

Bail Slip

The Appellant/Accused namely N.Kumaravel, in C.C.No.127/2006 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai, and Subsequently Modified by VII Additional Sessions Judge, Chennai, in Crl.A.331/2008, was directed to be released on bail in and by the order of this court dt. 8.04.2009 in Crl.MP.No.1/2009 in Crl.RC.337/2009 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal R.C. No.337 of 2009

N.Kumaravel

... Petitioner

vs.

State rep.by
the Inspector of Police,
Traffic Investigation Division,
J.3, Guindy Police Station.
(Crime No.482/2005)

.... Respondent

Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in Criminal Appeal No.331 of 2008 on the file of VII Additional Sessions Judge, Chennai, modify the judgment of the learned IV Metropolitan Magistrate, Chennai, in C.C.No.127 of 2006 dated 15.11.2008 and allow the Criminal Revision Petition by setting aside the conviction and sentence passed by learned VII Additional Sessions Judge, Chennai in Crl.A.No.331 of 2008 by Judgment dated 31.3.2009.

For Petitioner: Mr.R.Ravichandran

For Respondent: Mr.V.Arul,

Government Advocate (Crl.Side)

O R D E R

The petitioner was the accused in C.C.No.127 of 2006 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai. By judgment dated 15.11.2008, the petitioner was convicted under sections 304-A of the IPC and section 184 of the Motor Vehicles Act, and sentenced

to undergo simple imprisonment for two years and to pay a fine of Rs.2,000/-, in default to pay the fine, to undergo simple imprisonment for three months for the offence under section 304-A of the IPC and to pay a fine of Rs.1,000/- for the offence under Section 184 of the Motor Vehicles Act, in default to pay the fine, to undergo simple imprisonment for two weeks. Aggrieved over the said judgment, the petitioner preferred an Appeal in CrI.A.No.331 of 2008 and the appellate Court by judgment dated 31.3.2009, dismissing the Appeal, modified the sentence into one of simple imprisonment for 3 months and to pay a fine of Rs.2,000/-, in default to pay the fine, to undergo simple imprisonment for three weeks for the offence under section 304-A of the IPC and to pay a fine of Rs.1,000/-, in default to pay the fine, to undergo simple imprisonment for two weeks for the offence under section 184 of the Motor Vehicles Act.

2. The case of the prosecution in brief is as follows:-

The petitioner was the Driver of the State Transport Corporation of Tamil Nadu. On 27.7.2005 at 10.00 a.m., the petitioner drove the Bus bearing Regn.No.TN-01-1907 from Northern direction towards south and when he turned on the left side at Sengeniamman Koil Street, Vandikaran Street, Naduvankarai, Chennai, he dashed against the victim and crushed him between the bus and a compound wall of an apartment. After the treatment, the victim died at the Government Hospital, Chennai. A criminal case was registered. The petitioner was charged for the offence under section 304-A of the IPC and section 184 of the Motor Vehicles Act.

3. Learned counsel for the petitioner would submit that PW.1 has stated in her evidence that police officer has taken 3 blank papers from her with her signatures and hence, there is a doubt in the investigation of the police. Further, PW.1 admitted in her cross-examination stating that the police officer has not written in the complaint what she has stated and the police officer has written what she has not stated. The prosecution has not proved the case beyond reasonable doubts. In such circumstances, the conclusion arrived at by the courts below and the consequential imposition of punishment on the petitioner are liable to be set aside.

4. On the other hand, the learned Government Advocate would contend that both the Courts below convicted the petitioner only after taking into account the evidence adduced by the prosecution witnesses. All the witness have categorically stated that the accident took place only because of the rash and negligent driving of the petitioner. This is also corroborated by the prosecution witnesses 1 and 2 coupled with the evidence of PW.6, the Motor Vehicle Inspector, who in his evidence has ruled out that there is no mechanical defect in the vehicle at the time of accident. Therefore, the courts below are right in coming to the conclusion that the

petitioner, due to his rash and negligent driving of the bus, has caused the accident.

5. I heard the counsel for both sides and perused the materials placed on record. PW6, the Motor Vehicle Inspector, in his deposition had categorically stated that there was no mechanical defect in the bus at the time of accident. Therefore, it is clear that the accident took place only because of the speed at which the bus was driven by the petitioner. I am of the view that both the courts below are right in coming to the conclusion that the petitioner is solely responsible for the accident and I do not find any reason to interfere with the same.

6. As far as the sentence is concerned, by judgment dated 31.3.2009, while dismissing the Appeal in CrI.A.No.331 of 2009, the appellate court modified the sentence into one of simple imprisonment for 3 months and to pay a fine of Rs.2,000/-, in default to pay the fine, to undergo simple imprisonment for three weeks for the offence under section 304-A of the IPC and to pay a fine of Rs.1,000/-, in default to pay the fine, to undergo simple imprisonment for two weeks for the offence under section 184 of the Motor Vehicles Act.

7. The Honourable Apex Court in the decision reported in (2013) 7 SCC 545 [Gopal Singh vs. State of Uttarakhand] has clearly held that the awarding of sentence should be on par with the commission of crime. In Para Nos.18 to 20, the Apex Court has held as follows:

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to

the value based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors, which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.

19. A court, while imposing sentence, has to keep in view the various complex matters in mind. To structure a methodology relating to sentencing is difficult to conceive of. The legislature in its wisdom has conferred discretion on the Judge who is guided by certain rational parameters, regard been had to the factual scenario of the case. In certain spheres the legislature has not conferred that discretion and in such circumstances, the discretion is conditional. In respect of certain offences, sentence can be reduced by giving adequate special reasons. The special reasons have to rest on real special circumstances. Hence, the duty of the court in such situations becomes a complex one. The same has to be performed with due reverence for the rule of law and the collective conscience on one hand and the doctrine of proportionality, principle of reformation and other concomitant factors on the other. The task may be onerous but the same has to be done with total empirical rationality sans any kind of personal philosophy or individual experience or any a priori notion.

20. Keeping in view the aforesaid analysis, we would refer to the view in respect of sentence this Court had imposed under Section 324 IPC, regard being had to the concept of appropriate sentence. In *Dharma Pal vs. State of Punjab*, while converting the conviction under Section 307 IPC to Section 324 IPC, this Court thought it appropriate to sentence the convicts to one year's rigorous imprisonment. Be it noted, the Court observed that though the injuries inflicted by the appellants therein were somewhat serious, yet the conviction under Section 307 IPC was not made out."

8. In view of the aforesaid decision and considering the nature of the offence committed by the petitioner and also the sentence awarded by the appellate Court is lenient, I do not find any reason to interfere with the same.

9. In the result, the Criminal Revision Case is dismissed. The trial court is directed to take steps to secure the presence of the petitioner to undergo the remaining period of sentence, if any. It is needless to mention that any sentence already undergone by the petitioner shall be given set off as contemplated under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

To

- 1.The VII Additional Sessions Judge,
Chennai.
- 2.IV Metropolitan Magistrate, Saidapet, Chennai.
- 3.-do-The Chief Metropolitan Magistrate, Egmore, Chennai.
- 4.The Superintendent, Central Prison-I, Puzhal, Chennai.
- 5.The Inspector of Police,
Traffic Investigation Division,
J.3, Guindy Police Station,
Chennai.
(Crime No.482/2005)
- 6.The Public Prosecutor, Madras High Court.

Criminal R.C. No.337 of 2009

TS(CO)
EU 28.7.2015