

BAIL SLIP

The Appellant/accused namely S.Krishnamoorthy, S/o.Subramaniam, in C.C.No.3048 of 2006 dated 19.02.2008 on the file of the III Metropolitan Magistrate, George Town, Chennai and the accused in C.A.No.171 of 2008 on the file of the V Additional Sessions Judge, Chennai dated 01.02.2011 was released on bail CRL MP No.1 of 2011 in CRL RC No.990 of 2011 dated 01.08.2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.990 of 2011

S. Krishnamoorthy

.. Petitioner

Vs.

The State represented by its
Inspector of Police,
G-2, Yanakavani Police Station,
Traffic Investigation,
Chennai.

.. Respondent

Prayer: Criminal Revision filed under Sections 397 and 401 of Cr.P.C., against the conviction and sentence dated 19.02.2008 in C.C.No.3048 of 2006 passed by the III Metropolitan Magistrate, George Town, which was confirmed by judgment dated 01.02.2011 in C.A.No.171 of 2008 by the V Additional Sessions Judge, Chennai.

For Petitioner : Mr.I.C.Vasudevan
For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(CrI. Side)

ORDER

This criminal revision has been preferred seeking to set aside the conviction made by judgment dated 01.02.2011 in C.A.No.171 of 2008 by the V Additional Sessions Judge, Chennai, confirming the conviction and sentence dated 19.02.2008 in C.C.No.3048 of 2006 passed by the III Metropolitan Magistrate, George Town, Chennai.

2 The brief facts leading to the filing of this criminal revision are as follows:

2.1 It is the case of the prosecution that on 11.02.2006, around 6.00 a.m., Velu (PW1) was transporting Parvathy (PW2) and the deceased Nagaiya by his tricycle from Pulianthoppu to Elephant Gate (West to East) via Elephant Gate bridge; while they were going down, they were hit from behind by a milk van bearing Registration No. TN 23 E 6555, driven by the petitioner resulting in the tricycle toppling, due to which, Parvathy (PW2) and Nagaiya sustained injuries and they were rushed to the Government Hospital for treatment, where, Nagaiya was declared brought dead.

2.2 On the complaint lodged by Velu (PW1), M.Venkataraman (PW10), Sub-Inspector of Police, registered a case in Crime No.28/C2/2006 under Section 337 IPC (2 counts) and Section 184 of the Motor Vehicles Act against the petitioner and prepared the printed FIR (Ex-P8); he went to the place of occurrence and prepared observation Mahazar (Ex-P3) and rough sketch (Ex-P9). On getting information from the Government Hospital that Nagaiya had died, M.Venkataraman (PW10), Sub-Inspector of Police handed over the investigation to Krishnamoorthy (PW11), Inspector of Police, who went to the hospital and conducted inquest over the body of Nagaiya and prepared the inquest report (Ex-P10).

2.3 Post-mortem on the body of Nagaiya was done by Dr.M.A.Aravind (PW7), who, in his opinion as well in the post-mortem report (Ex-P5), has stated that the deceased could appear to have died due to multiple injuries. On 13.02.2006, the Investigating Officer sent a requisition to the Motor Vehicles Inspector to examine the milk van and received the report (Ex-P6). On 11.02.2006, the petitioner surrendered before the Investigating Officer who placed him under arrest.

2.4 After examining witnesses and obtaining reports from the Motor Vehicles Inspector and the doctor who performed autopsy, Krishnamoorthy (PW11), Inspector of Police, completed the investigation and filed final report before the III Metropolitan Magistrate, George Town, Chennai, which was taken on file as C.C.No.3048 of 2006.

2.5 On the appearance of the petitioner, he was furnished with the relied upon documents under Section 207 Cr.P.C. and charges were framed for the offences under Sections 304-A and 337 IPC and Section 184 of the Motor Vehicles Act. When questioned, the petitioner pleaded "not guilty".

