

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.928 of 2010

Ramalingam

... Petitioner/Accused

Vs.

1. State rep. by
Inspector of Police,
Puduchatram Police Station,
Cuddalore District. ... 1st Respondent/Complainant

2. Varatharajan ... 2nd Respondent/Proposed
Respondent

(R-2 impleaded as per the order of this
Court dated 20.08.2015 made in M.P.No.1 of
2015 in Crl.R.C.No.928 of 2010)

Prayer: Criminal Revision Case filed under Sections 397 & 401
of the Code of Criminal Procedure, against the judgment and the
sentence passed by the learned Additional District Judge, Fast
Track Court No.1, Chidambaram, dated 29.06.2010 in C.A.No.13 of
2008 by confirming the judgment and sentence passed by the
learned District Munsif-cum-Judicial Magistrate, Parangipetti,
convicting the accused dated 30.01.2008 in C.C.No.180 of 2006
under Section 304(A) of IPC to undergo sentence for a period of
one year rigorous imprisonment and to pay a fine of Rs.1,000/-,
in default, three months rigorous imprisonment.

For Petitioner : Mr.Om Sai Ram

For R-1 : Mrs.M.F.Shabana,
Government Advocate (Crl.Side)

For R-2 : Mr.K.Ananda Kumar

ORDER

This Criminal Revision Case is directed against the order
passed by the learned Additional District Judge, Fast Track
Court No.1, Chidambaram, dated 29.06.2010 in C.A.No.13 of 2008,
confirming the judgment passed by the learned District Munsif-
cum-Judicial Magistrate, Parangipetti, in C.C.No.180 of 2006,
dated 30.01.2008.

2. It is admitted by both parties that the revision petitioner was convicted by the learned District Munsif-cum-Judicial Magistrate, Parangipetti, in C.C.No.180 of 2006, dated 30.01.2008, for the offence under Section 304-A of IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. Against the said conviction and sentence, the petitioner herein/accused had preferred an appeal in CrI.A.No.13 of 2008 before the learned Additional District and Sessions Judge, Fast Track Court No.1, Chidambaram. The learned Additional District Judge, after hearing both the parties, dismissed the said appeal and confirmed the order passed by the learned District Munsif-cum-Judicial Magistrate, Parangipetti. As against the said order, the present criminal revision case is preferred by the petitioner before this Court.

3. During the pendency of the above criminal revision case, the revision petitioner/accused had compromised the matter with the victim and the mother of the deceased viz., Tamilarasi had filed proof affidavit through her counsel. Paragraph Nos.4 to 6 of the said affidavit reads as follows:-

"4. I submit that revision petitioner belongs to our community and we reside permanently in the same village. Due to the intervention of family elders and village heads both of us compromised the matter on 1.06.2015 and towards loss of my son the revision petitioner had paid a sum of Rs.1 lakh as compensation. Further, we have received a sum of Rs.3,00,000/- towards MACTOP claim offence occurred more than 9 years and all of us buried our differences and amicably leading our lives peacefully.

5. I submit that if revision petitioner released from this case, we will be happy in view of cordial relationship prevail between us.

6. In view of above developments and compromise between the parties the revision petitioner may be released him from this case based on compromise."

4. In this case, the learned counsel for the petitioner relied on a decision reported in 2013 SCC Online Utt 3893 (Prakash Singh Bhandari Vs. State of Uttarakhand), wherein, at paragraph Nos.12 and 14, the Uttarakhand High Court has held as follows:-

"12. Be that as it may, the legal position is that the offence under Section 304(A) IPC does not find place in the scheme of Section 320 Cr.P.C. The

offences complained of against the accused-revisionist are not covered by the pronouncement of Gian Singh v. State of Punjab, (2013) 1 SCC (Crl.) 160. The compounding application is, therefore, dismissed.

13.

14. Further, in order to prove the offence punishable under Section 304(A) IPC, the prosecution is required to establish that the death is caused by a person, by doing any rash or negligent act not amounting to culpable homicide. Thus, 'rash and negligent act' is sine qua non of the offences under Sections 279, 338 & 304(A) IPC. P.W.1, in his examination-in-chief said that the driver of the Bolero was driving speedily. In para 4 of his cross-examination, P.W.1 could not tell the speed of Bolero (vehilce). P.W.2 also told in his examination-in-chief that the driver of Bolero was driving the vehicle speedily. PW4, in his examination-in-chief supported PW1 and PW2, but in the cross-examination admitted that the Bolero was being driven with a normal speed. PW4 was the person, who was sitting beside the driver in the front seat of the vehicle. Thus, the ingredients of rash and negligent driving were not proved by PW1, PW2 or PW4."

5. In this case, the offence under Section 304-A IPC is clearly proved against the petitioner/accused and the trial Court convicted the accused for the offence under Section 304-A IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. It is admitted by the prosecution that the fine amount imposed by the trial Court was already paid by the revision petitioner/accused.

6. In this case, it is relevant to extract Section 304-A IPC which reads as follows:-

"304-A. Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

7. In view of the above facts and circumstances, for the offence under Section 304-A IPC, imprisonment is not a compulsory one. Further, in the peculiar circumstances of the

case, the revision petitioner compromised the matter with the mother of the deceased and paid a sum of Rs.1,00,000/- as compensation to the mother of the deceased. Hence, this Court is of the considered view that the sentence of one year rigorous imprisonment imposed on the petitioner/accused by the trial Court has to be set aside and the fine amount imposed on the petitioner/accused has to be confirmed.

8. In the result, this Criminal Revision Case is partly allowed and the sentence of one year rigorous imprisonment imposed by the trial Court on the petitioner/accused is set aside and the fine amount of Rs.1,000/- imposed on the revision petitioner/accused is confirmed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Jrl
To

1. The Additional District Judge,
Fast Track Court No.1, Chidambaram.
 2. The District Munsif-cum-Judicial Magistrate,
Parangipetti.
 3. The Inspector of Police,
Puduchatram Police Station,
Cuddalore District.
 4. The Public Prosecutor,
High Court, Madras.
 5. The Section Officer, Crl. Section, High Court, Madras
- +1 CC to Mr. S.T. Raja, Advocate Sr.No.49246

Cr1.R.C.No.928 of 2010

GR (CO)
MD : 06/10/2016