



Crl.M.P.No.5621 of 2024 in Crl.R.C.No.508 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5621 of 2024
in Crl.R.C.No.508 of 2024

Suresh Kumar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Sangagiri Police Station,
Salem District.
Crime No.255/2019.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence imposed by the Trial Court in judgment dated 31.08.2023 made in C.C.No.73 of 2020 on the file of the learned Judicial Magistrate No.1, Sangagiri, Salem District and confirmed in the judgment dated 24.01.2024 made in Crl.A.No.171 of 2023 on the file of the learned Principal Sessions Judge, Salem District and release the petitioner on bail pending disposal of the above revision petition.

For Petitioner : Mr.M.Rajavelu

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

ORDER



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The petitioner was convicted by the learned Judicial Magistrate No.1, Sangagiri, Salem District (trial Court) in C.C.No.73 of 2020 *vide* judgment, dated 31.08.2023 and sentenced the petitioner to undergo six months imprisonment and to pay fine of Rs.1,000/-, in default to undergo two weeks simple imprisonment for the offence under Section 279IPC, to undergo two years imprisonment and to pay a fine of Rs.1,000/-, in default to undergo two weeks simple imprisonment for the offence under Section 304(A)IPC and to pay a fine of Rs.5,000/-, in default to undergo two weeks simple imprisonment for the offence under Section 3 r/w. 181 of Motor Vehicles Act. Against which, the petitioner preferred an appeal before the Principal Sessions Court, Salem in Crl.A.No.171 of 2023 (lower appellate Court) and the same was dismissed *vide* judgment, dated 24.01.2024. Challenging the same, the present criminal revision case and the suspension of sentence.

2. It is submitted that the petitioner now surrendered before the learned Judicial Magistrate No.I, Sankari on 25.03.2024 and he is now confined in Central Prison, Salem.



3.The case of the prosecution is that on 19.08.2019 at about 8.15 p.m., the deceased Shanavas was riding his motor bike bearing registration No.TN-54-E-2985 proceeding from Bhavani to Sangagiri. When he was near Vasantham Colony, the petitioner/accused who was driving his car bearing registration No.TN-12-AB-4568 came in a rash and negligent manner dashed against the bike coming in the opposite direction, caused grievous injury on his head, left knee and blood was coming from his nose and ears, who was rushed to Government Hospital through 108 ambulance and he died on the way. PW1/brother of the deceased was informed about the accident by PW2, who sent the injured to the hospital through ambulance. On getting information, PW1 rushed to the hospital, found his brother dead and lodged a complaint to the respondent police. One Senthamarai, Sub-Inspector of Police received the complaint, registered FIR/Ex.P3, visited the scene of occurrence, prepared observation mahazar/Ex.P2 and rough sketch/Ex.P4 in the presence of PW5 and another, recorded the statement of witnesses, visited the hospital, conducted inquest and thereafter handed over investigation to PW7/Investigating Officer, who went to the scene of occurrence, again enquired the witnesses and sent the body for Postmortem. PW7 received the Postmortem report/Ex.P7, sent



the two wheeler and the car to the Motor Vehicle Inspector for inspection, found that the petitioner/accused has driven the car without license. Hence, section was altered by alteration report/Ex.P8. Motor Vehicle Inspector reports/Ex.P9 to Ex.P11 received, investigation completed and charge sheet filed. During trial, PW1 to PW7 examined and Ex.P1 to Ex.P11 marked on the side of the prosecution. 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. The Sessions Court dismissed the appeal filed by the petitioner and confirmed the conviction imposed by the Trial Court.

