

Bail Slip

The Appellant/Accused namely Nagalingam S/o Dhandapani (Accused in C.C. No. 107/2008 dated 01.02.2011 on the file of the Judicial Magistrate No.VI, Villupuram) was directed to be released on bail as per order of this Court dated 29.04.2011 in CrI.M.P. No. 1/2011 in CrI.R.C. no. 718/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HON'BLE MR.JUSTICE P.N. PRAKASH

CrI.R.C. No.718 of 2011

Nagalingam ..Petitioner/Appellant/Accused
vs.

State represented by
the Station House Officer
Valavanur
Cuddalore District
(Cr. No.379 of 2008)

..Respondent/Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to call for the records pertaining to the judgment dated 18.04.2011 passed in C.A. No.18 of 2011 on the file of the Principal District and Sessions Judge, Villupuram, modifying the judgment dated 01.02.2011 passed in C.C. No.107 of 2008 on the file of the Judicial Magistrate No.II, Villupuram and set aside the same.

For revision petitioner Mr. Om Sai Ram

For respondent

Mr. G. Ramar

Govt. Advocate (CrI. Side)

ORDER

This Criminal Revision Case has been preferred seeking to set aside the judgment dated 18.04.2011 passed in CrI.A.No.18 of 2011 on the file of the Principal District and Sessions Court, Villupuram, modifying the judgment dated 01.02.2011 passed in C.C.No.107 of 2008 on the file of the Judicial Magistrate No.II, Villupuram.

2 For the sake of convenience, the deceased, viz., Andavan and the accused, viz., Nagalingam are referred to by their name.

3 The facts of the case, minus the minute details, are given in a capsule as under:

3.1 It is the case of the prosecution that on 09.05.2008, around 6.00 p.m., Andavan was hit by the lorry bearing Regn. No.TN 21 5445, driven by Nagalingam, resulting in the death of the former. On the complaint (Ex.P.1) given by Krishnamoorthy (P.W.1), the police registered a case in Cr. No.379 of 2008 under Sections 279 and 304-A IPC and the investigation was taken over by Shankar, Inspector of Police (P.W.10). Andavan was rushed to the Government Hospital, Villupuram, where, he was declared 'brought dead'.

3.2 On the request of the Investigating Officer, Dr.Pandian (P.W.5) performed autopsy and issued post-mortem certificate (Ex.P.3), wherein, he has opined that Andavan had died of head injury sustained by him. The offending lorry was examined by Swaminathan, Motor Vehicles Inspector (P.W.4). Nagalingam was arrested and after completing the investigation, Shankar, Inspector of Police (P.W.10) filed final report in C.C. No.107 of 2008 before the Judicial Magistrate No.II, Villupuram.

3.3 On the appearance of Nagalingam, the provisions of Section 207 Cr.P.C. were complied with and the Trial Court framed charges against him under Sections 279 and 304-A IPC. When questioned, he pleaded 'not guilty'.

3.4 To prove the case, the prosecution examined ten witnesses and marked seven exhibits. When Nagalingam was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On the side of Nagalingam, neither any witness was examined nor any document marked.

3.5 After considering the evidence on record and hearing either side, the Trial Court, by judgment dated 01.02.2011, convicted Nagalingam under Sections 279 and 304-A IPC and slapped sentences on him as under:

Provision under which convicted	Sentence
304-A IPC	One year rigorous imprisonment and a fine of Rs.2,000/-, in default to undergo 3 months simple imprisonment.

Provision under which convicted	Sentence
279 IPC	No separate sentence

3.6 Challenging the aforesaid conviction and sentence, Nagalingam filed Crl.A.No.18 of 2011 in the Court of Session, which was heard by the Principal Sessions Judge, Villupuram, who, by judgment dated 18.04.2011, confirmed the conviction, however, modified the sentence of one year rigorous imprisonment for the offence under Section 304-A IPC to six months rigorous imprisonment, still aggrieved by which, Nagalingam is before this Court under Section 397 read with 401 Cr.P.C.

4 Heard Mr. Om Sai Ram, learned counsel for Nagalingam and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent-State.

