

Bail Slip

The petitioner in Crl.RC.343/2009 Viz., Chakkaravarthi, S/o. Govindarasu was directed to be released on bail as per order of this court dated 16.04.2009 made in MP.1/09 in Crl.RC.343/09.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 343 of 2009

Chakkaravarthi

.. Petitioner

Versus

The State represented by
The Station House Officer
Sethiathope Police Station
Chidambaram Taluk
Cuddalore District.

.. Respondent

Criminal Revision Case filed under Section 397 read with 401 of the Criminal Procedure Code, against the Judgment dated 28.01.2009 passed in Crl.A. No. 114 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Chidambaram, confirming the order dated 22.11.2007 passed in C.C. No. 77 of 2006 on the file of the learned Judicial Magistrate No.I, Chidambaram.

For Petitioner : No Appearance

For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

ORDER

The case of the prosecution is that on 21.06.2006, at about 8.30 p.m., the petitioner has dashed the Tractor against the victim at Cross Road, Sethiathope, due to which, the victim sustained grievous head injuries and died. Hence, a case was registered against the accused for the offence punishable under Section 304(A) IPC. Ultimately, after trial, the Trial Court convicted the accused for the aforesaid offence and sentenced him to undergo rigorous imprisonment for one year. Aggrieved against the same, the accused has filed Crl.A. No. 114 of 2007 before the learned Additional District and Sessions Judge, Fast Track Court No.I, Chidambaram, and the same was dismissed by judgment dated 28.01.2009, thereby, confirming the judgment of conviction and sentence imposed by the Trial Court. Aggrieved by the judgment passed by the Appellate Court, the petitioner has filed the present Criminal Revision Case.

2. Today, though, the matter is listed under the caption "Old Year Cases", when the matter is taken up, there is no representation for the petitioner. The Hon'ble Apex Court in the judgment reported in (1994) 4 Supreme Court Cases 664, Prasuram Patel & another vs. State of Orissa, has held that the Criminal Appeal cannot be dismissed for default in appearance of the appellant, but, the Court must decide the matter on merits even in the absence of the appellant or his counsel.

3. It is also relevant to refer to the judgment of the Hon'ble Apex Court reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, wherein, the Hon'ble Apex Court has culled out certain principles and has held in paragraph No.19 as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

4. Very recently, the Hon'ble Apex Court in the reported in (2014) 14 Supreme Court Cases 222, Surya Baksh Singh vs. State of Uttar Pradesh, has reiterated the above principles culled out in the decision cited supra and has held in paragraph No.15 as follows :-

"15. The discussion would not be complete without noticing the orders in Parasuram Patel vs. State of Orissa, (1994) 4 SCC 664 and Madan Lal Kapoor vs. Rajiv Thapar, (2007) 7 SCC 623. In neither of these cases had the appellate court taken steps available to it to ensure the attendance of the appellant. Instead, it appears that the High Court concerned had adopted the obviously less tedious approach of dismissing the appeals only because neither the appellant nor his counsel were present when the case was called on for hearing. The Court did not ruminate upon the curial malpractice which has now become endemic viz., the filing of appeals by convicts with the obvious intent to frustrate and circumvent sentences passed by criminal courts."

5. In the light of the judgments of the Hon'ble Apex Court cited supra, one thing is crystal clear that no doubt, the Court can decide the matter even in the absence of the petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. Hence, following the decisions cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned Government Advocate appearing for the respondent and also after perusing the materials available on record.

6. Mr.V.Arul, learned Government Advocate appearing for the respondent would contend that the petitioner has driven the vehicle in a rash and negligent manner and dashed against the victim who is walking on the road and thereafter, the petitioner stopped the vehicle and ran away from the occurrence spot. He would further add that the eye witnesses, viz., P.Ws. 1 to 4 have categorically stated that when they were walking on the road, they saw a Tractor coming from behind in a rash and negligent manner, they immediately moved to the road end and escaped, thereafter, the vehicle moved further in the forward direction and dashed against the victim, therefore, the evidence of the eye witnesses is very clear and cogent regarding the occurrence and hence, the Trial Court has correctly convicted the petitioner and sentenced to undergo imprisonment as stated supra and the same was rightly confirmed by the Appellate Court.

7. On a careful perusal of the entire materials available on record as well as the evidence and the judgment of both Courts below, it is evident that there are clear eye witnesses to the occurrence and the petitioner, who drove the Tractor, was identified. The eye witnesses, viz., P.Ws. 1 to 4, in their evidence, have categorically stated that when they were walking on the road at Sethiathope, they saw a Tractor coming from behind in a rash and negligent manner, they immediately moved to the road end and escaped, thereafter, the vehicle moved further in the forward direction and dashed against the victim. Moreover, P.W.6-Dr.Sugumar, who has done the post-mortem on the victim has given a clear opinion regarding death that it was only due to the rash and negligent driving of the vehicle by the accused and therefore, in my considered opinion, both Courts below have rightly convicted the petitioner and sentenced him to undergo imprisonment as stated supra.

8. At this point of time coming to the question of sentence imposed on the petitioner by the Courts below, this Court taking into consideration the submission of the learned counsel for the petitioner that the petitioner is a young man aged 36 years, he has a long way to go, he has take care of his family members and he is the sole breadwinner of the family and he is a first time offender, I am of the view that some leniency can be shown to the petitioner in reducing the sentence. Accordingly, while confirming the conviction imposed by the Appellate Court, the sentence alone is reduced to six months rigorous imprisonment.

9. In the result, this Criminal Revision Case is partly allowed. The conviction passed by the Appellate Court dated 28.01.2009 stands confirmed and the sentence alone is modified to the effect that the petitioner shall undergo rigorous imprisonment for a period of six months. The Trial Court is directed to take steps to secure the presence of the petitioner/accused to undergo the remaining period of sentence, if any. It is needless to mention that any sentence already undergone by the petitioner/accused shall be given set off as contemplated under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Station House Officer
Sethiathope Police Station
Chidambaram Taluk
Cuddalore District.
 - 2.The Additional District and Sessions Judge
Fast Track Court No.I
Chidambaram.
 3. -do- Through The Principal Sessions Judge, Cuddalore.
 - 4.The Judicial Magistrate No.I
Chidambaram.
 5. -do- Through The Chief Judicial Magistrate, Cuddalore.
 6. The Public Prosecutor, High Court, Madras
- + 1 cc to Mr. V.S. Velmurugan, Advocate SR.46082

VD(CO)
Eu 25.09.15

CRL.R.C.No. 343 of 2009