

BAIL SLIP

The Petitioner/Accused viz. Palanisamy was directed to be released on bail in and by the order of this Court dated 16.8.2004 and made in and Crl.M.P.No.8619/2004 in Crl.R.C.No.1163/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2006

Coram:

The Honourable Mr. Justice J.A.K.SAMPATH KUMAR

Crl.R.C.No.1163 of 2004

Palanisamy ...Accused/Appellant/Petitioner

vs.

The State of Tamil Naud rep.
by S.I. Of Police,
Ethappur Police Station,
Attur Taluk, Salem District.
(Cr.No.1067/2000)

...Complainant/Respondent/Respondent

Petition filed under Sections 397 & 401 of the Code of Criminal Procedure, 1973 praying to set aside the Judgment dated 27.05.2004 made in C.A.No.156 of 2002 on the file of the Court of Additional District & Sessions Judge, Fast Track Court No.1, Salem, confirming the conviction and sentence passed in order dated 20.06.2002 made in C.C.No.254 of 2000 on the file of the Court of Judicial Magistrate No.I, Attur.

For petitioner : Mr.N.S.Sivakumar

For Respondent : Mr.V.Arul,
Govt.Advocate (Crl.Side)

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ORDER

This Criminal Revision Case is against the Judgment of Additional Sessions Judge, Fast Track Court No-I, Salem in Criminal Appeal No. 156 of 2002 dated 27.05.2004, confirming the Judgment of Judicial Magistrate No.I, Attur in C.C.No.254 of 2002 dated 20.06.2002.

2. The petitioner has been convicted under Section 279 I.P.C. to pay a fine of Rs.500/- in default, to undergo rigorous imprisonment for one month and also convicted under Section 304 (a) I.P.C. sentencing him to undergo simple imprisonment for six months and also to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one month.

3. Heard the learned counsel for the petitioner as well as the learned Government Advocate.

4. The learned counsel for the petitioner submitted that the finding of the trial Court and lower Appellate Court is due to non application of mind in analysing the oral and documentary evidence coupled with legal points and as such, the conviction and sentence imposed by the trial court is liable to be set aside.

5. The learned counsel further challenged the findings of the trial Court and lower Appellate Court on the following grounds:-

i) The delay of 41/2 hours in lodging the complaint, vitiates the order of conviction.

ii) Except the relatives of the deceased no other independent witnesses were examined on the side of the prosecution, which creates a doubt about the prosecution case and as such, the finding of the lower Court is liable to be set aside.

iii) The prosecution failed to prove the external injury at the back of right ear of the deceased, which fact was not taken note of by the trial Court, vitiates the finding of the lower Court.

iv) The Courts below failed to see that the testimony of eye witness is not in consistent with the medical evidence regarding fatal injury to the deceased, vitiates the order of conviction.

v) The courts below failed to appreciate the fact that inspite of caution expressed by P.W.4 and P.W.5 regarding the on coming of fast vehicle, the deceased proceeded on the road, thereby the vehicle TVS 50 hit against him resulting his death, vitiates the order of conviction.

vi) The delay in submitting the records under Section 161 (3) of Cr.P.C. is fatal to the prosecution case, vitiates the order of conviction.

Vii) The courts below failed to note that the prosecution witnesses failed to prove that the death was due to rash and negligent driving of the vehicle by the petitioner, vitiates the

order of conviction.

6. Before considering the points on hand let us deal with the facts of prosecution case.

7. On 21.11.2000 at about 4.30p.m. in Aariyapalayam Road, within the jurisdiction of Ethappur Police Station, the petitioner herein drove TVS 50 bearing Registration No.TN27H-1160 in a rash and negligent manner, without giving horn, from west to east and dashed against the pedestrian Kali, caused injuries resulting his death in the hospital. Consequent of that a case in Crime No.1067 of 2000, under Sections 279 & 304-A I.P.C. was registered against him by Ethappur Police Station. After investigation, it was found that the accused committed the act of death of one kali due to rash and negligent driving and filed a final report against the petitioner/accused.

8. Prosecution has examined 12 witnesses and marked 7 Exhibits on its side to prove the guilt of the accused. On the side of the accused no one was examined. The lower Court after analysing the evidence found that the accused was guilty of the charges levelled against him and convicted him accordingly. Against this finding, the petitioner/accused filed an appeal before the Additional Sessions Judge, Fast Track Court No.I, Salem in Crl. Appeal No.156/02 and the same was also dismissed on merit on 27.05.2004. Hence this Revision.

9. The learned Government Advocate after taking me to the evidence of prosecution witnesses and the relevant documents marked as Exhibits has submitted that both the courts have found the accused guilty and accordingly convicted him for the charges levelled against him and hence, there is no substance in the contention of the learned counsel for the petitioner.

10. The rival claims of both sides have been considered in detail. Admittedly, there is a delay in submission of records before the lower Court, which were recorded on the side of prosecution under Section 161(3) Cr.P.C., but there is nothing to show that the petitioner/accused is really prejudiced due to the delay in submission of the said records. So I am of the view, that the delay in submission of records is in no way affects the case of prosecution.