2.6 To prove the case, the prosecution examined eleven witnesses and marked eleven exhibits.

2.7 When the petitioner was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

2.8 On the defence side, no witness was examined nor any document marked.

2.9 After considering the evidence on record, the trial Court convicted and sentenced the petitioner as follows:

Provision under which convicted	Sentence
(i) 304-A IPC	Six months rigorous imprisonment
(ii) 337 IPC	Fine of Rs.500/- in default to undergo one month simple imprisonment
(iii) 184 of the Motor Vehicles Act	Fine of Rs.200/- in default to undergo one week simple imprisonment

2.10 Challenging the above conviction and sentence, the petitioner filed C.A.No.171 of 2008 before the Court of Session and the same was dismissed on 01.02.2011, challenging which, the petitioner has filed this present criminal revision petition.

3 Heard Mr.I.C.Vasudevan, learned counsel appearing for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent/State.

4 At the outset, it may be necessary to state here that this Court cannot re-appreciate the evidence like a second appellate power in view of the judgment of the Supreme Court in State of Maharashtra, etc. vs. Jagmohan Singh Kuldip Singh

Anand and Others, etc.¹, wherein, it has been held that the powers under Section 397 read with 401 Cr.P.C. cannot be exercised as a second appellate power. The relevant portion of the said judgment reads as follows:

"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

¹ 2004 (7) SCC 659

revision conferred on the High Court or the Sessions 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 reappreciate 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.”

5 Mr. I. C. Vasudevan, learned counsel appearing for the petitioner contended that there is absolutely no finding by the Courts below that the petitioner had driven the offending van in a rash and negligent manner so as to make him liable under Section 304-A IPC. He placed strong reliance on the answer given by Janarthanan (PW4), in the cross-examination, to the effect that the milk van was being driven by the petitioner in a steady manner. He further contended that the tricycle carrying the passengers tried to suddenly turn right and that is why, the accident had taken place and not on account of rash and negligent driving of the petitioner.

6 Per contra, Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent/State refuted the contentions.

7 Velu (PW1), in his evidence, has stated that on 11.02.2006, he was transporting two passengers via Elephant Gate bridge and while he was ascending the bridge, his tricycle was hit from behind by a milk van, on account of which, it toppled, resulting in injuries to the deceased Nagaiya and Parvathy (PW2); he immediately carried them to Stanley Hospital where Nagaiya was declared brought dead and Parvathy (PW2) was admitted; he came to the police station and lodged a complaint (Ex-P1). He has further deposed that he saw the driver of the milk van and identified the petitioner in the dock.

8 In the cross-examination, he was questioned as to whether he had any licence to transport passengers in tricycle, for which, he has stated that he did not have one. He has further specifically stated that since the milk van had forcefully hit his tricycle, it got toppled. He has further stated in his cross-examination that there was no vehicle moving in the front. To a specific question in the cross-examination as to how many people were there in the milk van, he has stated that the petitioner was on the wheels. It was suggested to him that for getting compensation under the Motor Vehicles Act, a case has been foisted on the petitioner, which, he denied.

9 As regards Parvathy (PW2), she has stated in her examination-in-chief that she is a conservancy worker; on 11.02.2006 (Saturday), she was proceeding to work in the tricycle driven by Velu (PW1); along with her, an old man was also travelling; at that time, a milk van hit the tricycle from behind due to which the tricycle toppled resulting in injuries to her; she fainted and when she regained consciousness, she found that she was admitted in Stanley Hospital. She has not properly identified the petitioner as the person who had driven the vehicle.

10 Loganathan (PW6), in his evidence, has stated that he was working in the Electrical Department of the Southern Railway and that the petitioner Krishnamoorthy is his relative; he surrendered the petitioner to the police in connection with the involvement of the milk van driven by the petitioner in the accident.

11 The facts that have been proved beyond any doubt are:
(a) On 11.02.2006, the deceased Nagaiya and Parvathy (PW2) were travelling in a tricycle driven by Velu (PW1)
(b) When going down the Elephant Gate bridge, the accident had

occurred in which Nagaiya lost his life and Parvathy (PW2) was injured.

(c) The petitioner was driving the milk van.

12 Dr.Alagappan (PW9) has, in his evidence, stated that while he was on duty in the emergency accident ward in Stanley Hospital on 11.02.2006, he examined one Parvathy (PW2) who told him that while she was travelling by a tricycle, a milk van had hit the tricycle, on account of which, she has suffered injuries; he gave her first aid and admitted her in Ward No.8 for thorough examination; he issued the Accident Register copy (Ex-P7).

