

Bail Slip

The Appellant/Accused Viz., S.Jayakumar 37 Years S/o Subramani was released on bail vide Court order dated 22/03/2013 in MP Nos.1 & 2 of 2013 in CrI.R.C.No.1178 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.1178 of 2012

S.Jayakumar ... Petitioner/Appellant/
Accused

 $V_S.$

State represented by
The Inspector of Police,
Chitlapakkam Police Station,
Kancheepuram District. .. Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 07.01.2008 passed in C.C.No.698 of 2005 on the file of the Judicial Magistrate Court, Tambaram, confirmed by the judgment and order dated 30.07.2012 passed in C.A.No.9 of 2008 on the file of the Additional District and Sessions Court, Chengalpet, Kancheepuram.

For Petitioner : Mr.T.R.Ravi

For Respondent : Mrs.P.Kritika Kamal
Govt. Advocate
(CrI.Side)

ORDER

This criminal revision has been filed seeking to set aside the judgment and order dated 07.01.2008 passed in C.C.No.698 of 2005 on the file of the Judicial Magistrate Court, Tambaram, confirmed by the judgment and order dated 30.07.2012 passed in C.A.No.9 of 2008 on the file of the Additional District and Sessions Court, Chengalpet, Kancheepuram.

2. It is the case of the prosecution that on 22.03.2005, around 7.00 a.m., when the deceased Vijayan, aged about thirty years, was proceeding by his TVS-50 motorcycle bearing Registration No.TN-07-W-9651 from Kilkattalai to Pallavaram, a tipper lorry bearing Registration No. TN-01-A-2810 driven by the accused, came on the opposite side and hit the TVS-50 head-on, resulting in the death of Vijayan.

3. On the complaint (Ex-P1) given by Raji (PW1), brother of Vijayan, the respondent/police registered a case in Crime No.131 of 2005 and took up investigation of the case.

4. The Investigating Officer (PW8) prepared the observation mahazar (Ex-P7) and rough sketch (Ex-P8). He conducted inquest over the body of Vijayan and the inquest report was marked as Ex-P9. The body of Vijayan was sent to the Government Hospital, Royapettah.

5. Dr. Srinivasa Raghavan (PW6) performed autopsy on the body of Vijayan, who, in his evidence as well in the postmortem report (Ex-P5) has noted about ten injuries. On dissection of the skull, it was found that there was a 7 cm. fracture inside the skull and also a 6 cm. hairline crack in the hind brain, which were fatal injuries.

6. The accused was arrested by the police on 23.03.2005 at 10.30 a.m. Both the vehicles, viz., TVS-50 and tipper lorry, were examined by Sendhurvel (PW4), Motor Vehicles Inspector, who, in his evidence as well in the reports viz., Ex-P2 (pertaining to lorry) and Ex-P3 (pertaining to TVS 50), has stated that there was no mechanical failure in both the vehicles.

7. After completing the investigation, the police filed a final report in C.C.No.698 of 2005 before the Judicial Magistrate, Tambaram, for the offences under Sections 279 and 304-A IPC, against the accused.

8. On appearance of the accused, the provisions of Sections 207 Cr.P.C. were complied with and charges for the aforesaid offences were framed. When questioned, the accused pleaded "not guilty".

9. To prove the case, the prosecution examined eight witnesses and marked nine exhibits and one material object.

10. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, no witness was examined nor any document marked.

11. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 07.01.2008 in C.C.No.698 of 2005, convicted and sentenced the accused as follows:

Provision under which convicted	Sentence
Section 279 IPC	No specific sentence.
Section 304-A IPC	Two years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment.

12. The appeal in C.A.No.9 of 2008 filed by the accused was dismissed by the Additional District and Sessions Court, Chengalpet, Kancheepuram, on 30.07.2012.

13. Challenging the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

14. Heard T.R.Ravi, learned counsel for the accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

15. Before advertng to the rival submission, it may be necessary to state here that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

16. Mr.T.R.Ravi, learned counsel for the accused submitted that both the Courts have failed to appreciate the evidence of the alleged two eyewitnesses Mani (PW2) and Madhanagopal (PW3).

