

Bail Slip

Petitioner in Crl.R.C.No.631 of 2009 (Accused in CC No.141/02 dated 14.12.2006 on the file of the Judicial Magistrate Krishnagiri) was released on bail as per order of this Court dated 6.7.2009 in MP.1/2009 in Crl.R.C.No.631/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.631 of 2009

Durai

.. Petitioner/Accused

Versus

State by Inspector of Police
Krishnagiri Taluk Police Station
Krishnagiri District.

.. Respondent/Complainant

Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 24.04.2009 passed by the learned Additional District and Sessions Judge, Krishnagiri in C.A.No.4 of 2007 confirming the order dated 14.12.2006 passed by the learned Judicial Magistrate, Krishnagiri in C.C.No.141 of 2002.

For Petitioner : Mr.G.Vivekanand

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

ORDER

The petitioner was arrayed as an accused in C.C. No.141 of 2002 on the file of the learned Judicial Magistrate, Krishnagiri and tried for the offences punishable under Sections 279, 337 and 304 (A) of IPC. Upon completion of trial, the trial court convicted the petitioner for the offences under Sections 279 and 304 (A) [3 counts] of IPC. The petitioner was imposed with a fine of Rs.200/- and in default to undergo three months simple imprisonment for the offence under Section 279 IPC; and sentenced to undergo one year rigorous imprisonment with fine of Rs.2,000/- for each count, in default to undergo simple imprisonment for three months for each count, under Section 304 (A) of IPC [3 counts]. The petitioner was not convicted for the offence under Section 337 IPC. The petitioner unsuccessfully assailed the judgment of conviction passed by the trial court by filing Crl.Appeal No.4 of 2007 before the learned Additional District and Sessions Judge, Krishnagiri as it was dismissed by the Appellate Court on 24.04.2009. As against the same, the present Criminal Revision Case is filed by the petitioner.

2. The facts leading to the registration of criminal prosecution against the petitioner is as follows:-

On 29.03.2002 at about 14.30 hrs, the petitioner was driving the bus bearing Registration No.TN29 N 0704 near Krishnagiri Reservoir Project Dam to Sokkadu Road. At that time, one Mani @ Shanmugam was riding the bullet in which one Murugan @ Murugesan and Selvam were travelling as pillion riders. While so, due to rash and negligent driving of the driver of the bus, it hit the bullet from behind. In the impact, the driver of the bullet as well as the pillion riders succumbed to the injuries sustained by them. In this connection, the case in Crime No.312 of 2002 came to be registered against the petitioner for the offences under Section 279, 337 and 304 (A) [3 counts] of IPC.

3. The learned counsel for the petitioner would mainly contend that the accused is not the driver of the vehicle at the time of the alleged occurrence. He would also contend that even as per the evidence, it is clearly stated that the accused ran away at that time. Therefore the evidence adduced by P.Ws.1 and 2 that the petitioner was the person, who was driving the vehicle at that point of time and hit the bullet going before it, does not correlate. He would also contend that the accident took place only because of the rash and negligent driving of the driver of the bullet and at the time of the accident all the three deceased persons were intoxicated. Therefore, 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 PW.19, who is one of the eye witness to the incident as who was travelling in the offending vehicle and had also sustained injuries. He had also identified the driver of the bus. He would further submit that even though the petitioner/accused ran away from the place of occurrence, to establish that he was not the driver at that point of time, did not produce any trip sheet to evidence the same. The conductor of the bus also though to safe-guard the interest of the driver had stated that the petitioner did not drive the bus, but, failed to produce the trip sheet, which is fatal to the alleged defence raised by the petitioner. 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 PW18, 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, which led to the death of the three persons. Further, the punishment imposed by the trial court is only for a period of one year under each count for the offence under Section 304-A, IPC, which was also affirmed by the appellate Court and therefore, the same need not be interfered with by this Court.

5. I heard the counsel for both sides and perused the materials placed on record. At the outset, it has to be seen whether the courts below are right in holding that the petitioner had driven the bus in a rash and negligent manner and remained as a cause for the accident. According to the petitioner, he was not the driver of the bus at the time of accident. He would further state that the accident took place due to the rash and negligent driving of the driver of the bus as they have been drunken at that point of time. However, on a perusal of the judgments passed by the Courts below, it is seen that PW19 one of the eye witness to the occurrence as he was travelling in the bus and who had also sustained injuries had clearly stated that the petitioner is the driver of the bus and he was driving the vehicle by speaking to the passengers, which is not totally warranted. Further, to establish his case that the petitioner was not the driver at that point of time, he has not even produced the trip sheet. If the same is produced, it would have enabled the Courts below to peruse and come to the conclusion that the petitioner was not driving the vehicle. Further, PW18, 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, the accident had occurred, which resulted in the death of three innocent persons. Therefore, 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.

8. As far as sentence is concerned, the trial court awarded only a minimum sentence of one year rigorous imprisonment for each counts, for the offence punishable under Section 304 (A) [3 counts] of IPC with fine of Rs.2,000/- each, failing which to undergo simple imprisonment for a period of three months; and imposed only a fine amount of Rs.200/- for the offence under Section 279 IPC, in default to undergo three months simple imprisonment. Further the petitioner was not convicted for the offence under Section 337 as the prosecution has not proved the same.

9. 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."

10. In view of the aforesaid decision and considering the nature of the offence committed by the petitioner viz., involving the death of three innocent persons and also the sentence awarded by the Courts below is only for a period of one year rigorous imprisonment, 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

vj2

TO

1. The Judicial Magistrate Krishnagiri.
2. -do- Through The Chief Judicial Magistrate Dharmapuri @ Krishnagiri.
3. The Additional District and Sessions Judge, Krishnagiri.
4. The Inspector of Police Krishnagiri Taluk Police Station Krishnagiri.
5. The Public Prosecutor, High Court, Madras.

सत्यमेव जयते

Cr1 RC No.631 of 2009

TEJ(CO)
Eu 09.07.15

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