

Bail Slip

The Petitioner/Accused viz., Parimala Sundaram, male, aged 46 years S/o.Vaidyanatha Samy, was directed to be released on bail, vide order in MP.No.1 of 2012 in CrI.R.C.No.1270 of 2012, dated 06.11.2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1270 of 2012

Parimala Sundaram .. Petitioner / Accused

Vs.

State rep. By
Inspector of Police
Srimushnam Police Station
Cuddalore District
(Crime No.207/2005)

..Respondent/Complainant

Criminal Revision filed under Section 397 read with 401 Cr.P.C to set aside the judgment dated 14.08.2012 in C.A.No.91 of 2011 passed by the learned Additional Sessions Judge, Cuddalore, Virudachalam confirming the conviction and sentence passed by the Judicial Magistrate II dated 10.11.2011 in C.C.No.5 of 2006.

For Appellant : No appearance

For Respondent : Ms.P.Kritika Kamal

Government Advocate (Crl.side)

ORDER

This criminal revision is directed against the judgment of the Additional Sessions Judge, Cuddalore, Virudachalam in C.A.No.91 of 2011 dated 14.08.2012 confirming the conviction and sentence passed by the Judicial Magistrate II, Virudachalam dated 10.11.2011 in C.C.No.5 of 2006.

2. It is the case of the prosecution that on 12.08.2005, around 13.30 hours, children from Government School,

Srineduncheri got into the Minidor tempo van of the accused to go to their homes. The accused drove the van rashly and negligently resulting in the van ramming on a roadside palmyra tree and turning turtle. In that accident, Ranjana aged 13 years lost her life and more than 8 children were seriously injured. On the complaint (Ex.P1) lodged by Sekar (PW1), father of Ranjana, the police registered a case in Crime No.207 of 2005 and took up the investigation. The body of Ranjana was sent to the Government Hospital, where Dr.Subramaniam (PW14) performed autopsy and issued the post-mortem certificate (Ex.P17). Dr.Subramaniam (PW14) in his evidence as well in the post-mortem certificate has stated about the external injuries found on the body of Ranjana, especially on the parietal region and had opined that the death would have occurred on account of shock and haemorrhage due to the injuries sustained in the vital organ i.e., 'brain'. the other children, namely Chandrakala (PW5), Prasad (PW6), Sangeetha (PW8), Shifa (PW9), Vijayakumar (PW10), Sarathkumar (PW11), Meena (PW12) and Bharathi (PW13) were examined by Dr.Krishnamurthy (PW15) at the Government Hospital, Virudhachalam and they were treated for the injuries suffered by them. Dinakaran (PW16), the Motor Vehicle Inspector, examined the vehicle and opined that there was no mechanical failure vide MV Report (Ex.P13). After completing the investigation, the police filed a final report in C.C.No.5 of 2006 before the Judicial Magistrate II, Virudhachalam against the accused.

3. On appearance of the accused, the provisions of Section 207 Cr.P.C were complied with and charges for the offences under sections 279, 304A, 338, 337 IPC (8 counts) and Section 3 r/w.181 of MV Act were framed against the accused. When questioned, the accused pleaded 'not guilty'. To prove the case, the prosecution examined PW1 to PW20 and marked Exs.P1 to P18. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of accused nor any document marked.

4. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 10.11.2011 convicted and sentenced the accused as under:

Provision under which convicted	Sentence
Sections 279 IPC	Simple imprisonment for two months and fine of Rs.500/-, in default to under to two months Simple Imprisonment

Provision under which convicted	Sentence
Section 304A IPC	Simple imprisonment for six months and fine of Rs.1000/-, in default to undergo one month simple imprisonment
Section 338	Simple imprisonment for three months and fine of Rs.500/-, in default to undergo one month simple imprisonment
Section 337 (9 counts)	Fine of Rs.300/- for each count, totaling to Rs.2,700/-, in default to undergo two months simple imprisonment for each count
Section 3 r/w. Section 181 of MV Act	Fine of Rs.500/-, in default to undergo two months simple imprisonment

5. The appeal in C.A.No.91 of 2011 that was filed by the accused was dismissed on 14.08.2012 by the III Additional District and Sessions Court, Cuddalore. Challenging the concurrent findings of the two Courts below, the accused has filed the present revision under Section 397 r/w. Section 401 Cr.P.C.

