

BAIL SLIP

The Petitioner/Accused viz., Arunkumar, S/o.Subramaniam, (Sole Accused in CC.69 of 2009) was directed to be released on bail by order of this Court dated 26/04/2013 made in M.P.No.1/2013 in Crl RC. No.574/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

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

Crl.R.C. No.574 of 2013

Arunkumar

..Petitioner

vs.

State represented by
the Inspector of Police
Sulur Police Station
Sulur
(Cr. No.187 of 2008)

Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. seeking to set aside the judgment dated 02.03.2013 passed in Crl.A. No.245 of 2011 by the V Additional District & Sessions Judge (Fast Track Court No.II), Coimbatore, confirming the judgment dated 19.10.2011 in C.C. No.69 of 2009 on the file of the Judicial Magistrate, Palladam.

For petitioner : Mr. Kumarasamy
for Mr. S. Gunalan

For respondent Mrs. : P. Kritika Kamal
Govt. Advocate (Crl. Side)

ORDER

This criminal revision has been preferred seeking to set aside the judgment dated 02.03.2013 passed in Crl.A. No.245 of 2011 by the V Additional District & Sessions Judge (Fast Track Court No.II), Coimbatore, confirming the judgment dated 19.10.2011 in C.C. No.69 of 2009 on the file of the Judicial Magistrate Court, Palladam.

2 Shorn of the minute details, the facts necessary and germane for the disposal of this criminal revision are as under:

2.1 It is the case of the prosecution that on 07.03.2008, around 5.45 p.m., the petitioner, who was driving a tempo van bearing Regn. No.TDI 6984 from West to East in a rash and negligent manner, dashed against one Revathy, resulting in her passing away.

2.2 On the complaint lodged by Devi (P.W.1), the sister of the deceased Revathy, the respondent police registered a case in Cr.No.187 of 2008 and after completing the investigation, filed final report against the petitioner in C.C. No.69 of 2009 before the Judicial Magistrate, Palladam, for the offences under Sections 279 and 304-A IPC.

2.3 On the appearance of the petitioner, he was furnished with the copies of the relied upon documents under Section 207 Cr.P.C. and the Trial Court framed charges against him under Sections 279 and 304-A IPC. When questioned, the petitioner pleaded 'not guilty'.

2.4 To prove their case, the prosecution examined six witnesses and marked seven exhibits. When the petitioner was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

2.5 The Trial Court, after considering the evidence on record, by judgment dated 19.10.2011, convicted and sentenced the petitioner as under:

Provisions under which conviction was made	Sentence
304-A IPC	One year simple imprisonment and fine of Rs.2,000/-, in default to undergo three months simple imprisonment

2.6 Challenging the said conviction and sentence, the petitioner preferred Crl.A. No.245 of 2011 in the Court of Session and the same was heard by the V Additional District and Sessions Judge (Fast Track Court No.II), Coimbatore and was eventually dismissed on 02.03.2013, questioning the legality and validity of which, the petitioner has preferred the instant criminal revision before this Court under Sections 397 and 401 Cr.P.C.

3 Heard Mr. Kumarasamy, learned counsel representing Mr.S.Gunalan, learned counsel on record for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent/State.

4 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 Kuldip 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 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.

1 (2004)7 SCC 659

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, when material evidences have been overlooked by the Courts below, which would have otherwise turned the tables, this Court can embark upon the exercise of re-appreciating the same.

5 Coming to the case at hand, the death of Revathy in the accident in question is beyond cavil. The case of the prosecution rests on the evidence of Devi (P.W.1), Revathy's sister.

6 Devi (P.W.1) has stated that Revathy is her younger sister; on 07.03.2008, she and Revathy were going by walk from East to West to Angaliyamman Temple; at that time, they saw a tempo van coming in the opposite direction at a high speed; seeing the said tempo van, they tried to move to the left side of the road; yet, the tempo van hit them both, due to which impact, Revathy was thrown a little away; they were taken to R.V.S. Hospital and were given first aid; from there, they were sent by an ambulance to the Government Hospital, Coimbatore, where, Revathy was declared brought dead; she gave a complaint (Ex.P.1) to the police.

7 In the cross-examination, Devi (P.W.1) has stated that she suffered injuries on her right hand, for which, she took treatment in Maavani Hospital in Rasipalayam. She has admitted in her cross-examination that she stated in her complaint that the van first hit them and thereafter capsized, after hitting a compound wall of a company nearby. It was suggested to her that she was not there at the time of accident and that when her sister Revathy suddenly crossed the road without noticing the tempo van approaching towards her, the accident had occurred, which suggestion she denied.

8 Both the Courts below have accepted the evidence of Devi (P.W.1) and have held the petitioner guilty and this Court has no good reason to disbelieve her testimony. In fact, it may not be inappropriate to extract the findings giving in paragraph no.15 of the judgment of the lower Appellate Court as under:

"15. As per the evidence of P.W.1, they were walking along a village road from East to West direction. The road runs East to West. Vehicle was on the opposite direction. As observed by the Trial Court, the left side for the child will be on the South. The left for the accused on the side of the

north. But from the sketch it is seen that the accident took place on the extreme southern edge of the road portion. The width of the road measures 12 feet. When that is being so, reason for crossing over to the South side has not been explained by the accused. Because it is within his special knowledge as to what prompted to him to go the extreme southern road portion leaving his direction. Absolutely there is no explanation."

