 of 2016 dated 16.12.2016 on the file of the District and Sessions Court, Thiruvarur by confirming the order of conviction dated 09/08/2016 passed in C.C.No.316 of 2014 on the file of the Judicial Magistrate Court, Thiruvarur.

For Petitioner : Mr.K.M.Subramaniam

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner/accused in C.C.No.316 of 2014 was convicted by the learned Judicial Magistrate, Thiruvarur, by judgment dated 09.08.2016 for the offence under Section 304(A) of IPC,



sentencing him to undergo one year Simple Imprisonment and imposed a fine of Rs.1,000/-, in default to undergo two weeks Simple Imprisonment. The learned District Sessions Judge, Thiruvavur, by judgment dated 16.12.2016 dismissed the appeal filed by the petitioner/accused by confirming the conviction and sentence imposed by the Trial Court. Against which, the present revision petition is filed.

2.The respondent examined P.W.1 to P.W.13 and marked Ex.P1 to Ex.P8 during the trial. On the side of the defence, no witness was examined and no documents were marked.

3.The gist of the case is that on 26.07.2014, at about 8.45 a.m., the deceased Subbiah, father of P.W.1, riding in a two wheeler, viz., TVS Super Excel bearing registration No.TN 49 U 1518 was proceeding in the west to east direction in Pudukudi road. At that time, a vehicle, namely, TATA Magic Maxi Cab bearing registration No.TN 51 AA 5005 came from east to west direction dashed against the said Subbiah, who got injured. Thereafter, P.W.1 and P.W.2 took him to Government Hospital, Thiruvavur and he was referred for further treatment at Government Hospital, Thanjavur where he succumbed to the injuries. On 26.07.2014, P.W.12 received information from the Hospital, he reached hospital where the said Subbiah was in an unconscious state, hence statement was recorded from P.W.1 and complaint/Ex.P1 was received. Based on the complaint/Ex.P1, FIR was registered in Crime No.276 of 2014 for the offence under Sections 279 and 337 of IPC. Thereafter, P.W.12 visited the scene of occurrence, examined the witnesses present in the scene of occurrence, prepared observation mahazar and rough sketch. On 28.07.2014, P.W.12 received the information about the death of the said Subbiah and thereafter alteration report was filed. P.W.13 took up the further investigation, examined the witnesses, conducted inquest and sent the body for postmortem. In the meanwhile, on 30.07.2014, the accused appeared before the Police Station and surrendered. He was arrested and produced before the learned Magistrate and on completion of investigation, charge sheet was filed in this case. The Trial Court, on examination of the witnesses and documents found the petitioner guilty, convicted him and the Lower Appellate Court confirmed the conviction as stated above.

4.The contention of the learned counsel for the petitioner is that the alleged occurrence is said to have taken place on 26.07.2014 at 8.45 a.m., complaint/Ex.P1 was lodged at about 10.00 p.m. with considerable delay, for which no reason given. He further submits that in the complaint the petitioner was not



a named accused and there is no explanation as to how the petitioner was identified. Further, the FIR in this case reached the Court belatedly. P.W.1, P.W.2 and P.W.6 are projected as eye witnesses in this case, P.W.1 is the daughter of the deceased, P.W.2 is the daughter-in-law of the deceased and P.W.6 is a neighbour who are all closely related and known to the deceased. He further submits that P.W.1 and P.W.2 admits that after hearing the noise, they rushed to the accident spot, P.W.6 admits that after hearing the noise he saw the accident and hence, all the three witnesses are not witnesses to the occurrence proper. P.W.9, Motor Vehicle Inspector inspected the TATA Magic Maxi Cab vehicle bearing registration No.TN 51 AA 5005 on 28.07.2014, which is two days after the accident and there is no explanation as to what happened in between, likewise, TVS Excel Super bearing registration No.TN 49 U 1518 was produced for inspection only on 07.08.2014. In the motor vehicle reports, namely, Ex.P4 and Ex.P5, it is stated that the accident was not due to any mechanical defect. Further, P.W.9 admits that the driving license, permit, insurance for TATA Magic Maxi Cab was produced and with regard to vehicle rode by the deceased, license, registration certificate and insurance not produced. Admittedly, the deceased was of the age 76 years and he did not have any driving license. He further submits that in the observation mahazar and rough sketch, it is recorded that the accident took place near the centre division of the road and there is no reason as to why the TVS Excel Super, proceeded in the middle of the road, no investigation conducted in this regard. It is the case of the petitioner that the rider of TVS Excel Super suddenly attempted to take a turn from the middle of the road and he is the cause for the accident. He further submitted that none of the witnesses have stated that the petitioner driven the vehicle in a rash and negligent manner. From the rough sketch, it is seen that the house of P.W.1 is situated far away from the place of occurrence and no person near the scene of occurrence were examined as witness in this case. These vital facts were not considered by the Courts below. He further submitted that the Trial Court gave its own explanation that since the petitioner had not made any objections for he being arrayed as accused. Further submitted the ownership of the vehicle will not automatically make a person liable to be prosecuted and for the purpose of availing accident claim, the petitioner was falsely implicated in this case.