6. There was no representation for the petitioner on 05.11.2019 and therefore, this Court posted the case under the caption "For Dismissal" today. Today also there is no representation for the petitioner and therefore, this Court perused the original records and heard the learned Government Advocate (Criminal Side).

7. At this juncture, it may be relevant 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. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], 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)

8. The accused has raised the following grounds in the revision:

a) that Sekar (PW1) has not spoken anything about the accident:

Sekar (PW1), the father of the deceased Ranjana was not an eye witness at all. He came to the picture only after the accident and therefore, he did not say anything about how the accident occurred.

b) that Dinakaran (PW16), the Motor Vehicle Inspector has stated that there was no damage to the vehicle and therefore, the accident would not have occurred:

The vehicle is a Bajaj alliance three wheeler meant for transport of Cargo and it had capsized resulting in death of Ranjana and injuries to the other children. The eye-witness account of the injured children, viz., PW5 to PW12 clearly shows that the vehicle had hit a palmyra tree and turned turtle. Both the Courts have appreciated the evidence of the children. Just because the Motor Vehicle Inspector has stated in the evidence that there was no damage to the vehicle, the eye witness account cannot be rejected.

c) that Murugesan (PW7) and Sarath Kumar (PW11), two of the injured witnesses, have not stated as to how the accident took place:

i) The fact remains that these two children were in the vehicle and they also suffered injuries. They would have been less observant. Hence, just because they did not say as to how the accident took place, it cannot be stated that accident had not taken place at all.

ii) At this juncture, it may be relevant to discuss the evidence of Chandrakala (PW5), Prasad (PW6) and Sangeetha (PW8). These children have very clearly stated that 12.08.2005 was a half-a-day for them and while they were returning home, they got into the vehicle of the accused to go home. Chandrakala (PW5) has further stated that the accused drove the vehicle very rashly and she and other students asked him to go slow, in spite of which he went in a high speed, hit the palmyra tree and the vehicle capsized. Prasad (PW6) has also stated that the accused drove the vehicle very fast and dashed against the palmyra tree.

iii) These children were examined by Dr.Krishnamurthy (PW15) and their Accident Register copies have also been marked as Exs.P3 to P10.

d) That PW3 and PW4, the independent Observation Mahazar

witnesses turned hostile and hence, the prosecution case should be rejected:

PW3 and PW4 are Observation Mahazar witnesses who were present when the police came to the place of occurrence for preparing the Observation Mahazar. They are not eye-witness to the accident. Just because they turned hostile, the evidence of the Investigating Officer that he went to the place of occurrence and prepared the Observation Mahazar and rough sketch cannot be rejected.

e) that Dr. Subramaniam (PW14) has not stated about the injuries suffered by the deceased and that he has also not stated that the injuries could have been sustained in a road accident:

A perusal of the evidence of Dr. Subramaniam and the Postmortem Certificate shows that Ranjana had suffered injuries on the head, which would have been caused when the vehicle capsized. As regards the injuries sustained by the other children, Dr. Krishnamurthy (PW15), who examined them on the same day and through whom the Accident Register were marked has spoken about that.

9. This Court does not find any infirmity in the findings of fact arrived at by the two Courts below warranting interference. The maximum sentence of imprisonment that has been imposed on the accused by the trial Court is only simple imprisonment for 6 months for the offence 304A IPC, which in the opinion of this Court cannot be said to be excessive.

In the result, this criminal revision petition is devoid of merits and the same is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Sessions Judge, Cuddalore, Virudachalam
2. The Judicial Magistrate II, Virudachalam
3. -Do-Thro' The Chief Judicial Magistrate, Cuddalore(for information).
4. The Public Prosecutor, Madras High Court, Chennai
5. The Superintendent, Central Prison, Cuddalore.
6. The Inspector of Police, Srimushnam Police Station, Cuddalore.

Akm/16.12.19 /5P-7C/

CRL.R.C.No.1270 of 2012