The aforesaid reasoning of the lower Appellate Court cannot be said to be unreasonable or perverse.

9. Mr. Kumarasamy, learned counsel appearing for the petitioner contended that the identity of the petitioner has not been established, inasmuch as Devi (P.W.1) has not stated that the petitioner was on the wheels when the accident occurred and hence, the conviction and sentence made by the Courts below are liable to be set aside. In this regard, he placed reliance on the following judgments:

- Magesh vs. State by Inspector of Police, Gudiyatham Taluk Police Station, Vellore District²;
- S. Sakir vs. State of Tamil Nadu, represented by Inspector of Police, North Police Station, Tiruppur³; and
- Balachandran vs. State, represented by Inspector of Police, M-1 Periyanaickenpalayam Police Station⁴.

10. Albeit Devi (P.W.1) has not specifically stated so, a reading of her cross-examination and the deposition of other witnesses shows that the petitioner has not posed any question to the witnesses disputing his identity. In fact, Thirumeni (P.W.4), Inspector of Police, has stated in the chief-examination that on 19.03.2008, at 10.30 a.m., the petitioner himself voluntarily surrendered before the police and he was placed on arrest. This evidence in chief has not been repudiated by the defence in the cross-examination of Thirumeni (P.W.4). Thus, the conduct of the petitioner in surrendering before the police is relevant under Section 8 of the Evidence Act. The petitioner has not given any plausible explanation when he was examined under Section 313 Cr.P.C. as to why he voluntarily surrendered before the police. Coming to the reliance placed by Mr. Kumarasamy on the rulings aforesaid, the facts involved therein are distinguishable from the facts obtaining in the case at hand, as stated above and as such, are not of any avail to the petitioner.

² CDJ 2011 MHC 5787

³ (2012) 4 MLJ (Cr.) 668

⁴ (2012) 4 MLJ (Cr.) 648

11 As regards the sentence, this Court is of the view that interests of justice would be subserved if the substantive sentence of one year simple imprisonment slapped by the Courts below on the petitioner is reduced to three months simple imprisonment and it is ordered accordingly. However, the sentence of fine and the default sentence thereof slapped by the Courts below remain intact.

In the upshot, this criminal revision stands partly allowed. The Trial Court is directed to secure the presence of the petitioner and commit him to prison to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1.The Inspector of Police
Sulur Police Station
Sulur
- 2.The V Additional District & Sessions Judge
(Fast Track Court No.II)
Coimbatore
- 3.The Judicial Magistrate
Palladam
- 4.The Public Prosecutor
Madras High Court
Chennai 600 104.
- 5.The Chief Judicial Magistrate,
Tiruppur.
- 6.The Chief Judicial Magistrate,
Coimbatore.
- 7.The Director General of Police,
Mylapore, Chennai-4.
- 8.The District Collector,
Coimbatore.

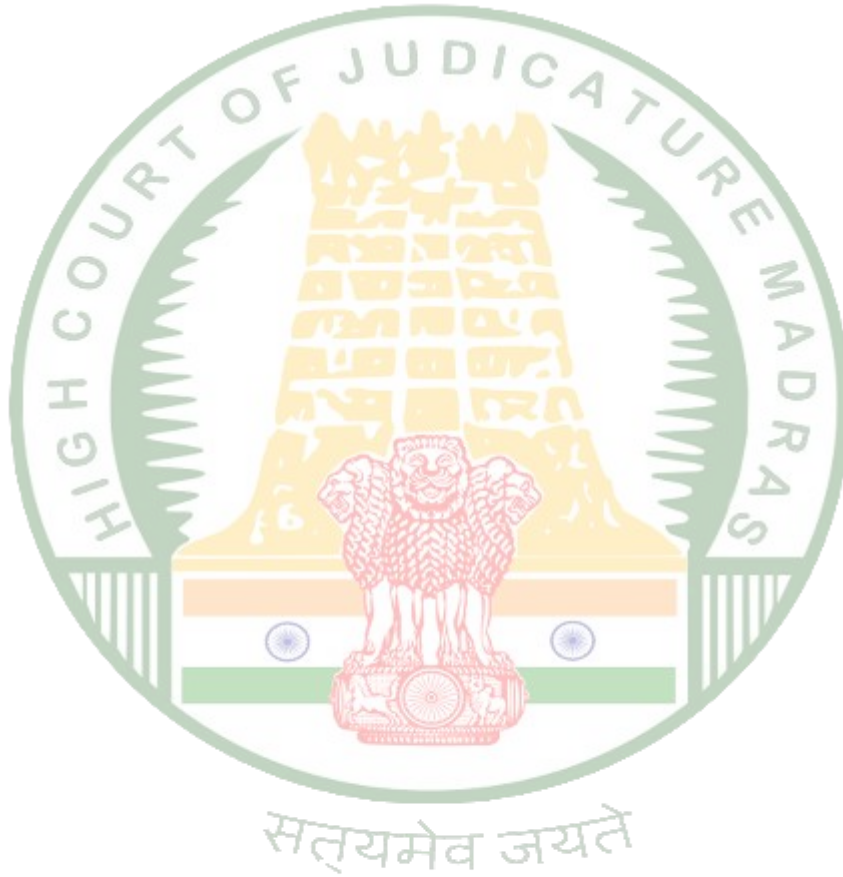
9.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.R.Muralidharan, Advocate, S.R.No.86402

Cr1.R.C. No.574 of 2013

GP(CO)

rrs 21/02/2019



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