

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.01.2019

CORAM :

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.416 of 2013

Vijayan

...Petitioner/Accused

Vs

State rep. by
Inspector of Police,
Sholavaram Police Station,
Tiruvallur District.
(Crime No.342/2009)

...Respondent/Complainant

Criminal revision preferred under Section 397 r/w 401 of Cr.P.C. against the judgment dated 06.03.2013 passed by the IV Additional District and Sessions Judge, Ponneri in Crl.A.No.43 of 2012 filed against the order in C.C No.277/2009 dated 31.05.2012 on the file of the Judicial Magistrate No.II, Ponneri.

For Petitioner : Mr.T.Muruganantham

For Respondent : Mr.G.Ramar, GA (Crl. Side)

O R D E R

This Revision Petition has been preferred challenging the judgment dated 06.03.2013 passed by the learned IV Additional District and Sessions Judge, Ponneri in Crl.A.No.43 of 2012.

2.It is the case of the prosecution that on 04.05.2009, around 11.00 a.m., the deceased Kumar was on the pillion in the motorbike bearing registration No.TN20 AT 4197 driven by his friend Balaraman (P.W.1) and was going towards Sholavaram in Sothuperumbedu road; while they were nearing Sothuperumbedu bazaar, they were hit from behind, by lorry bearing registration No.TN02 Y 2223 driven by the petitioner; in the impact, Balaraman (P.W.1) was thrown on the left side and Kumar fell on the right side, after which, the lorry ran over Kumar resulting in his death.

3. On the complaint (Ex.P1) lodged by Balaraman (P.W.1), Dillibabu, Sub-Inspector of Police, registered a case in Crime No.342 of 2009 under Sections 279 and 304-A IPC and prepared the printed FIR (Ex.P7). Investigation of the case was taken over by Manickam (P.W.9), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P8) and Rough Sketch (Ex.P9). He conducted inquest on the body of the deceased Kumar, in the presence of panchayatdars and prepared the Inquest Report (Ex.P10). He despatched the body through Murugesan, Head Constable, to the Government Hospital for postmortem. Dr.Shantakumar (P.W.8), performed autopsy on the body of the deceased Kumar and issued the Postmortem Certificate (Ex.P6). Though about twelve injuries have been catalogued in the postmortem report, it will suffice, if injury No.7 is extracted :

"7.Head and the fact was crushed side wards; on reflection of the scalp : Dark red scalp deep diffuse bruising on the frontal, both temporal and both parietal regions of the scalp; comminuted fracture of the frontal, both temporal and both parietal and the bones of the face; comminuted fracture of the base of the skull involving the floor of the anterior, middle and posterior cranial fossae; brain matter was completely lacerated and was in piecemeal."

4. Since Manickam (P.W.9) was temporarily holding charge as Inspector, he handed over the investigation of the case to Mohammed Nazeer (P.W.10), Inspector of Police, who arrested the petitioner at 13.30 hrs on 06.05.2009 in the police station. Mohammed Nazeer (P.W.10) examined the witnesses including the Doctor, who conducted the postmortem. He completed the investigation on 31.05.2009 and filed Final Report before the Judicial Magistrate No.II, Ponneri for the offences under Sections 279 and 304-A IPC against the petitioner.

5. On the appearance of the petitioner, the provisions of Section 207 Cr.P.C. were complied with and the trial Court framed charges under Sections 279 and 304-A IPC. When questioned, the petitioner pleaded 'not guilty'.

6. To prove the case, the prosecution examined ten witnesses and marked ten exhibits. When the petitioner 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 petitioner.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 31.05.2012 in

C.C.No.277 of 2009, convicted the petitioner and sentenced him as under :

Provision under which convicted	Sentence
Section 279 IPC	fine of Rs.1000/-
Section 304-A IPC	six months simple imprisonment

Challenging the said judgment, the petitioner filed CrI.A.No.43 of 2012, which was heard by the IV Additional District and Sessions Judge, Ponneri. The appellate Court confirmed the conviction, however, included the default sentence of one month simple imprisonment along with the fine of Rs.1000/-, which the trial Court had failed to include and reduced the sentence of simple imprisonment from six months to three months. Challenging the conviction and sentence, the petitioner is before this Court under Section 397 r/w 401 Cr.P.C.

8.Heard Mr.T.Muruganantham, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate (CrI. Side) appearing for the State.