4.The contention of the learned counsel for the petitioner is that PW1/brother of the deceased who was informed about the accident by PW2, came to the hospital and he is not the eye witness. The projected eye witnesses are PW2 and PW3. They admit that the place of accident is covered with row of tamarind trees, there was no sufficient light available and they witnessed the accident from a distance of 20 meters and 50 meters. Further, the other two witnesses, PW3 and PW4 who are said to have been near the scene of occurrence admit that after hearing the sound of the accident, they turned and rushed to the accident spot. None of the witnesses



stated anything about the registration number of the two wheeler as well as the car and they have not identified the petitioner. Further, in this case the Sub-Inspector of Police, Mrs.Senthamarai, who received the complaint, registered FIR, prepare observation mahazar and rough sketch, conducted inquest has not been examined as witness. Likewise, the Motor Vehicle Inspector Mrs.Kokila, the Casualty Doctor at Sangagiri Government Hospital Dr.Murugavel and the Postmortem Doctor/Dr.Sangeetha were not examined. The Motor Vehicle Inspector report, Accident Register and Postmortem report were marked through Investigating Officer. There is no presence of light in the scene of occurrence. These factors have not been considered by the Trial Court but had convicted the petitioner and the Sessions Court also not considered the same.

5.The learned Additional Public Prosecutor submits that on the complaint of PW1/brother of the deceased, who was informed by PW2 about the accident, rushed to the hospital where he found his brother died due to injuries sustained in the accident. PW2, who was standing near the bus stand saw the deceased riding a two wheeler proceeding from Bhavani to Sangagiri on the left edge of the road near the mud path and the car driven



by the petitioner which was proceeding on the opposite direction from Sangagiri to Bhavani dashed against the two wheeler which was coming in the opposite direction, thereafter the car dashed in the wall near the petrol bunk and stopped. PW2 rushed to the accident spot, found injuries on the face and legs of the deceased and thereafter, he immediately called 108 ambulance and sent the injured to the hospital. From the phone details found in the pocket of the injured, he informed PW1 and on the next day, PW2 was informed that the injured person died. PW3 who is running a provisional shop near the petrol bunk, was standing outside the shop and on seeing the accident, he rushed to help the injured. PW4 is working in a lathe shop was proceeding to Kongu mess to have dinner, at that time, he saw the accident. PW5 is the witness for observation mahazar. PW6 who is having a puncture shop on the road, on seeing the accident went to help the injured. PW7 is the Investigating Officer. On receipt of complaint from PW1, the Sub-Inspector of Police registered FIR, prepared observation mahazar and rough sketch, visited the hospital conducted inquest and thereafter, handed over the investigation to PW7, who visited the scene of occurrence, examined the witnesses, sent the body for postmortem, sent the two wheeler and car to the Motor Vehicle Inspector for inspection. PW7 collected the



Accident Register/Ex.P5, Postmortem report/Ex.P7, Motor Vehicle Inspector reports/Ex.P9 to Ex.P11. On finding that the petitioner had driver the vehicle without licence, section alteration report/EX.P8 filed. On conclusion of investigation, charge sheet filed and on conclusion of trial, the Trial Court had rightly convicted the petitioner which was confirmed by the Sessions Court.

6.Considering the submissions made and on perusal of the materials, it is seen that in this case PW2 and PW3 are the projected eye witnesses but both of them had not given the registration number of the two wheeler and the car. PW2 and PW3 admit that the road was covered with row of tamarind trees and there was no sufficient light and how they have seen the occurrence is doubtful. Further, they had stated that PW2 is 30 feet away from the accident spot and PW3 is 100 feet away from the accident sport. PW4 state that he was 10 meters away and PW6 was 20 feet away. None of them have given the particulars of the vehicle and the petitioner. In this case, the Accident Register, Postmortem report, Motor Vehicle Inspector reports were marked through Investigating Officer and further, the Sub-Inspector of Police, who conducted major portion of the investigation has



not been examined and no reason was given for non-examination of the witnesses. Hence, this Court is inclined to grant suspension of sentence.

7. 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.

8. 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 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.

9. Accordingly, this Miscellaneous Petition is ordered.

28.03.2024



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Index: Yes/No

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Note: Issue order copy on 01.04.2024

To

- 1.The Judicial Magistrate No.I,
Sangagiri at Salem.
- 2.The Principal Sessions Judge,
Salem.
- 3.The Inspector of Police,
Sangagiri Police Station,
Salem District.
- 4.The Superintendent,
Central Prison, Salem.
- 5.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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