11. No doubt, P.W.1 and P.W.2 are relative to the deceased. The learned counsel for the petitioner submits that since these witnesses were intimate to the deceased, accepting the evidence of these witnesses by the lower courts caused prejudice to the accused. It is well settled law that the Court shall not reject the evidence of prosecution witnesses only on the ground that they are relatives

or friends to the victim of the occurrence. They shall not treat them as interested witnesses. Interested witness means a person, who is really interested to see that the accused is punished at any cost out of motive. It is for the accused to say, how these witnesses are interested in getting conviction against him.

12. In this context, it is useful to refer the principles laid down in the decision in STATE OF A.P. v. S. RAYAPPA & ORS. (2006 (2) SCALE 321) wherein, it is held that conviction in Criminal cases can be based on the testimony of a close relative and trial Courts cannot discard such evidence on the ground that he being a relation of the deceased is an "interested witness". Further it is held that a close relative who is a very natural witness cannot be termed as an interested witness. The term 'interested' postulates that the person concerned must have some direct interest in seeing the accused being convicted somehow or the other either because of animosity or some other reasons. It is further held that it has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal cases because of varied reasons. Criminal cases are kept dragging for years and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness.

13. The evidence of P.W.4 and 5 are trustworthy. There is nothing, to suggest or disbelieve the evidence of these witnesses. In such circumstances, and in the light of the principles laid down in the above ruling, I am satisfied that these witnesses are of trustworthy and both the courts have not committed any error in accepting their evidence. So the contention of the learned counsel for the petitioner cannot sustain.

14. The learned counsel for the petitioner then contended that the prosecution failed to prove that the pedestrian died only due to rash and negligent act in driving the vehicle by the petitioner/accused. I am unable to accept the contention of the learned counsel for the petitioner, in view of the fact that the deceased sustained injuries only due to hit of the vehicle driven by the petitioner/accused. Whether such injuries sustained by the victim in the accident was sufficient to cause death or not is a matter of evidence of the doctor who conducted autopsy on the deceased. P.W.9., the Doctor, who conducted postmortem has opined that the deceased appears to have died due to shock and hemorrhage on account of burst of blood vessel. Ex.P.9 is the postmortem certificate.

15. In view of the evidence of the postmortem Doctor coupled with postmortem report, I am satisfied that the death was only due

to injuries sustained by him in the road accident due to hit of the vehicle driven by the petitioner/accused.

16. It is true that the accident took place at about 4.30p.m on 21.11.2000. Immediately after the occurrence, the injured was taken to hospital for treatment by one Venkatesan, who is the complainant in this case, and examined as P.W.3. The victim succumbed to injuries. Thereafter, the said Venkatesan went to the Police Station and lodged a complaint. The First Information Report was registered against the accused on the same day at about 21.00 hours. The said witness, soon after occurrence in order to save the life of the injured, took him to the hospital and in that process, there was a delay in lodging the complaint. Moreso, there is nothing on record to show that there is abnormal delay in lodging complaint. The accused being the rider of the motor cycle has admitted that the pedestrian sustained injuries only in the road accident.

17. In such circumstances, I am satisfied that there is no prejudiced caused to the petitioner/accused due to delay in lodging the complaint. It cannot also be stated that the delay vitiates the prosecution case. P.W.4 and 5 have stated that the deceased sustained injuries only due to rash and negligent act of the petitioner/accused, who has driven the two wheeler. There is nothing to disbelieve the evidence of these witnesses. It is also suggested on behalf of the accused to P.W.4 that the vehicle concerned in this case came fast, and it was not noticed by the deceased at the time of the accident. The suggestive case of the petitioner/accused to P.W.4 would amply prove that the vehicle driven by the accused came fast at the time of occurrence. Taking into consideration of the suggestive case of the petitioner/accused coupled with the evidence of eye witnesses, I am satisfied that the accident happened only due to rash and negligent act of the petitioner/accused in driving the two wheeler at the time of occurrence. Both the courts below have considered this aspect in right perspective and held that the accident took place only due to rash and negligent act of the petitioner/accused.

18. There is no error committed by both the courts below in rendering such finding. The finding of both the courts below do not require any interference.

In the result, the Revision fails and the same is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. THE SUB INSPECTOR OF POLICE,
ETHAPPUR POLICE STATION, ATTUR TALUK, SALEM DIST.
2. THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, FAST TRACK COURT
NO.1, SALEM.
3. THE PRINCIPAL DISTRICT JUDGE,
SALEM.
4. THE JUDICIAL MAGISTRATE NO.1,
ATTUR.
5. through THE CHIEF JUDICIAL MAGISTRATE,
SALEM.
6. THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.
7. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1cc to Mr.M.Sathyanarayanan, Advocate Sr 22180

MF (CO)
km/9.5.

Cr1. R.C.No.1163 of 2004