9.Before adverting to the rival submissions, it may be necessary to state here that, while dealing with a revision petition under Section 397 r/w 401 Cr.P.C., this Court cannot reappreciate the evidence, as if it is a Court of second appeal. In this regard, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004)7 SCC 659.]

"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 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."

However, if it is shown that the Courts below have overlooked any material piece of evidence, which would have otherwise turned the tables in favour of the petitioner or had grossly misappreciated the evidence, then, it is open to this Court to reappraise the same.

10. Balaraman (P.W.1) has stated that on 05.05.2009 around 11.00 a.m., he was proceeding in his Splendor Plus bike bearing Registration No. TN20 AT 4197 along with the deceased Kumar on the pillion and while they were nearing the Karanodai flour mill, the lorry that was coming behind them, hit the motorbike; due to the impact, he fell on the left side and Kumar fell on the right side; the lorry ran over Kumar and crushed him, resulting in his instantaneous death; he (P.W.1) gave the complaint (Ex.P1) to the police. In the cross-examination, he has admitted that Karanodai bazaar is a congested place prone to traffic snarls. He also admitted that since the lorry had hit the motorcycle from behind, he does not know the speed of the lorry. It was suggested to him that since the deceased Kumar was his friend, a false case has been filed for the purpose of claiming compensation, which suggestion, he denied.

11.Kalaiselvan (P.W.4), has stated that he is an electrician by profession; on 04.05.2009, around 11.00 a.m., while he was going to the flour mill on GNT Road, he saw a lorry hit a two-wheeler with two persons and thereafter, one of them fell on the left side and the other fell on the right side; the lorry ran over the person, who fell on the right side resulting in his death. In the cross-examination, he has stated that the place of occurrence is a busy one with traffic congestion. He has also stated that the rear wheel of the lorry ran over the deceased. He has admitted that he knows the deceased, but, denied the suggestion that he had not witnessed the occurrence.

12.Mr.T.Muruganantham, learned counsel for the petitioner contended that when all the witnesses have stated that the place of occurrence is a busy area with traffic congestion, the possibility of the petitioner driving the lorry recklessly and causing the accident appears remote. He also contended that it is the rear wheel of the lorry, which had run over the deceased. It is his further contention that the report of the Motor Vehicle Inspector does not show any serious damage to the two-wheeler and therefore, there is no material to show that the lorry had hit the two-wheeler from behind.

13.This Court is unable to countenance the aforesaid submissions. Balaraman (P.W.1), the rider of the motorbike and Kalaiselvan (P.W.4), the eye-witness, have clearly stated that the lorry that was coming behind, hit the motorbike. Just because, there is no serious damage to the rear side of the motorbike, it cannot be stated that the incident had not occurred at all. Balaraman (P.W.1) has stated that after the impact, he fell on the left side and Kumar fell on the right side. The lorry had run over Kumar, which, by itself shows that the lorry was driven rashly. Had the lorry stopped immediately after the impact, then, one can subscribe to the arguments advanced by the defence. Injury No.7 sustained by the deceased Kumar, as noted in the postmortem certificate, indubitably corroborates the testimony of Balaraman (P.W.1) and Kalaiselvan (P.W.4).

14.Hence, this Court does not find any infirmity or perversity in the findings of the Courts below, warranting interference. The appellate Court has reduced the sentence of imprisonment from six months to three months and hence, no further reduction in sentence need be given in this case.

In the result, this revision petition is dismissed as being devoid of merits and the judgment of conviction and sentence passed by the appellate Court in CrI.A.No.43 of 2012 dated

06.03.2013 is confirmed. The trial Court is directed to take steps to secure the petitioner and commit him to prison for undergoing the remaining period of sentence, if any. Registry is directed to send the original records to the trial Court forthwith.

23.01.2019

gya

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The IV Additional District and Sessions Judge,
Ponneri.
2. - Do- Thro' The Principal Sessions
Judge, Tiruvallur.
- 3.The Judicial Magistrate-II,
Ponneri.
4. - Do- Thro' The Chief Judicial Magistrate,
Tiruvallur.
- 5.The Inspector of Police,
Sholavaram Police Station,
TiruvallurDistrict.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Deputy Registrar,
Criminal Section,
High Court, Madras.

+1cc to M/s.T.Muruganantham, Advocate, SR.NO.5118

CRL.R.C.No.416 of 2013

RSI(CO)
KAK(23.01.2019)