



Bail Slip

The Petitioner/Accused viz., P.Selvaraj, male, S/o.Periyanayagam was directed to be released on bail vide order dated 12/10/2017 in Crl.M.P.No.8353 & 8355/2017 in Crl.R.C.No.888/2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.888 of 2017

P.Selvaraj

... Petitioner/Accused

Vs.

State represented by
Station House Officer,
Pudhuchathiram Police Station,
Cuddalore District.

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, against the judgment of the learned Principal Sessions Judge, Chidambaram in Crl.A.No.18 of 2017 dated 22.06.2017 modifying the order passed by the learned District Munsif cum Judicial Magistrate Parangipettai, in C.C.No.95 of 2015 by a judgment dated 20.02.2017 wherein the petitioner was convicted under Section 279 of Indian Penal Code and sentenced to undergo rigorous Imprisonment for 6 months and a fine of Rs.1,000/- in default Simple Imprisonment of 2 months and convicted under Section 304(A) of Indian Penal Code sentenced to undergo two years Rigorous Imprisonment and a fine Rs.1,000/- in default to undergo Simple Imprisonment for 2 months.

For Petitioner : Mr.A.Praveen Kumar

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)

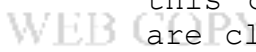


ORDER

The petitioner was convicted by the learned District Munsif-cum-Judicial Magistrate, Parangipettai (trial Court), vide judgment in C.C.No.95 of 2015, dated 20.02.2017 and sentenced to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for two months for offence under Section 279 of IPC and to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.1,000/-, in default to undergo two months Simple Imprisonment for offence under Section 304(A) of IPC. Aggrieved against the judgment of the trial Court, an appeal was filed by the petitioner before the learned II Additional District and Sessions Judge, Chidambaram (lower appellate Court) in C.A.No.18 of 2017. The lower appellate Court, by judgment, dated 22.06.2017 dismissed the appeal and modified the sentence to the effect that the petitioner to undergo Simple Imprisonment for six months and to pay a fine of Rs.1,000/- for offence under Section 304(A) of IPC and set aside the sentence imposed for offence under Section 279 IPC as the petitioner was convicted for the major offence. As against the same, the present Criminal Revision has been filed.

2.Gist of the case is that on 01.09.2015, at about 05.00 p.m., PW1 was in his house, at that time, his wife Vanitha had gone to pick her elder daughter Bhavana from school van. The elder daughter Bhavana got down from the school van, at that time, the petitioner, who was the driver of school van, not taking proper care, had moved the van ran over the younger daughter Sadana. Vanitha raised alarm. On hearing the same, PW3 and PW5 rushed to the spot, took the injured to the Government Hospital, Puthuchathiram, where she was declared dead. Thereafter, the complaint (Ex.P1) was lodged by PW1 to the respondent Police, who registered FIR (Ex.P5) for offence under Section 304(A) IPC. PW10, the Investigating Officer took up investigation, visited scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P7), conducted inquest on the body of the deceased, sent the body for Postmortem, examined the witnesses present in the scene of occurrence, recorded their statements, arrested the petitioner and sent the vehicle for Inspection by the Motor Vehicle Inspector. On receipt of Postmortem Report (Ex.P3) from PW8, Doctor and Motor Vehicle Inspection Report (Ex.P4) from PW9 and on completion of investigation, PW10 filed the charge sheet before the trial Court.

3.During trial, on the side of the prosecution, ten witnesses examined as PW1 to PW10 and seven documents marked as Exs.P1 to P7. On the side of the defence, no witness examined and no document marked. After completion of trial, the



5. He further submitted that PW7 is the witness for Observation Mahazar (Ex.P2). He admitted that he is not aware about the contents of the Observation Mahazar (Ex.P2). PW10, the Investigating Officer admitted that initially, FIR (Ex.P5) was registered under Section 304(A) of IPC, later, Section was altered including Section 279 IPC by Alteration Report (Ex.P7). In this case, none of the witnesses have stated about which side of the rear wheel ran over the deceased Sadana. In this case,



no eye witness was examined by the prosecution during trial. PW10 admitted that the residents near the scene of occurrence viz., Rajamanickam, Dhanam, Muruganantham not examined as witnesses in this case. Thus, the trial Court had convicted the petitioner on the ground of sympathy on the deceased Sadana, who was two years old. The finding of the trial Court is without any proper evidence and materials. The lower appellate Court without independent consideration of evidence and materials, merely confirmed the judgment of the trial Court, which needs interference of this Court. Hence, he prayed for acquittal.

