

Bail Slip

The Petitioner/Accused S/o.Vargheese was released on bail in M.P.No.1 of 2012 in CrI.RC.No.1579/12 by order dated 28/12/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM:

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

CrI.R.C.No.1579 of 2012

Johnson

.. Petitioner / Accused

Vs.

The Inspector of Police
Traffic Investigation Wing (West)
Coimbatore
Crime No.278 of 2006

.. Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w. 401 Cr.P.C to set aside the Judgment dated 19.11.2012 of the IV Additional District and Sessions Judge, (Previously FTC II), Coimbatore in C.A.No.243 of 2011 confirming the conviction and sentence imposed by the Judicial Magistrate No.8, Coimbatore in C.C.No.6 of 2007 dated 11.10.2011.

For Petitioner : Mr.P.Neethu for Petitioner

For Respondent : M/s.P.Kritika Kamal,
Government Advocate (CrI.Side)

सत्यमेव जयते
O R D E R

This Criminal Revision Petition has been preferred challenging the judgment dated 19.11.2012 passed by the IV Additional District and Sessions Judge, (FTC II), Coimbatore in C.A.No. 243 of 2011 confirming the conviction and sentence passed by the Judicial Magistrate No. 8, Coimbatore in C.C.No.6 of 2007 dated 11.10.2011.

2.It is the case of the prosecution that on 14.09.2006, around 08.15pm, when Parthiban was coming by his TVS 50 two wheeler, bearing Registration No.KL 11 F 3929, with the deceased

Balamurugan on pillion from south to north in the Coimbatore-Pallakkad Road, the accused, driver of the lorry bearing Registration No.TN47 L 1487, came on the opposite side i.e., from north to south and hit the TVS 50 head-on resulting in Balamurugan being thrown off and dying on the spot. On the complaint (Ex.P1) given by Parthiban, the police registered a case in Crime No.278 of 2006 and after completing investigation, filed a final report in C.C.No.6 of 2007 before the Judicial Magistrate No.8, Coimbatore, against the accused for the offences under Sections 279 and 304A IPC. After complying with Section 207 Cr.P.C, charges for the said offences were framed against the accused and the accused pleaded 'not guilty' .

3. To prove the case, the prosecution examined 11 witnesses and marked Exs.P1 to P12. 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 the accused.

4.After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 11.10.2011 convicted and sentenced the accused as under:

Provision under which convicted	Sentence
Sections 279 r/w. 304A IPC	Simple imprisonment for one year and fine Rs.3000/-, in default to undergo 3 months simple imprisonment

5. The appeal in C.A.No.243 of 2011 that was filed by the accused was dismissed by the IV Additional District and Sessions Judge (FTC II), Coimbatore on 19.11.2012. Challenging the concurrent findings of the two Courts below, the accused has filed the present revision petition.

6. Today, Mr.V. Maheswaran, Sub-Inspector of Police, TIW (West), Coimbatore is present before this Court. The learned counsel for the petitioner submitted that the petitioner has died. On instructions, the learned Government Advocate (Crl.side) also confirmed the same, but both were not able to give a copy of the Death Certificate.

7. The death of the accused will not result in abatement of the revision petition and therefore, it has become imperative for this Court to go into the records in order to find out if there is any illegality or impropriety in the findings arrived at by the two Courts below.

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. (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)

9. The prosecution has proved beyond cavil the death of Balamurugan in the instant case via the evidence of the eye witnesses and Dr.Malliga (PW1), who conducted autopsy and issued post-mortem certificate (Ex.P1) wherein she has stated about the injuries found on the body of the deceased. Now the question is whether the accused had driven the offending vehicle rashly and negligently. Murugan (PW2), the Motor Vehicle Inspector, in his evidence as well in the MV Report (Ex.P2), has stated that he examined the offending lorry and found that it did not have mechanical failure. Similarly, Pandiyan (PW9), another Motor Vehicle Inspector examined TVS 50 vehicle and in his evidence as well in the report (Ex.P6) has stated that there was no mechanical failure found in that vehicle also. Now the prosecution case rests on the eye witness testimony of the injured witness Parthiban (PW3) and Uthirakumar (PW6) and Karthickmani (PW8), who were going behind TVS 50. Parthiban (PW3) has stated that on 14.09.2006, around 08.15pm, Balamurugan and he were proceeding in his TVS 50 vehicle in Kovai-Pallakkad main road; While they were near the Kuniamuthur Mosque, he saw the lorry coming in the opposite direction haphazardly and the lorry hit his motorcycle head-on due to which he fell on the left side and Balamurugan fell on the right side; Balamurugan died on the spot and his friends, Uthirakumar (PW6) and Karthickmani (PW8), who were coming behind them, carried both of them to the hospital, where Balamurugan was declared brought dead. Uthirakumar (PW6) and Karthickmani (PW8), friends of the deceased and Parthiban have stated that they were all studying together in Janakiammal College and were proceeding in their bikes to the city, at which time the accident had taken place. Parthiban (PW3) has identified the accused as the one who was

on wheels of the lorry. The defence was not able to make any serious dent in the testimony of the eye witnesses. This Court does not find any infirmity in the findings of the two Courts below warranting interference.

In the result, this appeal is dismissed. Since the Death Certificate has not been produced, the trial Court is directed to issue warrant to secure the accused and only then, it will be known whether the accused is alive or dead.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The IV Additional & Sessions Judge,
(Previously FTC.NO.II) Coimbatore.

2.The Judicial Magistrate No.8,
Coimbatore.

3.The Inspector of Police
Traffic Investigation Wing (West)
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.S.B.Viswanathan, Advocate sr.98196

Cr1.R.C.No.1579 of 2012

bp(co)
nr 27/01/2020

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