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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.07.2019

DELIVERED ON: 12.07.2019

CORAM:

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

Crl.R.C. No.120 of 2016

Ramesh

Petitioner/Accused

vs.

State by
the Inspector of Police
Eathapur Police Station
Salem District

Respondent/Complainant

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the judgment and order dated 07.12.2015 passed in Crl.A. No.17 of 2015 on the file of the District and Sessions Court, Salem confirming the judgment and order dated 08.01.2015 passed in C.C. No.190 of 2012 on the file of the Judicial Magistrate Court No.I, Attur.

For petitioner Mr. A. Balamurugan
 for Mr. K. Selvakumaraswami

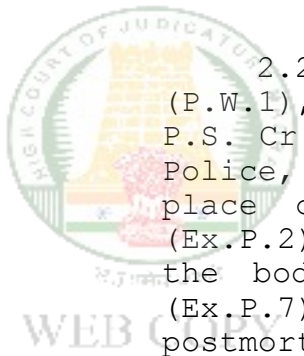
For respondent Mrs. P. Kritika Kamal
 Govt. Advocate (Crl. Side)

ORDER

This criminal revision has been filed seeking to set aside the judgment and order dated 07.12.2015 passed in Crl.A. No.17 of 2015 on the file of the District and Sessions Court, Salem confirming the judgment and order dated 08.01.2015 passed in C.C. No.190 of 2012 on the file of the Judicial Magistrate Court No.I, Attur.

2 Briefly stated, the germane facts leading to the institution of this criminal revision are as under:

2.1 It is the case of the prosecution that on 21.05.2012, around 6.00 p.m., when Sengodan (P.W.1) and his wife Shakunthala (deceased) were standing in the Puthragoundanpalayam Bus Stop, the petitioner who was the driver of Mahalakshmi Bus Service bus bearing Regn. No. TN 54 Z 2588, drove the bus in a rash and negligent manner and ran over Shakunthala resulting in her death.



2.2 On the complaint (Ex.P.1) lodged by Sengodan (P.W.1), the respondent police registered a case in Eathapur P.S. Cr. No.194 of 2012 and Karunanidhi (P.W.12), Inspector of Police, took up the investigation of the case. He went to the place of occurrence and prepared the observation mahazar (Ex.P.2) and rough sketch (Ex.P.6). He conducted inquest over the body of the deceased and prepared the inquest report (Ex.P.7). The body was sent to the Government Hospital for postmortem, where, Dr.Kesavalingam (P.W.10) performed autopsy on the body of the deceased and issued the postmortem certificate (Ex.P.4). The petitioner was arrested during investigation on 22.05.2012. After recording the statement of witnesses and after completing the investigation, the respondent police filed final report in C.C. No.190 of 2012 before the Judicial Magistrate No.I, Attur against the petitioner for the offences under Sections 279 and 304-A IPC.

2.3 On the appearance of the petitioner, the provisions of Section 207 Cr.P.C. were complied with and charges were framed against him for the aforesaid offences. When questioned, he pleaded not guilty.

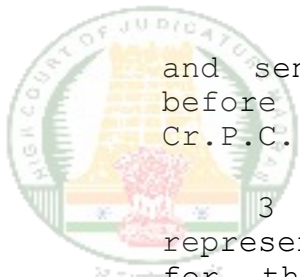
2.4 To prove its case, the prosecution examined 12 witnesses and marked 7 exhibits.

2.5 When the petitioner was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On the side of the petitioner, no witness was examined nor any document marked.

2.6 After considering the evidence on record and hearing the learned counsel on either side, the Trial Court, vide judgment and order dated 08.01.2015 in C.C. No.190 of 2012, convicted and sentenced the petitioner as under:

S.No.	Provision under which convicted	Sentence
1	279 IPC	Fine of Rs.1,000/-
2	304-A IPC	1 year rigorous imprisonment and fine of Rs.3,000/-, in default to undergo one month simple imprisonment

2.7 Challenging the aforesaid conviction and sentence, the petitioner preferred CrI.A. No.17 of 2015 which was heard by the Principal District and Sessions Judge, Salem, who, vide judgment dated 07.12.2015, confirmed the conviction and sentence slapped on the petitioner. Challenging the conviction



and sentence slapped by the Courts below, the accused is before this Court under Section 397 read with Section 401 Cr.P.C.

3 Heard Mr. A. Balamurugan, learned counsel representing Mr.K.Selvakumaraswami, learned counsel on record for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent/State.

