

Bail Slip

Mr.Sudhakar aged 46 years S/O Thangavel, Accused in C.A 109/12 on the file of I Additional District and Sessions Judge, Tiruppur was enlarged on bail by this Court order in M.P.1 of 2013 dated 1/4/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.431 of 2013

Sudhakar, aged 46 years,
S/o. Thangavel,
No.9, Maniayakarar Compound,
Therkku Thottom,
Karuvampalayam,
Tirupur.

... Petitioner

Vs.

State represented by
The Inspector of Police,
Tirupur South Police Station,
Tirupur.

...Respondent

Prayer: Criminal Revision filed under Sections 397 and 401 of Cr.P.C., against the judgment of conviction dated 22.01.2013 made in C.A.No.109 of 2012 on the file of I Additional District and Session Court, Tirupur, which confirmed the conviction and modified the sentence imposed in a judgment dated 16.03.2012 made in C.C.No.14 of 2007 on the file of learned Judicial Magistrate No.II, Tirupur.

For Petitioner : Mr.P.M.Duraiswamy

For Respondent : Mr.G.Ramar
Government Advocate (Crl. Side)

ORDER

This criminal revision has been preferred seeking to set aside the conviction made by judgment dated 22.01.2013, made

in C.A.No.109 of 2012, on the file of the I Additional District and Session Court, Tirupur, confirming the conviction and modifying the sentence imposed in judgment dated 16.03.2012, made in C.C.No.14 of 2007, on the file of the learned Judicial Magistrate, Court No.II, Tirupur.

The brief facts leading to the filing of this criminal revision petition are as under:

2 It is the case of the prosecution that on 13.09.2006, around 10.00 a.m., when Appusamy (PW1) was going with his wife Ramathal in his Splendour Plus motor bike, bearing Registration No. TN 39 Z 6356, the accused who was the driver of Shanthamani private bus bearing Registration No. TN 39 V 9626, hit the motor bike of Appusamy (PW1) from behind resulting in the bus running over Ramathal and causing injuries to Appusamy (PW1). The bystanders carried Appusamy (PW1) and Ramathal to the Government Hospital by ambulance and on intimation, the police came to the hospital and recorded the statement (Ex-P1) of Appusamy (PW1) and registered a case in Crime No.1434 of 2006 under Sections 279, 337 and 304-A IPC. Dr.Suseela (PW9), conducted autopsy on the body of the deceased Ramathal and issued post-mortem certificate (Ex-P3). In her evidence as well in the post-mortem report (Ex-P3), it is stated that the head portion of the deceased was found crushed. It is further stated that she also treated Appusamy (PW1) for the injuries sustained by him and issued the Accident Register copy, which was marked as Ex-P4.

2.1 Pattabisamy (PW11), Motor Vehicle Inspector, examined the motor bike of Appusamy (PW1) and issued a certificate (Ex-P6) to the effect that there was no mechanical failure in the motor bike. Similarly, Rajinikanth (PW14), Motor Vehicle Inspector, inspected the offending bus and issued a certificate (Ex-P9) to the effect that there was no mechanical failure in the bus.

2.2 The investigation was conducted by Krishnasamy (PW13), Inspector of Police, who examined the witnesses, collected the post-mortem report (Ex-P3) and reports (Ex-P6 and Ex-P9) of the Motor Vehicle Inspectors (PW11 and PW14) and filed final report in C.C.No.14 of 2007, before the Judicial Magistrate No.2, Tiruppur, against the accused for the offences under Sections 279, 337 and 304-A IPC.

2.3 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and charges for the offences under Sections 279, 337 and 304-A IPC were framed against the accused and when questioned, the accused, pleaded "not guilty".

2.4 To prove the case, the prosecution examined fourteen witnesses and marked nine exhibits. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on behalf of the accused.

2.5 After considering the evidence on record and hearing either side, the trial Court, by judgment dated 16.03.2012 in C.C.No.14 of 2007, convicted and sentenced the accused as follows:

Provision under which convicted	Sentence
(a) 279 IPC	three months simple imprisonment with fine of Rs.500/-, in default to undergo two months simple imprisonment.
(b) 304-A IPC	one year simple imprisonment with fine of Rs.1000/-, in default to undergo three months simple imprisonment.

However, the accused was acquitted for the offence under Section 337 IPC.

2.6 Challenging the conviction and sentence passed by the trial Court in C.C.No.14 of 2007 by judgment dated 16.03.2012, the accused preferred C.A.No.109 of 2012 before the Court of Session, Tiruppur, which was heard by the I Additional District and Sessions Judge, Tiruppur. The Sessions Court confirmed the conviction imposed on the accused by the trial Court, but, reduced the sentence as under:

Provision under which convicted	Sentence
(a) 279 IPC	Fine of Rs.500/-, in default to undergo two months simple imprisonment.
(b) 304-A IPC	Six months simple imprisonment and fine of Rs.1000/-, in default to undergo three months simple imprisonment.

3 Heard Mr.Duraiswamy, learned counsel appearing for the accused and Mr.G.Ramar, learned Government Advocate(Crl. Side) appearing for the respondent/State.

4 Mr.Duraiswamy, learned counsel for the accused, took this Court through the evidence of Appusamy (PW1) and submitted that the accident had not taken place in the manner projected by

the prosecution and that Appusamy (PW1) suddenly overtook the stationary State Transport Corporation bus, on account of which, the accident had taken place.

5 Per contra, learned Government Advocate appearing for the respondent/State refuted the contentions of the learned counsel for the accused.

6 Before adverting to the rival submissions, it may be necessary to refer to the judgment of the Supreme Court in State of Maharashtra, etc. vs. Jagmohan Singh Kuldeep 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 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)

1 2004 (7) SCC 659

"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."