1(2004) 7 SCC 659

2(2019) 4 SCC 197

He further submitted that both the eyewitnesses have not stated that the accused had driven the lorry in a rash and negligent manner resulting in the accident.

17. Per contra, the learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for the accused.

18. The prosecution has proved beyond cavil the following facts:

(i) Vijayan lost his life on 22.03.2005;

(ii) The tipper lorry was found in the place of occurrence; and

(iii) The TVS-50 was lying opposite to the tipper lorry, as could be seen from the observation mahazar and rough sketch.

19. Mani (PW2), in his evidence, has stated that he was a milk vendor by profession; on 22.03.2005 at 7.00 a.m., while he was proceeding towards Kilkattalai, he saw a person coming by TVS-50 on the opposite direction and he also saw a tipper lorry colliding with the said TVS-50; the registration number of the tipper lorry was TN-01-A-2810; immediately, he (PW2) and one auto driver (PW3) went near the person, who had fallen from the TVS-50 and found that he was unconscious; on checking his pocket, they found a visiting card, in which, the name Vijayan was there; they contacted the number in that visiting card and gave the information; the driver of the tipper lorry abandoned the vehicle and ran away; the brother of Vijayan came to the place and gave the complaint.

20. In the cross-examination, Mani (PW2) has stated that he has been vending milk for about ten years; he does not remember the registration number of the TVS-50; he was using that road almost daily for the last six months; he did not notice which part of the lorry had hit the TVS-50.

21. Madhanagopal (PW3), in his evidence, has stated that he was an auto driver; on 22.03.2005, around 7.00 a.m., while he was proceeding in the 200 feet road towards Pallavaram, he saw a tipper lorry crossing the median line and hitting a TVS-50, which was coming on the opposite side; thereafter, the driver of the tipper lorry ran away; he (PW3) went near the place of accident and found the injured unconscious; at that time, a milk vendor came and together, they checked the pocket of Vijayan and

found a visiting card; the milk vendor called the mobile number in the visiting card and informed about the accident.

22. In the cross-examination of Madhanagopal (PW3), he has stated that he was going 30 feet behind the tipper lorry and there was a passenger in his auto; he does not remember the registration number of the TVS-50; he stayed at the spot till the police came; Vijayan's brother came to the place, but, he does not remember the exact time at which, he came.

23. It is seen that both the witnesses Mani (PW2) and Madhanagopal (PW3) have identified the accused as the person who had driven the tipper lorry at the relevant point to time. From the evidence of Raji (PW1), Vijayan's brother and Dr.Srinivasa Raghavan (PW6), the prosecution has established beyond a peradventure that the deceased was Vijayan.

24. Mr.T.R.Ravi, learned counsel for the accused submitted that both the witnesses have not stated that the tipper lorry was driven rashly and negligently. In the opinion of this Court, just because the witnesses have not used the expression "rashly and negligently", it cannot be stated that the accused had not driven the vehicle rashly and negligently. The evidence of Madhangopal (PW3) clearly shows that the TVS-50 was coming on the opposite side and the tipper lorry crossed the median line and hit the TVS-50 head-on. The number of injuries sustained by Vijayan supports the prosecution theory.

25. In view of the foregoing discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference. However, the learned counsel for the accused submitted that some leniency may be shown qua the substantive sentence of imprisonment. Accepting his submission, the substantive sentence of two years rigorous imprisonment for the offence under Section 304-A IPC, is reduced to six months rigorous imprisonment. Fine amount and the default sentence shall remain the same.

In the result, this criminal revision is partly allowed. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
Tambaram.
2. The Additional District and Sessions Judge,
Chengalpet,
Kancheepuram.
3. The Inspector of Police,
Chitlapakkam Police Station,
Kancheepuram District.
4. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.
5. The Deputy Registrar,
(Criminal Section),
Madras High Court,
Chennai - 600 104. } with a direction to return the
original records to the Courts
below concerned

+1cc to Mr.T.R.Ravi, Advocate Sr.96124

Cr1.R.C.No.1178 of 2012

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srg 06/01/2020