6.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that PW1 is the father of the deceased Sadana, who lodged the complaint (Ex.P1) on the next day of the occurrence at about 10.00 a.m. The reason for delay in lodging the complaint was the entire family was in state of shock. The petitioner was the driver of the school van is not in dispute and the petitioner used to pick and drop the school children is also not in dispute. PW1's elder daughter Bhavana used to go to school by school van is also not in dispute. PW2 to PW6 are relatives of PW1. In the village, it is natural that all the relatives live nearby houses. PW2 to PW6 in their evidence stated about rash and negligence of the petitioner while driving the school van. PW7 is the witness to the Observation Mahazar (Ex.P2), who identifies his signature in it. PW8, the Postmortem Doctor confirmed that the death was due to run over by a vehicle. The Postmortem certificate (Ex.P3) confirmed the same. PW9, the Motor Vehicle Inspector in his report (Ex.P4) confirmed the accident not occurred due to any mechanical defect. PW10, the Investigating Officer stated that on receipt of FIR (Ex.P5), he visited the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P6), arrested the accused, conducted inquest on the body of the deceased, sent the body for postmortem, made arrangements for examination of vehicle by the Motor Vehicle Inspector. After recording the statement of witnesses, collecting documents, filed the final report before the trial Court. Both the Courts below on analysing the evidence and materials, rightly convicted and sentenced the petitioner, which needs no interference of this Court.

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

8.PW1 is the father of the deceased Sadana, who died in the accident, which took place on 01.09.2015, at about 05.00 p.m. It is the admitted case of the prosecution that the petitioner dropped Bhavana elder daughter of PW1 from the school van. After she got down from the van, the petitioner moved the school van, at that time, the younger daughter Sadana, who in a playful



manner went under the school van and she was run over. Vanitha, who is the mother of the deceased Sadana failed to notice her daughter Sadana had gone under the wheel. Due to her carelessness, she left her younger daughter Sadana to move freely and the baby of two years old without knowing the seriousness and consequence, in a playful manner, had gone under the vehicle.

9.It is not the case that the deceased Sadana was playing in front of the school van, she was visible and the petitioner failed to apply break and ran over. In this case, PW1 admitted that he was inside the house at the time of occurrence and not witnessed the accident and it was only his wife Vanitha, who was present during the accident. Despite knowing that Vanitha was eye witness to accident, the prosecution failed to examine her as witnesses in this case. The reason given by PW10/Investigation Officer for not examining her is not proper and acceptable. PW1 does not state that his wife was in state of shock and unable to depose during trial. Admittedly, PW2 to PW6 are close relatives of PW1. While deposing before the trial Court, they gave contradictory version with regard to the accident and subsequent happenings. They admitted that they have come to the scene of occurrence after hearing the cry of Vanitha. PW3 and PW5 stated that they took the deceased Sadana to the Government Hospital, Puduchathiram immediately after the accident. They admitted that both of them came to the accident spot after hearing the cry of Vanitha. In the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P6), there is no mention about the position of the vehicle and which of the rear tyre had run over the deceased Sadana. PW10 admitted that in the FIR (Ex.P5), it was mentioned left front wheel ran over the deceased Sadana. In the final report, it was mentioned right rear wheel ran over the deceased Sadana. Admittedly, in this case, none of the witnesses have spoken anything in this regard. It is sad that the baby Sadana died due to the accident, but there is no witness to confirm and prove that the petitioner driven the vehicle in a rash and negligent manner. Admittedly, the school van was stationed, the younger daughter of PW1 Bhavana got down from the school van and thereafter, while moving the school van, the accident took place, confirming that no rash and negligence driving of vehicle is possible. These facts have been lost sight of by the trial Court and the lower appellate Court.

10.On the above facts and circumstances and available evidence, this Court finds that the prosecution failed to establish the guilt of the petitioner beyond all reasonable doubt. Hence, the judgments of the Courts below are liable to be set aside and, are set aside and the petitioner is acquitted from all the charges.



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11. In the result, this Criminal Revision Case is allowed.
Fine amount, if any, paid shall be refunded.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Chidambaram.
2. The II Additional District and Sessions Court,
Chidambaram.
3. The District Munsif-cum-Judicial Magistrate Court,
Parangipettai.
4. The Chief Judicial Magistrate,
Cuddalore (for information)
5. The Station House Officer,
Pudhuchathiram Police Station,
Cuddalore District.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Praveen Kumar, Advocate SR.No.18107

Cr1.R.C.No.888 of 2017

PK (CO)
GMY (29/03/2022)