

Bail Slip

The Petitioner / Accused viz Mr.Balu, Aged 43 years, Male, S/o.Thirunavukkarasu was released on bail as per order of this Court dated 18.05.2017 in Crl.M.P.No.6549 of 2017 in Crl.R.C.No.683 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM :

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.683 of 2017

Balu,
S/o.Thirunavukkarasu.

... Petitioner

Versus

The State
Rep.by Inspector of Police,
Tindivanam Police Station,
Tindivanam.
(Crime No.65 of 2015)

... Respondent

Criminal Revision Case filed under Section 397 Cr.P.C, to call for the records relating to the judgement of conviction and sentence dated 29.08.2016 in C.C.No.177 of 2016 on the file of learned Judicial Magistrate No.1, Tindivanam, as confirmed by the Judgment of conviction and sentence dated 27.04.2017 in Crl.A.No.36 of 2016 on the file of II Additional District and Sessions Judge, Tindivanam and set aside the same and thereby allow the criminal revision case as prayed for.

For Petitioner	:	Ms.AL.Ganthimathi.
For Respondents	:	Mr.N.S.Suganthan, Government Advocate (Criminal Side)

O R D E R

This revision petition is filed by the accused, who has suffered the concurrent findings of conviction by the Courts below to the cases registered under Section 304A of IPC.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. The brief facts of the prosecution case is that on 05.05.2015, at about 15.00 hours, on the Chennai to Villupuram by-pass High Way near Nathamedu, the TATA Ace vehicle, bearing registration No.TN 25 AY 7274, rash and negligently hit a two wheeler and caused accident. The rider of the two wheeler Sagayaraj died on the way to the Hospital. The occurrence was witnessed by Ramalingam/PW2 and Munusamy/PW3. Thereafter, the wife of the deceased hearing the accident gave the complaint, which is marked as Ex.P1. The respondent Police on investigation charge sheeted the accused, the driver of the TATA Ace for causing death by rash and negligent driving. The Court below on considering the evidence of the eye witnesses and the sketch/marked as Ex.P8, had arrived the conclusion that the accident was caused due to the rash and negligent driving of the petitioner herein, while driving TATA Ace bearing registration No.TN 25 AY 7274, and he was sentenced to undergo 6 months simple imprisonment for the offences under Section 304A of IPC.

4. The learned counsel appearing for the petitioner would submit that the Court below failed to appreciate the evidence of the eyewitness and the Motor vehicle Inspector report in proper perspective. The fact which has been elucidated during the cross examination of the Motor Vehicle Inspector/PW8 would prove that the accident occurred due to the negligence of the victim, who did not have license to drive Motor vehicle. The two wheeler in fact hit the barricade on left side and he fell on the right side. Though, this fact being elucidated during the cross examination of prosecution witnesses, the Court below failed to take note of this fact. In the light of damages to the two wheeler and TATA Ace noted by the Motor Vehicle Inspector, it is clear that the two wheeler just hit in the left side barricade and fell in the Van losing balance. Further learned counsel would submit that due to boycott of the Courts by advocates on 09.08.2016, the petitioner was not able to cross examine the PW2 and therefore he filed an application for recalling the witness. The trial Court declined to issue summon to the witness, without any reasonable cause. The said refusal has caused prejudice to the petitioner.

5. The learned Public Prosecutor submitted that Ramalingam-PW2 and Munuswamy-PW3 are the witnesses to the occurrence. They are colleagues of the deceased Sagayaraj i.e., all working in nearby School. They have deposed that while returning home on that evening around 05.00 p.m., the TATA Ace bearing Registration No.TN 25 AY 7274 crossed them in rash and negligently hit Sagayaraj, who was going ahead in his two

wheeler. Evidence of these two eyewitnesses is impeccable and stand unimpeached. The petitioner, who failed to cross examine the witnesses, when they were present, cannot take advantage of this own fault.

6. Regarding the damages to the vehicles involved in the accident, the learned Public Prosecutor submit that by the damages caused to the vehicles, the 2 wheeler as well as four wheeler, who at fault could not be determined. While, the witnesses to the occurrence had clearly spoken about the negligence of the petitioner, the findings of the Court below could not be faulted.

7. PW3 and PW4 are known to the deceased and the same is admitted by PW1 in her cross examination. The deceased had no driving license, which is also admitted by PW1 (wife of the deceased) and this has been corroborated by the Motor Vehicle Inspector who was examined as PW8. While the time of occurrence is mentioned as 04.45 p.m by PW2, PW3 says it was around 04.15 p.m. The PW2 in the chief examination itself had stated that the driver of the vehicle as well as occupants of the Van after the accident took the injured in their vehicle and shifted him to the 108 Ambulance PW3 had deposed that accused came along with them to the Hospital and later, absconded.

8. This Court finds that PW2 and PW3 are crucial witnesses for the prosecution. The accused has deprived his rights to cross examine PW2, in spite of filing petition to recall him. Normally, such request made belatedly should be declined and there is no error in it. But the fact of this case is not a belated petition to recall the witness. The petitioner was deprived of legal assistant since his counsel was participating in the State wide boycott and not attend the Court on the day, PW2 was present. If the petitioner was forced to do the cross examination by himself, he did his best and cross examined PW3.

9. The prosecution had relied upon two independent witnesses, who admittedly are the persons interested in outcome of this case. Out of these two witness, the accused has been deprived of his right to cross examine one of them. In the light of the fact elucidated by the petitioner, from PW3 he has probabalised his defence that along the scene of occurrence, the road margin did have barricade and the deceased and witnesses PW2 and PW3 were returning from the School and proceeding close to each other. In the said circumstances, the rash and negligent driving has not been proved beyond doubt. More particularly, when the Motor Vehicle Inspector, an expert in the field, had admitted that when 2 two wheelers go in parallel, there is a possibility of the rider of the two wheeler on the left side being obstructed by the barricade and lose is balance and in

such circumstances, the front assemble set of the two wheeler likely to be damaged. This portion of the deposition of PW8 strengthens the case of the defence that the accident has not occurred in the manner in which the prosecution has projected and the evidence of PW2 and PW3 who are alleged to be the witnesses to the occurrence has not deposed the truth and their testimony carry inherent inconsistency. In addition, deprivation of right the cross examination of PW2 ennures the benefit of doubt on the accused.

10. For the said reason, the correctness of the order passed by the trial Court found to be not based on evidence and therefore, this petition is allowed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nsa

To

1. The II Additional District and Sessions Judge,
Tindivanam.
2. The Judicial Magistrate No.1,
Tindivanam.
3. The Inspector of Police,
Tindivanam Police Station,
Tindivanam.
4. The Public Prosecutor,
High Court, Madras - 104.

+1cc to Ms.AL.Ganthimathi, Advocate, S.R.No.37377

Cr1.R.C.No.683 of 2017

SKM[co]
NSK/12/07/2022