



Bail Slip

The Appellant herein/Accused namely K.Vaithiyanathan S/o.SriKulla Udayar (in C.C.No.235 of 2007 on the file of Judicial Magistrate No.I, Attur) was directed to be released on bail by order of this court dated 26.04.2017 and made in CrI.MP.No.6068 of 2017 in CrI.RC.No.657 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2022
PRONOUNCED ON : 19.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.657 of 2017

K.Vaithiyanathan ... Petitioner/Accused

Vs.

State Rep. by the Sub Inspector of Police,
Attur Police Station, Attur (Cr.No.7/2007).

... Respondent/Complainant

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in respect of the judgment dated 25.01.2017 passed by the learned II Additional District and Sessions Judge, Salem in C.A.No.70 of 2016 confirming the conviction and the sentence passed by the learned Judicial Magistrate No.I, Attur in C.C.No.235/2007 on 09.05.2016, to set-aside the conviction and sentence imposed on the petitioner herein, to acquit him.

For Petitioner : Mr.C.S.Dhanasekaran
For Respondent : Mr.R.Kishore Kumar,
Government Advocate (CrI. Side)

ORDER

The petitioner was convicted by the learned Judicial Magistrate No.I, Attur (trial Court), vide judgment, dated 09.05.2016 in C.C.No.235 of 2007 and sentenced to undergo one month Rigorous Imprisonment and to pay a fine of Rs.250/-, in



default to undergo one month Simple Imprisonment for offence under Section 279 IPC and also sentenced to undergo two months Rigorous Imprisonment and to pay a fine of Rs.1,500/-, in default to undergo one month Simple Imprisonment for offence under Section 338 of IPC (2 counts) and further, he was sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment for offence under Section 304(A) IPC. As against the judgment of the trial Court, an appeal was preferred by the petitioner before the learned II Additional District Judge, Salem (lower appellate Court) in C.A.No.70 of 2016. The lower appellate Court, by judgment, dated 25.01.2017 dismissed the appeal confirming the judgment of the trial Court, against which the present Criminal Revision Case.

2.The gist of the case is that on 06.01.2007, at about 11.30 a.m., the petitioner drove his Trax Jeep bearing registration No.TN 27 U 4677 in a rash and negligent manner in Attur to Cuddalore main road, near Elumalaian Engineering Works from east to west direction and hit Manikandan (PW12) and Vignesh (deceased), who were walking at the edge on the road and thereafter, dashed against the two wheeler viz., TVS Suzuki bearing registration No.TN 27 U 5832 of Senthil @ Kalaiselvam (PW11), son of the defacto complainant (PW1). Due to which, Vignesh (deceased), PW11 and PW12 sustained injuries and they were taken to the Government Hospital, Attur. After treatment, PW11 and PW12 survived, Vignesh (deceased) succumbed to injuries. On getting information, the respondent Police rushed to the Government Hospital, Attur and received the complaint (Ex.P1) from PW1. Thereafter, FIR in Crime No.7 of 2007 (Ex.P8) was registered by PW15 and the same was placed before Thangavel, Inspector, who immediately visited the scene of occurrence, prepared Observation Mahazar (Ex.P9), Rough Sketch (Ex.P10), examined the witnesses present in the scene of occurrence, conducted inquest on the body of the deceased and sent the same for postmortem, examined the injured witnesses (PW11 & PW12), examined the Doctors (PW14, PW16 & PW17), recorded their statements, collected medical records (Exs.P6, P11 to P14), produced both the Trax Jeep and TVS Suzuki before the Motor Vehicle Inspector (PW13) for inspection, received the Motor Vehicle Inspector reports (Exs.P4 & P5) and filed the charge sheet before the trial Court.

3.During trial, on the side of the prosecution, 17 witnesses were examined as PW1 to PW17 and 14 documents were marked as Exs.P1 to P14. On the side of the defence, no witness was examined and no document was marked. The trial Court, on



conclusion of trial, convicted and sentenced the petitioner, vide judgment, dated 09.05.2016 in C.C.No.235 of 2007 as stated above. As against the judgment of the trial Court, appeal was preferred by the petitioner before the lower appellate Court in C.A.No.70 of 2016. The lower appellate Court, by judgment, dated 25.01.2017 dismissed the appeal confirming the judgment of the trial Court.