5.The learned Additional Public Prosecutor submitted that based on the complaint of P.W.1, a case was registered, P.W.1 along with P.W.2 took the victim to the hospital, P.W.6



confirms that he saw P.W.1 and P.W.2 near the accident spot, he fetched auto and sent the injured along with them to the hospital. Thereafter, P.W.1 and P.W.2 were in the hospital providing medical care to the injured and further, the injured was referred for further treatment to the Government Hospital, Thanjavur where P.W.1 and P.W.2 accompanied the injured. P.W.12 confirms that he received accident information from the Government Hospital, Thanjavur, thereafter he went to the hospital, hence, the delay in giving the complaint is given. P.W.12 on receipt of the complaint visited the scene of occurrence, examined the witnesses, prepared observation mahazar/Ex.P2, rough sketch/Ex.P7 in the presence of P.W.7 and P.W.10, after the death of the victim, alteration report/Ex.P8 was prepared, thereafter inquest conducted and request for postmortem was made, P.W.8 conducted the postmortem and issued Postmortem Certificate/Ex.P3. P.W.9 is the Motor Vehicle Inspector, who examined both the vehicles, namely, TATA Magic Maxi Cab and TVS Excel Super and gave Inspection report, Ex.P4 and Ex.P5, with reason that the accident was not due to any mechanical defect. He further submitted that P.W.1 and P.W.2 are the eye witnesses who confirmed that the accident occurred due to the rash and negligence of the petitioner. Further, the Trial Court on analysing the evidence and materials produced convicted the petitioner, the Lower Appellate Court confirmed the same. Hence, he sought for dismissal of this revision petition.

6.Considering the submissions made and on perusal of the materials, it is seen that P.W.1, P.W.2 and P.W.6 are the projected eye witnesses to the accident. P.W.1 is the daughter of the deceased, P.W.2 is the daughter-in-law of the deceased, P.W.6 is the neighbour and their presence were spoken by each of them. P.W.1 admits that it was the Police who identified the petitioner as the driver, P.W.2 and P.W.6 did not state anything about the petitioner driving the TATA Magic Maxi Cab the other witnesses, namely, P.W.3, P.W.4 and P.W.5 are all in the nature of hearsay witnesses. The Trial Court giving its own reason that the petitioner not made any objection when he was arrayed as accused cannot be countenanced. It is for the prosecution to prove that the petitioner was the Driver of the vehicle during the accident. P.W.9, the Motor Vehicle Inspector confirms that the deceased had no driving license and the TVS Excel Super vehicle was without any documents. Further from the rough sketch/Ex.P7, it is seen that the accident took place near the middle of the road, no reason given as to why TVS Excel Super was in the middle of the road and the accident occurred in the middle of the road, i.e. TVS Excel Super was proceeding from



west to east direction and the TATA Magic Maxi Cab was coming from east to west direction. From the Motor Vehicle report in respect to TVS Excel Super, viz., Ex.P5, it is seen that front wheel and fork got bent and damaged, this damage probably due to the sudden turn attempted by the deceased. Had it been head on collision, the damage to the TVS Excel Super vehicle could have been more severe. The windshield of TATA Magic Maxi Cab was broken as could be seen from Motor Vehicle Report/Ex.P4, this could be due to sudden application of break and there is no damage to the vehicle. Thus, there is no evidence to show that the petitioner was the driver of the vehicle on the date of occurrence and petitioner driven the vehicle in a rash and negligent manner. The deceased was an elderly person, aged about 76 years, without license came to the middle of the road and took a sudden turn, to avoid the same the petitioner applied sudden break, collision occurred, the deceased is the reason for the accident. Further, the prosecution miserably failed to prove beyond all reasonable doubt that the petitioner caused the accident due to his rash and negligent driving.

7. In view of the above, this Court is inclined to set aside the order passed in Crl.Appeal No.12 of 2016 dated 16.12.2016 by the District and Sessions Court, Thiruvarur, confirming the order of conviction passed in C.C.No.316 of 2014 dated 09.08.2016 by the Judicial Magistrate Court, Thiruvarur and the same is hereby set aside. Accordingly, the criminal revision petition is allowed. The petitioner/accused is hereby acquitted from all charges.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

cse
To

1. The District and Sessions Judge,
Thiruvarur.
2. The Judicial Magistrate Court,
Thiruvarur.



3.The Chief Judicial Magistrate,
Thiruvarur.(For Information)

4.The Inspector of Police,
Kodavasal Police Station.

5.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.K.M. Subrahmaniam, Advocate Sr.15185

Cr1.R.C.No.255 of 2017

jp-II[col
srg 18/03/2022