4 The learned counsel for the petitioner contended that Sengodan (P.W.1), in his evidence, has stated that he lodged the complaint on the date of the incident itself, i.e., on 21.05.2012, but, the FIR has been registered only on 22.05.2012, which only shows that there was delay in lodging the complaint. He further contended that Murugan (P.W.7), an eyewitness to the incident, has stated in his evidence that when the deceased was attempting to board the bus, the petitioner started the bus and so, the deceased fell down and was run over. Based on this, the learned counsel for the petitioner contended that there is no material to show that the petitioner had driven the bus rashly and negligently.

5 The learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the petitioner.

6 Before advertng 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 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.

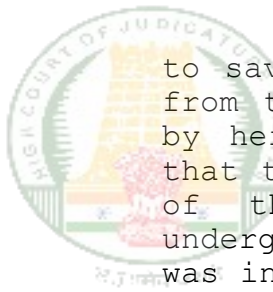
(emphasis supplied)

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."

7 This Court carefully perused the evidence of the prosecution witnesses. Sengodan (P.W.1), in his evidence, has stated that on 21.05.2012, around 5.45 p.m., while he was standing with his wife in the Puthragoundanpalayam Bus Stop, a bus of Mahalakshmi Transport Company coming from Attur to Salem, ran over his wife's lower limbs; he immediately carried her to Salem Medical Centre where she was given first aid and he was advised to take his wife to the Government Hospital, Salem; en route, his wife breathed her last and therefore, the doctor at the Government Hospital, Salem, declared her as "brought dead"; thereafter, he came to the police station and lodged a complaint which was marked as Ex.P.1.

8 It is true that the FIR in this case has been registered on 22.05.2012 at 6.30 a.m. It is manifest from the evidence on record that the incident had taken place in a far flung village from where Sengodan (P.W.1) took his injured wife to Salem Medical Centre where she was given first aid and from there, he took her to the Government Hospital, Salem. All these events could not have happened in the wink of an eye. Finding his wife injured right under his nose, Sengodan's (P.W.1's) mental disposition would have been only



to save his wife from further deterioration of her health or from the jaws of death, given the nature of injury sustained by her, rather than giving police complaint with an intent that the petitioner be brought to book. Thus, in the backdrop of the facts obtaining in this case, especially, the trauma undergone by Sengodan (P.W.1), it cannot be stated that there was inordinate delay in the registration of the FIR nor can it be stated that the stray statement of Sengodan (P.W.1) that he lodged the complaint on the date of the accident, would vitiate the prosecution case.

9 Further, from a perusal of the records, it is clear that the front wheel of the bus had run over the deceased. As contended by the defence, had the deceased fallen while boarding the bus through the front entrance, normally, the rear wheel would have run over her, for, it is common knowledge that the front wheel will be before the front entrance and not behind the front entrance.

10 Be that as it may, even assuming for a moment that while the deceased was boarding the bus, the petitioner started moving the bus, yet, that will not absolve him of criminal liability, as observed by the Appellate Court in paragraph 6.2 of its judgment which is worth referring to:

"6.2 ... There are now two parts to the accident: One what the victim did - whether she was stationary at the bus stop or was mobile and was in the process of boarding the bus. Second, what is the role of the bus driver. Here it is the role of the bus driver which is far more critical, for his duty to care a commuter of a bus standing at the bus stop can be discharged with fair amount of anticipation. And, for a bus driver sitting at a higher plane, the visibility would also be close to 180 degrees. If it is so, how does it matter whether the victim was stationary at the bus stop or was about to enter the bus? Either way, driver's duty to care is absolute. Why should the driver accelerate the vehicle without even checking if all the passengers have boarded the bus? Has he not a minimum responsibility to his passenger? This Court finds that the driver has been negligent and failed in his duty to care vis-a-vis the life of the victim."

This Court has no reason to disagree with the aforesaid finding.

11 However, the learned counsel for the petitioner submitted that some leniency may be shown to the petitioner on the aspect of sentence.



12 Acceding to the aforesaid request of the learned counsel for the petitioner, the substantive sentence of one year rigorous imprisonment slapped on the petitioner for the offence under Section 304-A IPC is reduced to three months rigorous imprisonment.

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With the above modification in sentence, this criminal revision stands partly allowed. The Trial Court is directed to secure the presence of the petitioner and commit him to prison to undergo the period of sentence.

Sd/-

Assistant Registrar (CS ii)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Inspector of Police
Eathapur Police Station
Salem District
- 2 The District and Sessions Judge,
Salem
- 3 The Judicial Magistrate Court No.I
Attur
- 4 The Public Prosecutor
High Court of Madras
Chennai 600 104

Cr1.R.C. No.120 of 2016

A.SK(07/08/2019)