4.The learned counsel for the petitioner submitted that the impugned judgments suffers from infirmity since it does not follow the mandatory procedures as per Sections 385 and 386 of IPC. He further submitted that the ingredients of offence under Sections 279, 337 and 304(A) of IPC are not proved with the available evidence and materials. The Courts below ought to have acquitted the petitioner, since none of the witnesses deposed that the petitioner drove the Trax Jeep in rash and negligent manner and caused the accident. The Courts below ought not to have convicted the petitioner on the basis of Observation Mahazar (Ex.P9) and Rough Sketch (Ex.P10) for the reason that both witnesses (PW8 & PW10) to the Observation Mahazar (Ex.P9) except for identifying their signature, they have not stated about the drawing of Observation Mahazar (Ex.P9) and Rough Sketch (Ex.P10) and its contents. In this case, the Rough Sketch (Ex.P10) was prepared by Thangavel, Inspector, who died during trial. Hence, the Rough Sketch (Ex.P10) was marked through PW15, the Sub Inspector of Police who deposed on behalf of Thangavel, Investigating Officer. In such circumstances, the Observation Mahazar (Ex.P9) and Rough Sketch (Ex.P10) are not proved in the manner known to law, which is fatal to the case of the prosecution.

5.He further submitted that in this case, during cross examination, PW1 admitted that he did not see the accident on 06.01.2007, only after hearing the noise, he came out from his Oil Shop and saw the accident. Likewise, PW2 to PW7, who are all family members and known persons to Vignesh (deceased), admitted that they have come to the scene of occurrence after the accident. In this case, PW5 to PW10 turned hostile during trial. PW11, the son of the defacto complainant (PW1) is the injured witness, he stated that he did not know the registration number of the Trax Jeep and not identified the driver of Trax Jeeps. PW12, who was walking along with Vignesh (deceased), does not state about the petitioner driven the Trax Jeep in rash and negligent manner. It could be seen that PW12 and Vignesh (deceased) were walking inside the road and not on the mud path. Since they suddenly crossed the road, the accident had occurred and the petitioner had never driven Trax Jeep in rash and



negligent manner. PW13 is the Motor Vehicle Inspector, who conducted inspection on the Trax Jeep of the petitioner and the two wheeler TVS Suzuki of PW11 and issued Motor Vehicle Inspection Reports (Exs.P4 & P5). PW14 is the Doctor who treated PW12 and issued the Wound Certificate (Ex.P6) also conducted postmortem on the body of the deceased and issued postmortem report (Ex.P7). PW16 is the another Doctor, who took X-Ray for injuries sustained by PW12 and issued X-Ray reports (Exs.P12 & P13). PW17 is the another Doctor, who treated PW11 and issued the Wound Certificate (Ex.P14).

6.The learned counsel further submitted that in this case, none of the witnesses have spoken that the petitioner had driven his car Trax Jeep in a rash and negligent manner and committed the accident and none of the witnesses have identified the petitioner. The trial Court convicting the petitioner solely relying upon the Observation Mahazar and Rough Sketch (Exs.P9 & P10) and on the evidence of PW12, is not proper. The lower appellate Court goes one step further and applied the principle of res-ipsa loquitor, is not proper and the said principle is not applicable to the facts and circumstances of the case. Hence, the judgments of the Courts below needs interference of this Court.

7.In support of his submissions, the learned counsel for the petitioner relied on the following decisions:-

(i)"Syad Akbar Versus State of Karnataka reported in (1980) 1 Supreme Court Cases 30", wherein the Hon'ble Apex Court had held that 'the maxim can be used only as a convenient ratiocinative aid in assessment of evidence, in drawing permissive inferences under Section 114 of the Evidence Act from the circumstances of the particular case.'

(ii)"Innasi Muthu Versus State of Tamil Nadu reported in (1984) L.W (Crl.) 69" wherein this Court had held that the 'a person should have driven a motor vehicle in a rash and negligent manner merely because there was an accident, and whether a person is guilty of rash and negligent driving or not, is a question of fact and Section 304-A IPC is no exception to the Criminal Jurisprudence'.

(iii)"Jacob Mathew Versus State of Punjab and another reported in (2005) 6 Supreme Court Cases 1", wherein it had held that 'the expression of 'rash and negligence act' as occurring in Section 304-A IPC has to be read as qualified by the word "grossly". To impose criminal liability under Section 304-A, the penal code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused.'



