

BAIL SLIP

The Revision Petitioner/Accused herein viz.T.Sasikumar, aged 27 years, S/o.Thangavel, was directed to be released on bail as per order dated 21/06/2011 made in CrI.M.P.1/2011 in CrI.R.C.No. 791 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.12.2018

DELIVERED ON: 07.01.2019

CORAM:

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

CrI.R.C. No.791 of 2011

Sasikumar

Petitioner

vs.

State represented by
the Inspector of Police
Traffic Investigation Wing (West) Police Station
Coimbatore
(Cr. No.55 of 2007)

Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. seeking to set aside the judgment dated 31.03.2011 passed by the Additional District Judge-cum-Sessions Court (Fast Track Court No.II), Coimbatore in CrI.A.265 of 2010, confirming the judgment of conviction and sentence dated 03.12.2010 passed by the Judicial Magistrate No.VIII, Coimbatore in C.C.No.106 of 2007, in and by which, the petitioner was convicted under Section 279 r/w 304-A IPC and Section 196 of the Motor Vehicles Act and sentenced to undergo one year simple imprisonment and a fine of Rs.2,000/-, in default to undergo three months simple imprisonment for Section 379 r/w 304-A IPC and Rs.1,000/- as fine for Section 196 of the Motor Vehicles Act in case of default to undergo one week simple imprisonment.

For petitioner

Ms. K. Sumathy
for Mr. K. Thilageswaran

For respondent

Mr. G. Ramar
Govt. Advocate (CrI. Side)

ORDER

This criminal revision has been preferred seeking to set aside the judgment dated 31.03.2011 passed by the Additional District Judge-cum-Sessions Court (Fast Track Court No.II), Coimbatore in Crl.A.265 of 2010, confirming the judgment of conviction and sentence dated 03.12.2010 passed by the Judicial Magistrate No.VIII, Coimbatore in C.C.No.106 of 2007.

2 Succinctly stated, the facts leading to the filing of this criminal revision are as under:

2.1 It is the case of the prosecution that on 15.02.2007, around 10.00 a.m., the petitioner, who was the driver of Maruti Omni van bearing Regn. No.TN 09 S 2775, hit the TVS motorcycle bearing Regn. No.TN 37 H 4616 ridden by the deceased Ganesan with his friend Xavier (P.W.4) on the pillion, resulting in the death of Ganesan and injuries to Xavier (P.W.4).

2.2 On the complaint lodged by Nagaraj (P.W.1), an auto rickshaw driver, the respondent police registered a case in Cr. No.55 of 2007 and after completing the investigation, filed final report in C.C.No.106 of 2007 before the Judicial Magistrate No.VIII, Coimbatore.

2.3 On the appearance of the petitioner, he was supplied with the copies of the relied upon documents under Section 207 Cr.P.C. The Trial Court framed charges under Section 279, 337 and 304-A IPC and Section 196 of the Motor Vehicles Act, 1988 (for absence of insurance cover). When questioned, the petitioner pleaded 'not guilty'.

2.4 To prove their case, the prosecution examined twelve witnesses and marked ten exhibits. When the petitioner was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On the petitioner's side, no witness was examined nor any document marked.

2.5 The Trial Court, after considering the evidence on record, by judgment dated 03.12.2010, convicted and sentenced the petitioner as under:

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

Provisions under which conviction was made	Sentence
196 of the Motor Vehicles Act	Fine of Rs.1,000/-, in default to undergo one week simple imprisonment

2.6 Challenging the aforesaid conviction and sentence, the petitioner preferred CrI.A. No.265 of 2010 before the Court of Session, which was heard by the Additional District and Sessions Court (Fast Track Court No.II), Coimbatore and the same was dismissed on 31.03.2011, confirming the conviction and sentence made by the Trial Court, aggrieved by which, the petitioner is before this Court.

3 Heard Ms. Sumathy, learned counsel representing Mr.K.Thilageswaran, learned counsel on record for the petitioner and Mr.G.Ramar, learned Government Advocate (CrI. 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

1 (2004) 7 SCC 659

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.