5 Mr. Om Sai Ram, learned counsel for Nagalingam, taking this Court through the evidence of Krishnamoorthy (P.W.1), Vijayan (P.W.2) and Janakarathan (P.W.3), submitted that the accident had not occurred in the manner as projected by the prosecution, inasmuch as the prosecution witnesses have clearly stated that the rear wheel of the lorry had run over Nagalingam. He built up his arguments further by contending that had there been a head on collision, as alleged by the prosecution, the front wheel would have mowed Andavan.

6 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for Nagalingam.

7 This Court gave its anxious thought to the rival submissions and scanned the materials available on record.

8 While dealing with a revision petition under Sections 397 and 401 Cr.P.C., this Court cannot re-appreciate the evidence as a Court of Second Appeal. At this juncture, it is apropos to allude to the following paragraphs of the judgment of the Supreme Court in State of Maharashtra, etc. vs. Jagmohan Singh Kuldeep Singh Anand and Others, etc.¹:

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions

1 (2004) 7 SCC 659

Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

Of course, where it is demonstrated that both the Courts below had overlooked certain material evidences, then, the power of this Court to re-appreciate the evidence can be exercised.

9 Krishnamoorthy (P.W.1) and Vijayan (P.W.2) have stated in their evidence that they were working as Loadmen along with the Andavan in Veeranam; on 09.05.2008, after their work, they were proceeding in their respective cycles from Kariamanikkam to Veeranam and Andavan was going by his cycle a little ahead of them; around 6.00 p.m., the lorry driven by Nagalingam came in the opposite direction and dashed against Andavan and ran over

him, resulting in his death. Krishnamoorthy (P.W.1) has clearly stated that he saw Nagalingam on the wheels and that he ran away, abandoning the lorry. In the cross-examination, Krishnamoorthy (P.W.1) has stated that he heard a loud noise and the lorry was not there at the place of occurrence. The learned counsel for Nagalingam, based on the said stray statement of Krishnamoorthy (P.W.1) contended that Krishnamoorthy (P.W.1) had not seen the accident himself. However, on a careful reading of the evidence of Krishnamoorthy (P.W.1) in vernacular, he has been asked whether he heard any sound of collision, for which, he has stated in the affirmative. Thereafter, he was asked whether the lorry was there at the spot, for which, he has stated that the lorry was not there at the spot. These two statements are disjunctive. Even in the chief-examination, Krishnamoorthy (P.W.1) has stated that after the lorry hit Andavan, it did not stop, but, went away and thereafter, the driver abandoned the lorry and ran away.

10 Mr. Om Sai Ram contended that had there been a head on collision, the front wheel of the lorry would have run over Andavan and not the rear wheel. The learned Government Advocate (Crl. Side) brought to the notice of this Court the evidence of Swaminathan, Motor Vehicles Inspector (P.W.4), who has stated that the glass of the right side indicator lamp of the lorry was broken. This shows that the lorry must have come so close that the hand bar of the cycle must have hit the glass of the indicator lamp causing damage to it and in that impact, Andavan was thrown to the ground resulting in the rear wheel running over him. The evidence of Dr. Pandian, (P.W.5), who conducted post-mortem, shows that he found the head of Andavan crushed. This opinion of the doctor amply corroborates the prosecution version that the lorry ran over Andavan.

11 Mr. Om Sai Ram contended that in the cross-examination of Swaminathan, Motor Vehicles Inspector (P.W.4), he has stated that he does not know as to when the glass of the right side indicator lamp was broken. Based on this reply of the witness, Mr. Om Sai Ram contended that the glass of the right side indicator lamp would have broken earlier and not in the accident in question. Be it noted that the evidence of the Motor Vehicles Inspector is relevant under Section 45 of the Evidence Act and he was not examined to give evidence on the fact in issue as, obviously, he was not an eye-witness. The evidence of Krishnamoorthy (P.W.1) and Vijayan (P.W.2) address the fact in issue.