8. On the contrary, the learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that in this case, the defacto complainant (PW1) is the nearby shop vendor, who witnessed the accident committed by the petitioner while driving his vehicle viz., Trax Jeep bearing registration No.TN 27 U 4677. PW1 clearly stated about PW12 and Vignesh (deceased) walking on the road from west to east direction and his son PW11 was sitting in his two wheeler viz., TVS Suzuki bearing registration No.TN 27 U 5832 and starting the same. At that time, a Trax Jeep bearing registration No.TN 27 U 4677 came in the opposite direction in a rash and negligent manner from the east to west direction, dashed against Vignesh (deceased), PW12 and also PW11. Due to which, all the three got injured and they were taken to the Government Hospital, Attur. After taking treatment, PW11 and PW12 survived, but Vignesh (deceased) succumbed to injuries. On getting information, PW15 reached the Government Hospital, Attur, recorded the statement of PW1 (Ex.P1), registered FIR (Ex.P8) and placed the same to his superior officer Thangavel, Inspector. On receipt of the same, Thangavel Inspector visited the scene of occurrence, prepared Observation Mahazar (Ex.P9), Rough Sketch (Ex.P10) in presence of PW8 and PW10, recorded the statements of the family members of Vignesh (deceased) and the witnesses present in the scene of occurrence, conducted inquest on the body of the deceased, sent the body for postmortem. PW14, the Doctor conducted postmortem and gave the postmortem report (Ex.P7) and issued Wound Certificate (Ex.P6) for PW12. PW16 is the another Doctor, who taken X-Ray for injuries sustained by PW12 and issued X-Ray reports (Exs.P12 & P13). PW17 is the another Doctor, who treated PW11 and issued the Wound Certificate (Ex.P14). Thereafter, the vehicles involved in the accident were sent to PW13, the Motor Vehicle Inspector. PW13 conducted inspection on the Trax Jeep of the petitioner and the two wheeler TVS Suzuki of PW11 and issued Motor Vehicle Inspection Reports (Exs.P4 & P5). Since Thangavel, Investigation Officer passed away, PW15 took up the further investigation in Crime No.7 of 2007, received the medical reports of Vignesh (deceased), PW11 and PW12 from the Doctors (PW14, PW16 & PW17) and also received the Motor Vehicle Inspection reports (Exs.P4 & P5) and filed the charge sheet before the trial Court.

9. He further submitted that in this case, PW11 and PW12 are injured witnesses, PW1 and PW9 are eye witnesses to the occurrence. PW1 initially supported the case of the prosecution, identified the accused as well as the vehicle involved in the accident, but during cross examination at



belated stage, he gave different version. PW11 stated that the accident occurred by a Trax Jeep driven by the petitioner. Likewise, PW12 confirmed the involvement of the Trax Jeep in the accident. In this case, the presence of PW11 and PW12 in the accident spot is not disputed and injuries sustained by them during accident, are corroborated by the Doctors (PW14, PW16 & PW17) and their reports (Exs.P6, P12 to P14). Having corroborative evidence and materials that the petitioner drove his Trax Jeep bearing registration No.TN 27 U 4677 in a rash and negligent manner and committed the accident, the trial Court convicted and sentenced the petitioner. The lower appellate Court independently assessing the evidence and materials, confirmed the judgment of trial Court. Hence, the judgments of Courts below needs no interference.

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

11.It is seen that in this case PW1 is the defacto complainant, whose son (PW11) and one Manikandan (PW12) sustained injuries and one Vignesh (deceased) died due to accident, which had taken place on 06.01.2007. The complaint of the defacto complainant (PW1) is a detailed one. Ex.P1 was received by PW15 when PW1 was in the hospital along with his injured son (PW11). In the complaint (Ex.P1), PW1 gave details about the manner in which the accident had occurred and furnished the registration numbers and name of two vehicles viz., Trax Jeep bearing registration No.TN 27 U 4677 and TVS Suzuki bearing registration No.TN 27 U 5832. The evidence of PW1 is in conformity to the complaint (Ex.P1) and he supported the case of the prosecution. PW1 identified the petitioner, who is the person driven the Trax Jeep and committed the accident on 06.01.2007. During cross examination of PW1, nothing could be made out by the accused, thereafter, he was again recalled for cross examination belatedly that too, after several months. By the time, he had been won over and he gave different version. Hence, the subsequent recall and cross examination of PW1 by the defence to be ignored.

