

Bail Slip in CrI RC No.496 of 2013

The Appellant/Accused namely Iyyandurai S/o Iyamperumal was released on bail 12/4/2013 in M.P.No.1/13 in CrI.R.C.No.496/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2019

PRONOUNCED ON : 23.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.496 of 2013

Iyyandurai ... Petitioner/Appellant/Accused

Vs.

State represented by
The Inspector of Police,
T.I.W. Salem. ... Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 23.01.2013 passed in C.A.No.128 of 2012 on the file of the II Additional District and Sessions Court, Salem, modifying and confirming the judgment and order dated 05.11.2012 passed in C.C.No.39 of 2008 on the file of the Judicial Magistrate Court No.I, Salem.

For Petitioner : Mr.Mohd.Nazrullah
for Mr.K.V.Shanmuganathan

For Respondent : Mr.G.Ramar
Govt. Advocate
(CrI.Side)

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 23.01.2013 passed in C.A.No.128 of 2012 on the file of the II Additional District and Sessions Court, Salem, modifying and confirming the judgment and order dated 05.11.2012 passed in C.C.No.39 of 2008 on the file of the Judicial Magistrate Court No.I, Salem.

2. The facts of the case in brief are as under:

2.1 It is the case of the prosecution that on 28.08.2007, around 12.00 noon, when Santha (PW1) and her deceased sister Latha were waiting for the red signal to turn green, at the Collectorate Roundtana traffic signal, in Santha's TVS Scooty, bearing Registration No.TN-30-L-2320, they were hit from behind by TNSTC bus (Route No.13), driven by the accused rashly and negligently, resulting in the death of Latha and injuries to Santha (PW1).

2.2 On the written complaint (Ex-P1) lodged by Santha (PW1), the respondent/police registered a case in Crime No.307 of 2007 and after completing the investigation, filed a final report in C.C.No.39 of 2008 before the Judicial Magistrate Court No.I, Salem, against Iyyandurai (accused/petitioner herein), for the offences under Sections 279, 337 and 304-A IPC.

2.3 The trial Court framed charges for the aforesaid offences against the accused and when questioned, the accused pleaded "not guilty".

2.4 To prove the case, the prosecution examined fourteen witnesses and marked ten exhibits.

2.5 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 nor any document marked on behalf of the accused.

2.6 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 05.11.2012 in C.C.No.39 of 2008, convicted and sentenced the accused as follows:

Provisions under which convicted	Sentence
Section 279 IPC	Fine of Rs.800/-, in default to undergo one month simple imprisonment.
Section 337 IPC	Fine of Rs.400/-, in default to undergo one month simple imprisonment.
Section 304-A IPC	One year rigorous imprisonment.

2.7 Challenging the above conviction and sentences, the accused preferred an appeal in C.A.No.128 of 2012 before the II Additional District and Sessions Court, Salem, in which, the

Appellate Court has set aside the conviction under Section 337 IPC, but, confirmed the conviction and sentence for the offences under Sections 279 and 304-A IPC, against the accused, on 23.01.2013.

2.8 Challenging the concurrent findings of fact arrived at by the Courts below, the accused is before this Court under Section 397 r/w 401 Cr.P.C.

3. Heard Mr.Mohd.Nazrullah, learned counsel representing Mr.K.V.Shanmuganathan, learned counsel on record for the accused and Mr.G.Ramar, learned Government Advocate (Crl.Side) for the respondent/State.

4. The learned counsel for the accused submitted that there is no material to show that the accused had driven the offending bus in a rash and negligent manner, inasmuch as the accident had taken place in a busy thoroughfare. He further submitted that the prosecution had not marked the trip sheets in order to show that the bus was driven by the accused. It is his further submission that the Courts below had mis-appreciated the evidence of Krishnan (PW2), Traffic Constable on duty, whose testimony suffers serious contradictions.

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

6. This Court gave its anxious consideration to the rival submissions.

7. Before adverting to the rival submissions, it may be necessary to state here that, while exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra 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

1 (2004) 7 SCC 659

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 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 reappreciate 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.”

8. The fact that Latha had lost her life in the accident in question has been proved beyond cavil by the prosecution via examination of Santha (PW1), Krishnan (PW2) and Dr. Selvakumar (PW8), who performed autopsy and issued postmortem certificate (Ex-P2).

9. The evidence of Suresh (PW9), Motor Vehicle Inspector and his Report (Ex-P3) (relating to bus bearing Registration No. TN-27-N-1429) and Report (Ex-P4) (relating to TVS Scooty bearing Registration No. TN-30-L-2320), show that there was no mechanical failure in the bus and damage was there on the front right side of the bus and also in the danger light and seat of the TVS Scooty.