13 M.Vijayakumar (PW8), Motor Vehicles Inspector, Regional Transport Office, Chennai, has stated that he examined the milk van bearing Registration No. TN 23 E 6555 and gave report (Ex-P6). In his evidence as well in the report (Ex-P6), it is stated that the left indicator of the van was found broken and paint scrapings were observed on the left side of the front bumper. From this, one can infer that the left side of the milk van has hit the tricycle from behind, may be, when the driver attempted to overtake the tricycle.

14 Coming to the evidence of Janarthanan (PW4), he has stated in the examination-in-chief that he is a Typewriter mechanic; on 11.02.2006, around 6.00 a.m., while he was going down the Elephant Gate bridge in his bicycle, he saw a van going ahead of him; he also saw a tricycle ahead of the van; the van dashed on the tricycle, due to which, the persons travelling in the tricycle and the rider of the tricycle fell down; the persons who were travelling were an elderly man and a lady; the lady suffered injuries on her shoulders and there were no external injuries on the elderly person however, he had fainted; an auto-rickshaw was called and they were sent to Stanley Hospital for treatment; he noted down the Registration number of the milk van and in his evidence, he has given the Registration number as TN 23 E 6555. He has further stated that the police prepared the Observation Mahazar (Ex-P3) and rough sketch (Ex-P9) in his presence.

15 In the cross-examination of Janarthanan (PW4), he has stated that the tricycle was going on the left side of the road. He has also stated in the cross-examination that the petitioner/driver of the milk van was driving steadily.

16 The question is, whether this solitary statement of Janarthanan (PW4) would be enough to hold that the petitioner was not driving the vehicle rashly and negligently. Even according to the evidence of Janarthanan (PW4), the tricycle was going on the left side of the road and it is not his case that

the tricycle was going in the middle of the road.

17 The evidence of M.Vijayakumar (PW8), Motor Vehicles Inspector, Regional Transport office, Chennai, shows that the left indicator of the van was found broken and the paint on the left side of the bumper was found scrapped. In the collision, the tricycle carrying the two passengers has toppled resulting in injuries to them. This, by itself, shows that the petitioner was coming down the bridge rashly and while trying to overtake the tricycle negligently, the left side bumper had hit the tricycle with impact, on account of which, the tricycle had toppled.

18 It is seen that the deceased Nagaiya was aged about 70 years and the external injuries were only three abrasions. As stated above, the accident had occurred when the petitioner tried to overtake the tricycle while going down the Elephant Gate bridge. Parvathy (PW2) suffered only external and internal pain, for which, she was given first aid and later discharged.

19 In such view of the matter, the conviction of the petitioner under Section 304-A, 337 IPC and 184 of the Motor Vehicles Act stands confirmed. The sentence under Section 304-A IPC of six months rigorous imprisonment is reduced to three months rigorous imprisonment. The fine amount and the default sentence shall remain the same. The trial Court is directed to issue warrant for securing the petitioner immediately.

In the result, this criminal revision is partly allowed.

Sd/-
Assistant Registrar(CS V)
//True Copy//

Sub Assistant Registrar

nsd

To

1. The Inspector of Police,
G-2, Yanakavani Police Station,
Traffic Investigation,
Chennai.
2. The III Metropolitan Magistrate,
George Town.
3. The Chief Metropolitan Magistrate,
Egmore, Chennai.

4. The V Additional Sessions Judge,
Chennai.

5. The Direct General of Police,
Chennai 4.

6. The Commissioner of Police,
Chennai.

7. The District Collector,
Chennai.

8. The Superintendent,
Central Prison, Puzhal, Chennai.

9. The Public Prosecutor,
Madras High Court,
Chennai - 104.

10. The Section Officer,
Criminal Section,
High Court, Chennai.

+1 cc to Mr.I.C.Vasudevan, Advocate Sr.No.86999

Cr1.R.C.No.990 of 2011

SSI (CO)
CSL/07.02.2019



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