5 ADMITTED FACTS:

- Ganesan (deceased) was riding the TVS motorcycle bearing Regn. No.TN 37 H 4616 and he lost his life in the accident.
- The complaint (Ex.P.1) was lodged by Nagaraj (P.W.1), auto rickshaw driver.

6 It is the specific case of the prosecution that on 15.02.2007, around 10.00 a.m., the deceased Ganesan, along with his friend Xavier (P.W.4) as pillion rider, was riding TVS motorcycle bearing Regn. No.TN 37 H 4616 and was proceeding from West to East and at that time, the petitioner came in the opposite direction in a Maruti Omni van bearing Regn. No.TN 09 S 2775 and dashed against the TVS motorcycle driven by Ganesan, resulting in his death and injuries to Xavier (P.W.4).

7 Nagaraj (P.W.1) has stated that he is an auto rickshaw driver; on 15.02.2007, around 10.00 a.m., while he was going down Nanjundapuram Road, a TVS motorcycle with a rider and a pillion rider, came behind him; the rider of the TVS motorcycle overtook his auto rickshaw and went ahead of his auto rickshaw; at that time, a Maruti Omni van came on the opposite side and hit the TVS motorcycle resulting in the occupants being thrown away; one person was severely injured on his face and the other person sustained injuries on his leg; both of them were taken by ambulance to the Government Hospital; one of them was declared brought dead; thereafter, he narrated the incident which was written by one Nachimuthu as the complaint (Ex.P.1) and the same was given to the police.

8 In the cross-examination by the petitioner, Nagaraj (P.W.1) has stated that he is 70 years old and the registration number of his auto rickshaw is TNT 2625; he does not remember the registration number of the Maruti Omni van and the TVS motorcycle; he is an illiterate and therefore, he requested another person to write the complaint and the name of the said person is Nachimuthu. It was suggested to him that his auto rickshaw had hit the TVS motorcycle and in that impact, the TVS motorcycle had hit the Maruti Omni van coming on the opposite direction, resulting in the accident, which suggestion he denied.

9 Ms. Sumathy, learned counsel appearing for the petitioner submitted that the accident had not taken place in the manner projected by the prosecution and it was the auto rickshaw, which was the offending vehicle and not the Maruti Omni van driven by the petitioner.

10 Apart from Nagaraj (P.W.1), there are two other witnesses, viz., Vijayan (P.W.2), Ganesan (P.W.3), who have corroborated the evidence of Nagaraj (P.W.1). Ms. Sumathy, learned counsel appearing for the petitioner contended that this Court should not place reliance on their evidence, because, they hail from the village of the deceased Ganesan. This argument cannot be countenanced, because, the creditworthiness of the testimony of a witness cannot be suspected on such grounds. Be it noted, both of them are chance witnesses who were going down the road for their work. On seeing the accident, they had stopped to help the injured, which an ordinary prudent person with humanitarian approach, would do.

11 Ms. Sumathy contended that in the accident register copy (Ex.P.3), it is stated that the deceased Ganesan was brought by Sivakumar, driver of Annai Ambulance bearing Regn. No.TCG 5023 from near Nirmala College and that the said ambulance driver has not been examined. She further contended that Nirmala College is nowhere near the place of accident. It

is not the case of the defence that Ganesan did not die nor is it their case that he himself walked to the hospital for treatment. All the witnesses have stated that ambulance was called and the injured were sent for treatment. Therefore, non-examination of the ambulance driver, who came into the picture much after the accident, for taking the injured to the hospital, cannot be said to be fatal to the case of the prosecution.

12 Ms. Sumathy, learned counsel appearing for the petitioner contended that Xavier (P.W.4) was not on the pillion, because, Nagaraj (P.W.1), in his evidence, has stated that both the injured were sent by ambulance to the hospital, whereas, Xavier (P.W.4), has stated that only Ganesan was sent by ambulance and he (Xavier-P.W.4) took treatment in Kowshik Hospital.