12 Mr. Om Sai Ram contended that the third eye witness, viz., Janakarathan (P.W.3) did not support the prosecution case and stated that Andavan hit the rear side of the lorry and fell beneath the back wheel. It is seen that the prosecution have

rightly declared him hostile and the evidence of the hostile witness should have to be weighed on the scales, along with the evidence of Krishnamoorthy (P.W.1) and Vijayan (P.W.2). On such weighment, this Court is inclined to accept the evidence of Krishnamoorthy (P.W.1) and Vijayan (P.W.2) rather than the evidence of Janakarathan (P.W.3). Both the Trial Court as well the lower Appellate Court have appreciated the evidence on record in the right perspective and this Court does not find any impropriety or illegality in their judgments.

13 Coming to the question of sentence, the lower Appellate Court has reduced the sentence from one year rigorous imprisonment to six months rigorous imprisonment, which, in the opinion of this Court, does not deserve any further reduction in the light of the law laid down by the Supreme Court in *State of Punjab vs. Balwinder Singh and others*², wherein, it has been categorically held as under:

"11 While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted, he would be dealt with leniently by the Court. For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilty beyond reasonable doubt."

In the ultimate analysis, this criminal revision case fails and is accordingly dismissed. The Trial Court is directed to secure the presence of Nagalingam and send him to prison to undergo the remaining period of sentence, if any.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

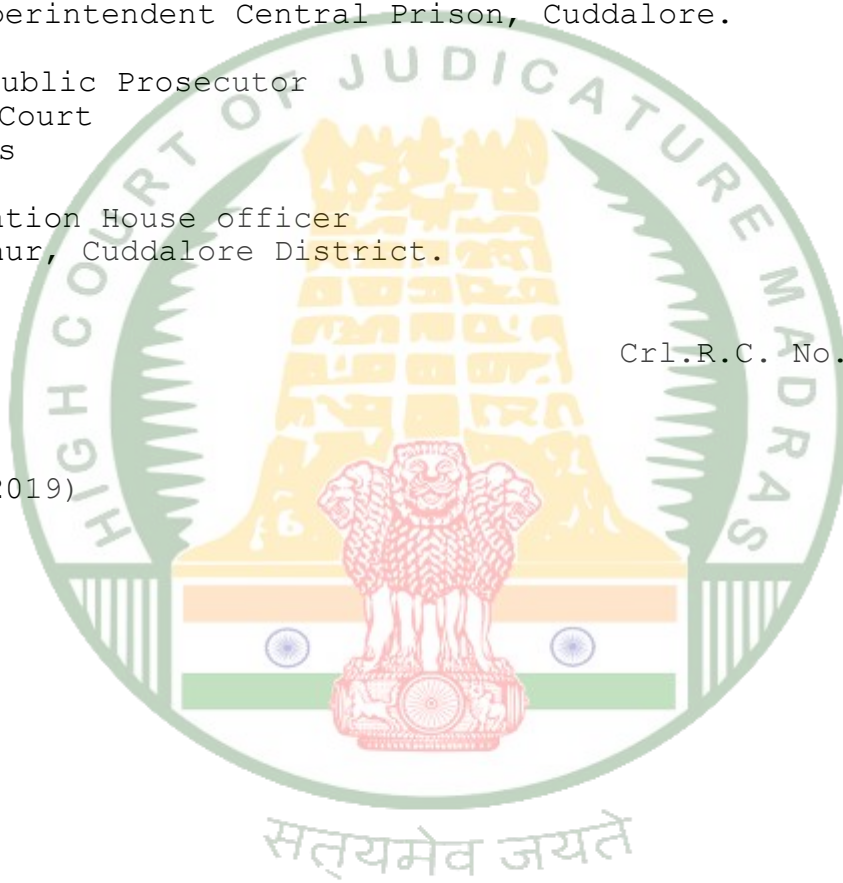
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To

1. The Judicial Magistrate No.II
Villupuram.
2. The Chief Judicial Magistrate
Villupuram(for information)
3. The Principal District and Sessions Judge
Villupuram
4. The Superintendent Central Prison, Cuddalore.
5. The Public Prosecutor
High Court
Madras
6. The Station House officer
Valavanur, Cuddalore District.

Crl.R.C. No.718 of 2011

RJI (CO)
SP(03/01/2019)



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