

BAIL SLIP

The Petitioner in Crl.RC.1009 of 2012 viz., A.Thirunavukarasu, aged 54 years S/o.Angappa Mudaliar, was directed to be released on bail as per order dated 17.12.2012 and made in MP.1 of 2012 in CRL.MP.No.1509 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2019

DELIVERED ON: 02.12.2019

CORAM:

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

CRL.R.C.NO.1509 OF 2012

A.Thirunavukkarasu Petitioner/Appellant/Accused

vs.

State represented by
the Inspector of Police
Mc Donald Choultry Police Station
Salem District
Respondent/Respondent/Complainant
(Cr. No.422 of 2007)

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to call for the records relating to the judgment and order dated 10.09.2012 passed in Crl.A. No.29 of 2012 on the file of the III Additional District & Sessions Court Salem, confirming the judgment and order dated 22.02.2012 passed in C.C.No.117 of 2009 on the file of the Judicial Magistrate Court No.II, Sankagiri, Salem District and set aside the same.

For petitioner Mr.R.Karthikeyan

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

ORDER

The epitome of the prosecution case is that on 15.10.2007, around 1.15 p.m., while the deceased Palaniappa Gounder was proceeding in his TVS XL Super motorcycle (for short "the motorcycle) bearing Regn. No. TN 30 C 1780 from west to east in

Magudanchavadi Road towards Salem, the petitioner, who was the driver of the TNSTC bus bearing Regn. No.TN 30 N 0187 coming on the opposite side, hit the motorcycle driven by Palaniappa Gounder, resulting in his death.

2 On the complaint lodged by one Ponnusamy (P.W.1), the respondent police registered a case in Cr. No.422 of 2007 and after completing the investigation, filed a final report in C.C. No.117 of 2009 before the Judicial Magistrate No.II, Sankagiri, who framed charges under Sections 279 and 304-A IPC against the petitioner. When questioned, the petitioner pleaded not guilty. Before the trial Court, the prosecution examined 11 witnesses and marked 8 documents.

3 When the petitioner was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied everything. No witness was examined on the side of the petitioner nor any document marked.

4 The trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 22.02.2012, convicted the petitioner of the offences under Sections 279 and 304-A IPC and sentenced him as under:

Provision under which convicted	Sentence
S.279 IPC	Fine of Rs.500/-, in default to undergo one month simple imprisonment
S.304-A IPC	1 year rigorous imprisonment

5 Challenging the above conviction and sentences, the petitioner preferred CrI.A. No.29 of 2012 before the III Additional District and Sessions Court, Salem, which was dismissed vide judgment and order dated 10.09.2012, confirming the judgment and order dated 22.02.2012 passed by the trial Court.

6 Challenging the concurrent findings rendered by the two Courts below, the petitioner has preferred the instant criminal revision invoking Section 397 read with Section 401 Cr.P.C.

7 Heard Mr. R. Karthikeyan, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (CrI. Side) appearing for the respondent State.

8 It is trite 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)

9 Coming to the case at hand, the prosecution has proved beyond a peradventure, the fact that the Palaniappa Gounder lost his life on 15.10.2007 in a vehicular accident via the evidence of Periasamy (P.W.4), Dr.Kesavalingam of Government Hospital, Salem and Rajendran (P.W.7), Motor Vehicles Inspector, Salem, who examined both the bus and the motorcycle and assessed the damage in them and also certified that both the vehicles did not suffer any mechanical failure.

10 The short question that falls for the consideration of this Court is whether the petitioner had driven the bus in a rash and negligent manner.

11 The learned counsel for the petitioner submitted that there was no eyewitness to the accident. This Court is unable to subscribe to the said submission, because, Periasamy (P.W.4), in his evidence, has stated that on 15.10.2007, around 1.15 p.m., when he was going to his house in the road under the Magudanchavadi bridge, he saw a TNSTC bus coming on the opposite side and hitting the motorcycle in which, Palaniappa Gounder was going and he (Palaniappa Gounder) suffered serious head injuries. Periasamy (P.W.4) has clearly stated that the bus dragged the motorcycle upto 20 feet and then stopped. The photographs on record also show that the motorcycle was mangled in the front guard of the TNSTC bus. The evidence of Dr.Kesavalingam (P.W.6) shows the head injuries sustained by Palaniappa Gounder and the rough sketch (Ex.P.7) shows that bridge repair work was going on at the relevant point of time and therefore, vehicles were to go through a bypass road around

1 (2004) 7 SCC 659

2 (2019) 4 SCC 197

the bridge. Whereas, in this case, the offending bus which was coming from Salem and was going towards west, did not take the bypass road and had instead, come through the bridge road on the "no entry" side and had hit the motorcycle, which was proceeding in the right direction over the bridge from west to east. All these aspects have been properly appreciated by the two Courts below for concluding that the petitioner had driven the offending bus in a rash and negligent manner, resulting in the accident. In such perspective of the matter, this Court does not find any infirmity in the findings of the two Courts below. Accordingly, the conviction of the appellant of the offences under Sections 279 and 304-A IPC by the two Courts below stands confirmed.

12 However, to subserve the interests of justice, the substantive sentence of one year simple imprisonment slapped on the petitioner for the offence under Section 304-A IPC is reduced to three months simple imprisonment. The sentence of fine of Rs.500/- imposed on the petitioner for the offence under Section 279 IPC is confirmed.

In the result, this criminal revision is dismissed. The trial Court is directed to secure the presence of the petitioner and commit him to prison for serving out the period of sentence.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The III Additional District & Sessions Judge
Salem
- 2 The Judicial Magistrate No.II
Sankagiri
Salem District
3. Do Through The Chief Judicial Magistrate,
Salem.
- 4 The Inspector of Police
Mc Donald Choultry Police Station
Salem District