7 As held by the Supreme Court, while exercising the powers under Section 401 Cr.P.C., this Court cannot completely re-appreciate the evidence, unless it is shown that the trial Court and the lower Appellate Court had overlooked vital and material pieces of evidence.

8 Apart from Appusamy (PW1), the accident has been spoken to by Sasikumar (PW5) and Dhanapal (PW6). Appusamy (PW1), in his evidence has stated that, on 13.09.2006, he was going with his wife Ramathal by his Splendour Plus motor bike, bearing Registration No. TN 39 Z 6356, for distributing invitation cards; while they were going from North-South direction, they were hit from behind by a bus, on account of which, he lost his balance and fell on the left side; his wife fell on the right side and the bus ran over her. To that effect is the evidence of Sasikumar (PW5) and Dhanapal (PW6) as well.

9 In the cross-examination of Appusamy (PW1), he has admitted that the accident had taken place near TKT bus stand. He has also admitted that a State Transport Corporation bus halted at the TKT bus stand and passengers were alighting from that bus. He has further admitted that he tried to overtake the stationary bus and at that time, the offending bus hit his motor bike from behind.

10 Mr.Duraiswamy, learned counsel for the accused contended that the accident has occurred on account of Appusamy (PW1), suddenly overtaking the stationary bus and not on account of the rash and negligent driving of the accused.

11 This Court is unable to persuade itself to agree with the above submission for the following reasons:

(a) It is not the case of Appusamy (PW1) that the State Transport Corporation bus, which was going in front of him

suddenly stopped. It is his case that the State Transport Corporation bus had halted at the bus stand and passengers were alighting. Confronted with such a situation, anyone coming behind would have to perforce overtake the stationary bus and proceed further, if the road on the opposite side is clear. The accident did not take place after sunset but in broad daylight at 10.00 a.m.

(b) That apart, the manner in which Appusamy (PW1) and his wife Ramathal were thrown on the ground, would, by itself, show that the accused had not noticed the motor bike in front of him and he also overtook the stationary bus from behind resulting in the accident. Had the accused driven the bus in normal speed, he would have noticed the motor bike overtaking the stationary bus and proceeding further, in which event, the accident could have been averted. Obviously he failed to notice the motor-cyclist before him and after the impact also, had he applied the brakes, the bus would not have run over the deceased Ramathal.

12 In view of the above discussion, this Court does not find any infirmity in the findings of the trial Court and the lower Appellate Court qua conviction of the accused. However, the sentence of six months simple imprisonment imposed by the lower Appellate Court is reduced to three months simple imprisonment and the fine and default sentence remain unchanged.

In the result, this criminal revision is partly allowed. The trial Court is directed to secure the accused for undergoing the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS IV)

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सत्यमेव जयते
Sub Assistant Registrar

To

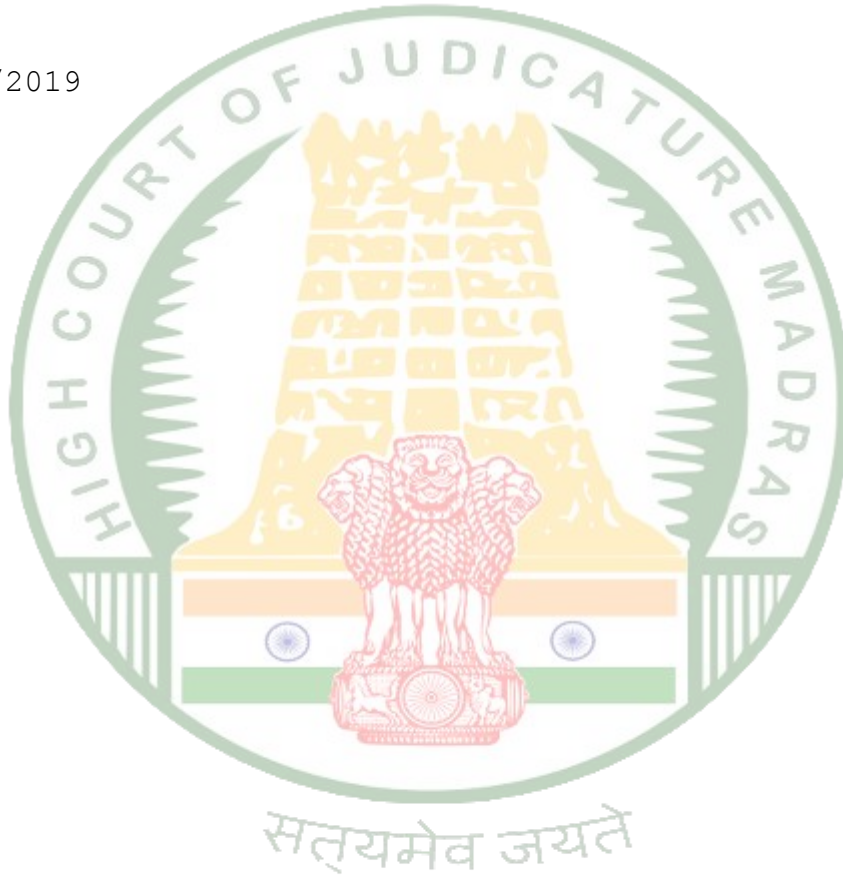
1. The Inspector of Police,
Tirupur South Police Station, Tirupur.
2. The I Additional District and Session Judge,
Tirupur.
3. The Judicial Magistrate No.II,
Tirupur.

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

+1cc to Mr.P.M.Duraiswamy, Advocate Sr.83769

Cr1.R.C.No.431 of 2013

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srg 31/01/2019



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