



WEB COPY



Crl.M.P.No.3955 of 2024
in Crl.R.C.No.413 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.3955 of 2024

in

Crl.R.C.No.413 of 2024

Balakumaran

... Petitioner

Vs.

State rep.by
The Inspector of Police,
Sankari Police Station,
Salem District.
[Crime No.11/2019].

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence in order passed in Crl.A.No.88 of 2023 by the learned I Additional District and Sessions Judge, Salem, dated 08.01.2024 confirming the sentence and conviction of the petitioner in C.C.No.36 of 2019 on the file of the Judicial Magistrate No.I, Sankari vide order dated 19.04.2019 and release the petitioner on bail.

For Petitioner : Mr.R.K.Gandhi

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



Crl.M.P.No.3955 of 2024
in Crl.R.C.No.413 of 2024

ORDER

WEB COPY

The petitioner was convicted by the learned Judicial Magistrate No.I, Sankari (trial Court) in C.C.No.36 of 2019 *vide* judgment, dated 19.04.2019 and sentenced to undergo six months imprisonment and to pay a fine of Rs.1,000/-, in default to undergo two weeks simple imprisonment for offence under Section 279 of IPC and to undergo two years imprisonment and to pay a fine of Rs.1,000/-, in default, to under two weeks simple imprisonment for the offence under Section 304(A) IPC. Challenging the same, the preferred an appeal before the learned I Additional District and Sessions Judge, Salem in Crl.A.No.88 of 2023 (lower appellate Court) and the same was dismissed *vide* judgment, dated 08.01.2024. Challenging the same, the present criminal revision case and the suspension of sentence.

2.Now, the petitioner surrendered before the learned Judicial Magistrate No.I, Sankari and presently he is confined in Central Prison, Coimbatore.

3.The contention of the learned counsel for the petitioner is that the



CrI.M.P.No.3955 of 2024
in CrI.R.C.No.413 of 2024

victim lady, who is 75 years old, suddenly crossed the road, the petitioner took immediate steps to avoid the victim but the victim due to fear fell down and sustained injuries. Later, when she was taken to hospital, she succumbed to death. In fact, the petitioner also fell down and sustained bruises. He would submit that the Motor Vehicle report/Ex.P6 confirms that there is no damage to the vehicle except for few scratches. The grandson of the deceased, on receipt of information rushed to the hospital to visit his grandmother and he is not an eye witness. PW2, PW3 and PW4, who are the projected eye witnesses present near the scene of occurrence, gave contradictory version. PW5 and PW6 are the witnesses to the observation mahazar and rough sketch. PW7 is the Sub-Inspector of Police, who received the complaint and conducted investigation in this case. He would further submit that in this case, the Motor Vehicle Inspector and Postmortem Doctor both not examined and all the documents were marked through the Investigating Officer. He further submitted that The Trial Court had given a finding that the petitioner was not riding the vehicle in a rash and negligent manner and he was proceeding slowly. Once such a finding was given, convicting the petitioner for rashness and negligence and being cause to the



CrI.M.P.No.3955 of 2024
in CrI.R.C.No.413 of 2024

accident is not proper. The Sessions Court also failed to independently consider the evidence and materials and dismissed the appeal confirming the conviction.

4.The learned Additional Public Prosecutor submits that the victim lady is 75 years old who walks only with the support of a stick and hence, the victim crossing the road suddenly does not arise. He would submit that the petitioner on seeing the old lady ought to have avoided dashing her and since he was driving the vehicle in a rash and negligent manner, the petitioner caused the accident. After the accident, the victim was immediately taken to Sankari Government Hospital and thereafter, she was referred to Salem Government Hospital for further treatment, where she succumbed to death. PW1 is the grandson of the victim, who lodged a complaint/Ex.P1, PW5 and PW6 are the witnesses for the observation mahazar and rough sketch, PW7 is the Sub-Inspector of Police, who received the complaint, registered FIR/Ex.P9, visited the scene of occurrence, conducted inquest and gave requisition for Postmortem. The vehicle was subjected to inspection by the Motor Vehicle Inspector. In this



Crl.M.P.No.3955 of 2024
in Crl.R.C.No.413 of 2024

case, PW2, PW3 and PW4 are the witnesses present in the scene of occurrence, who identified the person came in a bike in a rash and negligent manner and caused the accident, thereby the victim sustained injuries and later, succumbed to death. He would further submit that the evidence of witnesses are cogent and the records confirm that the victim died due to accident. During the trial, on the side of the prosecution PW1 to PW7 examined and Ex.P1 to Ex.P9 marked. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above which was confirmed by the Sessions Court. Hence, he prays for dismissal.

5.Considering the submissions and on perusal of the materials, it is seen that the presence of PW2, PW3 and PW4 in the scene of occurrence is doubtful since they gave contradictory version with regard to witnessing the accident. All the witnesses state that only after hearing the noise, they saw the accident. The victim lady, who is 75 years old crossed the road is not in dispute. Further, from the motor vehicle report, it is seen that except for scratches, there is no damage to the vehicle. The contention of the petitioner



CrI.M.P.No.3955 of 2024
in CrI.R.C.No.413 of 2024

is that the victim suddenly crossed the road and thereafter, to avoid her, he fell down and sustained bruises. This explanation has not been considered by the Trial Court as well as the Lower Appellate Court. Further, in this case neither the Motor Vehicle Inspector nor the Doctor who gave treatment to the victim and the Postmortem Doctor examined. All these documents were marked through the Investigating Officer. Hence, this Court is inclined to grant suspension of sentence.

6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

7. Further, the petitioner shall appear before the Trial Court on the first working day of once in three month at 10.30 a.m. until the disposal of the criminal revision and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317



CrI.M.P.No.3955 of 2024
in CrI.R.C.No.413 of 2024

Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

8. Accordingly, this Miscellaneous Petition is ordered.

20.03.2024

Index: Yes/No

Internet: Yes

cse

Note: Issue order copy on 21.03.2024

To

1. The I Additional District and Sessions Judge,
Salem.
2. The Judicial Magistrate No.I,
Sankari.
3. The Inspector of Police,
Sankari Police Station,
Salem District.
4. The Superintendent,
Central Prison, Coimbatore.
5. The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

cse



WEB COPY



Crl.M.P.No.3955 of 2024
in Crl.R.C.No.413 of 2024

Crl.M.P.No.3955 of 2024 in
Crl.R.C.No.413 of 2024

20.03.2024