10. It is true that Santha (PW1), in her evidence, has stated that she along with her sister Latha on the pillion of the Scooty, was proceeding from her house to the petrol bunk at Mulvadi Gate; when she approached the Collectorate Rountana, traffic signal showed red and hence, she stopped the Scooty and was waiting for the red signal to turn green; at that time, the Scooty was hit from behind by bus No.13, due to which, her sister fell on the left side of the road and she (PW1) fell on the right side of the road and suffered injuries. Her version had been corroborated by the evidence of Krishnan (PW2) and Elango (PW3).

11. Krishnan (PW2), who was Traffic Constable on duty near the signal, has clearly stated that he saw the bus coming in high speed and hitting the Scooty from behind and running over the head of the pillion rider (Latha).

12. The injury No.5 in the postmortem certificate (Ex-P2) shows that the face of Latha was crushed. Therefore, it cannot be stated that the findings arrived at by the Courts below suffer perversities, warranting interference, by this Court.

13. The learned counsel for the accused pleaded that the sentence may be reduced.

14. Accepting the submission made by the learned counsel for the accused, the conviction of the accused of the offences under Sections 279 and 304-A IPC are confirmed, but, the sentence imposed on the accused for the offence under Section 304-A IPC is reduced from one year rigorous imprisonment to six months rigorous imprisonment.

In fine, this criminal revision is partly allowed. The trial Court is directed to secure the accused and commit him to prison, for undergoing the remaining period of sentence, if any. The Registry is directed to return the original records to the Courts below concerned.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
T.I.W. Salem.

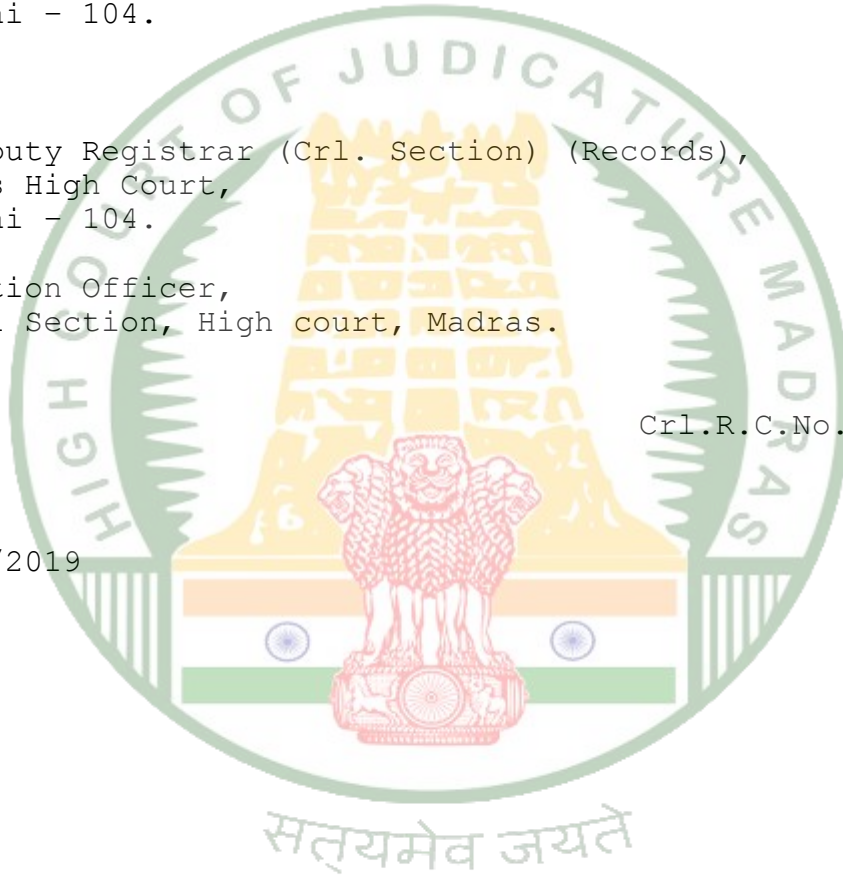
2. The II Additional District and Sessions Judge,
Salem.
3. The Judicial Magistrate No.I,
Salem.
4. The Chief Judicial Magistrate,
Salem.
5. The Public Prosecutor,
Madras High Court,
Chennai - 104.

Copy to

1. The Deputy Registrar (Crl. Section) (Records),
Madras High Court,
Chennai - 104.
2. The Section Officer,
Criminal Section, High court, Madras.

Crl.R.C.No.496 of 2013

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