12.PW11 is the one of the injured witness in this case. His presence is is recorded in the complaint (Ex.P1). PW11, in his evidence, categorically stated that the Trax Jeep hit PW12 and Vignesh (deceased), thereafter the two wheeler viz., TVS Suzuki of PW11, due to which, all the three sustained injuries and took treatment at Government Hospital, Attur. Since PW11 was unable to give the registration number of the Trax Jeep and failed to identify its driver, he was treated hostile. PW12,



another boy aged 12 years at the time of occurrence, clearly stated that 6 years prior, when he and Vignesh (deceased) were walking in the road near Elumalaian Engineer Shop, a Trax Jeep came in the opposite direction and hit them as well as PW11. All the three sustained injuries and took treatment at Government Hospital, Attur. PW12 confirmed that the accident had occurred due to rash and negligent driving of the petitioner. On getting information, PW15 rushed to the Government Hospital, Attur, received the complaint (Ex.P1) from PW1 and registered FIR (Ex.P8). The investigation was conducted without any delay by the respondent Police. In this case, the involvement of Trax Jeep and its driver are confirmed by PW1 in his evidence and the registration number of Trax Jeep is recorded in the complaint (Ex.P1).

13.Immediately after the occurrence, PW11, PW12 and Vignesh (deceased) were admitted in the Government Hospital, Attur and treatment was given to them, which was confirmed by the evidence of PW14, who issued Wound Certificate (Ex.P6) for PW12 and, PW16, who produced X-Ray copies (Exs.P12 & P13) for PW12 and, PW17, who issued Wound Certificate (Ex.P14) for PW11. The Wound Certificate (Ex.P6) is dated 06.01.2007. Likewise, the serial number of X-Ray (Exs.P12 & P13) is No.835, dated 06.01.2007. The medical certificates viz., the Wound Certificates (Exs.P6 & P14) of PW11 & PW12, X-Ray (Exs.P12 & P13) of PW12 and the postmortem certificate of Vignesh (deceased) (Ex.P7) are all contemporaneous documents. PW13, the Motor Vehicle Inspector gave his report Ex.P4 for two wheeler viz., TVS Suzuki and Ex.P5 for Trax Jeep stating that the accident was not due to mechanical defect of the said vehicles.

14.It is not the quantity of witnesses which matters but the quality of witnesses that matters. From the evidence of PW1, PW11 and PW12, the involvement of the petitioner in the accident on 06.01.2007 is proved. Due to the negligence of the petitioner, two young boys (PW11 & PW12) aged 12 years got injured and one Vignesh (deceased) aged about 12 years at the time of occurrence, vanished from the world. The Doctors (PW14, PW16 and PW17) confirmed the injuries sustained by PW11 and PW12 due to the accident. PW13, the Motor Vehicle Inspector examined the two vehicles and confirmed that the accident is not due to any mechanical defect. From the Rough Sketch (Ex.P10), it is seen that the accident had taken place in extreme margin of the road, the Trax Jeep proceeding from Attur to Cuddalore from east to west direction on the opposite side and caused the accident. The road is 22 feet, which is recorded in the Observation Mahazar (Ex.P9). From Ex.P9, it is proved that the Trax Jeep



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came in the opposite direction, treaded beyond the middle of the road and dashed against Vignesh (deceased), PW12 and thereafter, PW11. PW1 and the injured witnesses (PW11 & PW12) confirmed the same.

15.The citations relied on by the learned counsel for the petitioner are not applicable to the facts and circumstances of this case.

16.Thus, the trial Court recording the evidence and analyzing the materials, had rightly convicted the petitioner. The lower appellate Court on reappraisal of evidence and materials, had rightly confirmed the judgment of the trial Court. This Court does not find any illegality or infirmity in the judgments of the Courts below and the same are hereby confirmed. Accordingly, this Criminal Revision case is dismissed.

17.The respondent Police is directed to secure the petitioner for sufferance of remaining period of sentence.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District and Sessions Judge,
Salem.

2.The Judicial Magistrate No.I,
Attur.

3.The Sub Inspector of Police,
Attur Police Station,
Attur.

4.The Public Prosecutor,
High Court, Madras.



5.The Record Keeper
Criminal section
High Court, Madras-104

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Copy to:
The Section Officer
Criminal Section
High Court,
Madras-104.

+1 cc to Mr.C.S.Dhanasekaran Advocate sr26473

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