13 Xavier (P.W.4), in his evidence, has stated that while he was going on pillion with Ganesan, the offending vehicle came in the opposite direction and hit the TVS motorcycle ridden by Ganesan, resulting in both of them falling down; Ganesan suffered injuries in his head and he (P.W.4) suffered injuries in his hand and leg. Nagaraj (P.W.1), the auto rickshaw driver, has, in his evidence, stated that, of the two persons in the TVS motorcycle, one suffered injuries on his face and the other suffered injuries on his leg. Injuries sustained by Xavier (P.W.4) were not serious demanding very immediate nursing care and therefore, he did not take treatment in the Government Hospital. On that score alone, it cannot be stated that he was not at all on the pillion.

14 Ms. Sumathy took this Court through the evidence of Balraj (P.W.8), Motor Vehicle Inspector, who inspected the TVS motorcycle and his report (Ex.P.4) and contended that the rear side number plate and danger light assembly of the TVS motorcycle have been damaged, which only shows that the TVS motorcycle was hit from behind by the auto rickshaw. Pertinent, it is, to point out that though the evidence of Balraj (P.W.8) reads like that, yet, his report reads as under:

"Bumper assembly broken, Rear number plate, danger light assembly, clutch cover assembly, accelerator cable assembly damaged."

Balraj (P.W.8) has also stated that the TVS motorcycle was not in a motorable condition. The extent of damage to the TVS motorcycle only shows that it had been thrown away in the impact, due to which, it suffered damage, both in the bumper assembly and rear side.

15 Ms. Sumathy further contended that the police have

failed to send the auto rickshaw of Nagaraj (P.W.1) for motor vehicle inspection. She further took this Court through the evidence of Palanivelu (P.W.9), Motor Vehicle Inspector, who examined the Maruti Omni van and inspection report (Ex.P.5) issued by him and contended that the right door panel of the Maruti Omni van was damaged, which clearly shows that the TVS motorcycle was hit from behind by the auto rickshaw and in that impact, it had hit the right side of the Maruti Omni van driven by the petitioner, resulting in the TVS motorcycle being thrown away.

16 At the first blush, this argument of Ms. Sumathy did sound convincing. But, on a closer scrutiny of the evidence on record, this Court is not able to countenance the same. Nagaraj (P.W.1), the auto rickshaw driver, has clearly stated that after the TVS motorcycle overtook his auto rickshaw and was going ahead of it, the accident took place. He has not stated that while the TVS motorcycle was overtaking his auto rickshaw, the accident had taken place. Thus, it is limpid that the TVS motorcycle was ahead of the auto rickshaw when the accident took place. At this juncture, the fact that TVS motorcycle is not similar to high powered motorbikes like Yamaha, Hero Honda, etc., should not be lost sight of. The TVS motorcycle involved in the accident had two occupants, viz., Ganesan (deceased), the rider and Xavier (P.W.4), the pillion rider. Considering the nature of the vehicle and its load, this Court is of the view that it could not have gone at a high speed. The prosecution evidence shows that the Maruti Omni van was not going in a straight line, but, was going diagonally across the road in the opposite direction. The rough sketch (Ex.P.9) shows that the TVS motorcycle was found ten feet away on the roadside from the Maruti Omni van. Had the auto rickshaw of Nagaraj (P.W.1) hit the TVS motorcycle driven by the deceased Ganesan from behind, the latter would have gained additional momentum and with that, had it banged against a vehicle coming on the opposite side, it would not have been thrown ten feet away diagonally. After hitting a large vehicle, it would have rebound and fallen in front or banged against the auto rickshaw coming behind resulting in multiple accidents. That is not the case here. Further, if Nagaraj (P.W.1) had been the culprit, as is the case of the petitioner, he would have escaped from the scene at once and would not have been a good Samaritan to attend on to the injured and give the complaint (Ex.P.1) admitting that the TVS motorcycle overtook his autorickshaw and was proceeding ahead of him. Therefore, there is no reason for this Court to suspect the hand of Nagaraj (P.W.1) in the accident.

17 Both the Courts below have appreciated the evidence on record in the right perspective. The presence of Xavier (P.W.4)

cannot be denied on the ground that he did not go in the ambulance to the Government Hospital. Though the police have not collected any record to show that Xavier underwent treatment in Kowshik Hospital, that cannot be a valid reason to doubt his testimony. In such view of the matter, the conviction made by the Courts below is confirmed.

18 Coming to the sentence, this Court is of the view that interests of justice would be subserved if the period of one year simple imprisonment slapped on the petitioner for the conviction under Section 279 r/w 304-A IPC is reduced to three months simple imprisonment and it is ordered accordingly. The sentence of fine for the conviction under Section 279 r/w 304-A IPC and the default sentence thereof and so also the sentence of fine for the conviction under Section 196 of the Motor Vehicles Act slapped by the Trial Court and confirmed by the lower Appellate Court, remain intact.

In the upshot, this criminal revision stands allowed in part. 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(CS-III)

//True Copy//

Sub Assistant Registrar

cad

To

1. The Judicial Magistrate No.VIII
Coimbatore
- 2.Do Thro The Chief Judicial Magistrate,
Coimbatore
- 3 The Additional District Judge-cum-Sessions Court
(Fast Track Court No.II)
Coimbatore
- 4 The Inspector of Police
Traffic Investigation Wing (West) Police Station
Coimbatore.
- 5.The Superintendent,
Central Prison,
Coimbatore

6 The Public Prosecutor
Madras High Court
Chennai 600 104

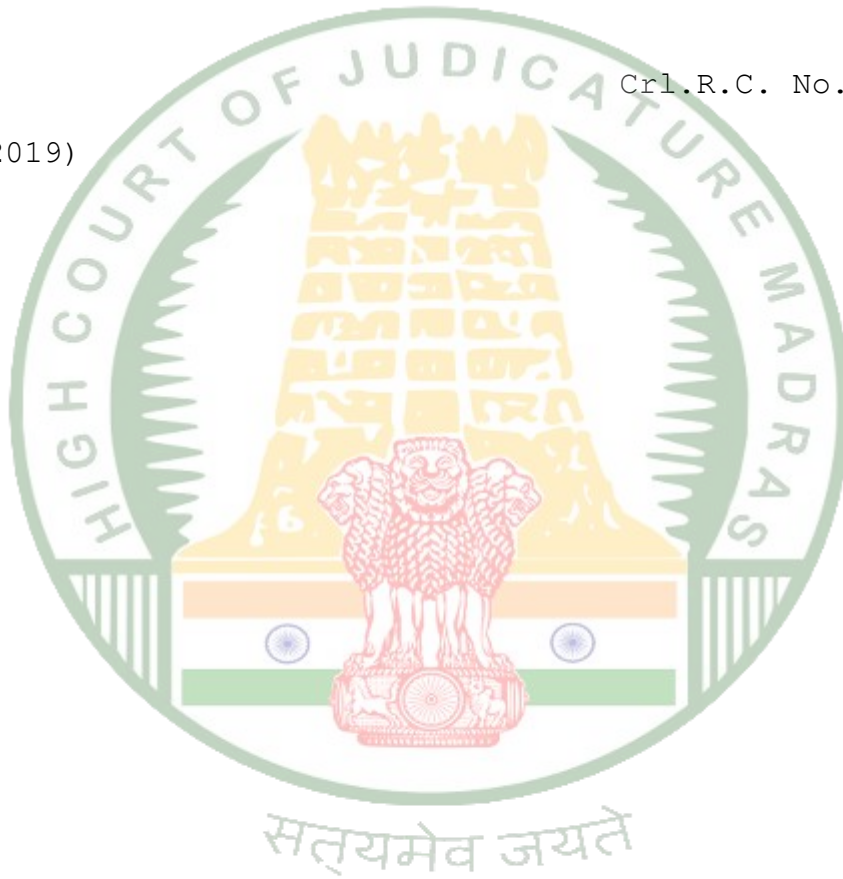
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The Section Officer,
Criminal Section, High Court,
Madras.(2 copies)

+1cc to Mr.A.Arulmozhi, Advocate, S.R.No. 1295

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