

Bail Slip

The Petitioner/Appellant/Accused namely D.Natarajan, S/o.Duraisamy Gounder was released on bail as per order of this Court dt.04/02/2016 made in Crl.M.P.No.1247 of 2016 in Crl.Rc.No.190 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.190 of 2016

D.Natarajan,
S/o.Duraisamy Gounder,
No.80, Mariyamman Koil Street,
Kurumbapalayam, Pollachi,
Coimbatore District.

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Thiyagadurugam Police Station,
Villupuram District.

...Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., against the judgment and order dated 18.07.2014 passed in C.C.No.223 of 2006 on the file of the Judicial Magistrate Court, Kallakurichi, confirmed by the judgment and order dated 24.08.2015 passed in C.A.No.23 of 2014 on the file of the III Additional District Sessions Court, Kallakurichi.

For Petitioner : Mr.P.Rajavel

For Respondent : Mr.G.Ramar
Government Advocate
(Crl. Side)

ORDER

This criminal revision has been preferred seeking to set aside the judgment and order dated 18.07.2014 passed in C.C.No.223 of 2006 on the file of the Judicial Magistrate Court, Kallakurichi, confirmed by the judgment and order dated 24.08.2015 passed in C.A.No.23 of 2014 on the file of the III Additional District Sessions Court, Kallakurichi.

2. The precis of facts is as under:

2.1 The case of the prosecution is that on 07.06.2006, around 11.00 a.m., while the deceased Saravanan, aged about 32 years, was going by a motor-cycle, bearing Registration No.TN 32 W 4443 in Chennai-Kallakurichi National Highway, from East to West, the accused, driver of the Lorry bearing Registration No.TN 22 E 4556, hit the deceased from behind, resulting in his death instantaneously.

2.2 On the complaint (Ex-P2) lodged by Pradeep Kumar (PW5), the respondent police registered a case in Crime No.94 of 2006 and took up the investigation of the case. The observation mahazar (Ex-P1) and rough sketch (Ex-P7) were prepared by Balasubramanian (PW10), Inspector of Police. The inquest was conducted over the body of the deceased and inquest report was marked as Ex-P8. The body was sent to the Government Hospital, Kallakurichi, where, Dr.Anbuselvi (PW6), performed autopsy and issued the postmortem certificate (Ex-P3). The accused was arrested during the course of the investigation. Both the vehicles were inspected by Muruganandham (PW7), Motor Vehicle Inspector, who, in his evidence as well in the MVI reports (Exs-P4 & P5), has stated that there was no mechanical failure in those vehicles.

2.3 After completing the investigation, the police filed final report in C.C.No.223 of 2006 before the Judicial Magistrate, Kallakurichi.

2.4 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. The Trial Court framed charge under Section 304-A IPC, against the accused and when questioned, he pleaded "not guilty".

2.5 To prove its case, the prosecution examined ten witnesses and marked eight exhibits.

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

2.7 After considering the evidence on record and on hearing either side, the Trial Court, by judgment and order dated 18.07.2014 in C.C.No.223 of 2006, convicted and sentenced the accused as under:

Provision under which convicted	Sentence
304-A IPC	Six months simple imprisonment and fine of Rs.1,000/-, in default to undergo one month simple imprisonment.

2.8 Challenging the above conviction and sentence, the appeal in C.A.No.23 of 2014, preferred by the accused has been dismissed by the learned III Additional Sessions Judge, Kallakurichi, Villupuram, on 24.08.2015, challenging which, the accused is before this Court.

3. Heard Mr.P.Rajavel, learned counsel for the accused and Mr.G.Ramar, learned Government Advocate (Crl.Side) for the respondent/State.

4. Before advertting 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

1 (2004) 7 SCC 659

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."

5. The learned counsel for the accused submitted that the prosecution had cited Aadiyapadham (PW1) and Pradeep Kumar (PW5) as eye-witnesses, but, Aadiyapadham (PW1) turned hostile and Pradeep Kumar (PW5) has stated in the chief-examination itself, that a dog crossed the road, to avoid hitting which, the deceased applied the brakes and at that time, the lorry driven by the accused had hit him. Based on this evidence, the learned counsel for the accused contended that the accused had not driven the lorry in a rash and negligent manner, resulting in the death of Saravanan.

6. This Court carefully perused the evidence of Pradeep Kumar (PW5) and the complaint (Ex-P2) lodged by him. In the complaint (Ex-P2), Pradeep Kumar (PW5) has not stated that a dog had suddenly crossed the road. Pradeep Kumar (PW5) is a politician and was the local Councillor. For the first time, he has stated in the witness box that a dog suddenly crossed the road and to avoid hitting the dog, the deceased applied the brakes, resulting in the lorry hitting the motor-cycle from behind.

7. This argument did not find favour with the Trial Court and the Appellate Court for the following reasons. From the evidence of Dr. Anbuselvi (PW6) and the postmortem certificate

(Ex-P3), it could be seen that the head of the deceased was found crushed and the cerebrum was found protruding. Tyre marks were found over the right side chest, right side shoulders and right side stomach of the deceased.

8. The witnesses have stated that the place, where the accident had occurred, was a busy area, inasmuch as, there were shops, bus stand and marriage hall near it. In such a busy area, the accused should have driven the vehicle at a low speed. Had the accused driven the vehicle at a low speed, he would have seen the deceased applying the brakes to avoid hitting the dog. Had the lorry merely hit the motor-cycle from behind, the deceased would have been thrown on the front side, whereas, the lorry has run over the deceased, which was evident from the tyre marks found on the body of the deceased during postmortem.

9. Therefore, both the Courts below have held that, even if the dog crossing theory proffered by Pradeep Kumar (PW5) is accepted, it cannot be inferred that the accused had not driven the lorry in a rash and negligent manner.

10. In view of the concurrent findings of fact by the Courts below, which, in the opinion of this Court, do not suffer from any infirmity or illegality, there is no good reason to interfere with the same under Section 397 r/w 401 Cr.P.C.

11. The learned counsel for the accused submitted that the accused is suffering from renal failure and is aged about 60 years and prayed for at least reduction in sentence.

12. Accepting the plea, the sentence of six months simple imprisonment is reduced to three months simple imprisonment.

In the result, this criminal revision petition is partly allowed. The conviction under Section 304-A IPC is confirmed, but, sentence is reduced from six months simple imprisonment to three months simple imprisonment. The Trial Court is directed to secure the accused and commit him to prison to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
Kallakurichi.

2.The Chief Judicial Magistrate,
Villupuram.

3.The III Additional District Sessions Judge,
Kallakurichi.

4.The Inspector of Police,
Thiyagadurugam Police Station,
Villupuram District.

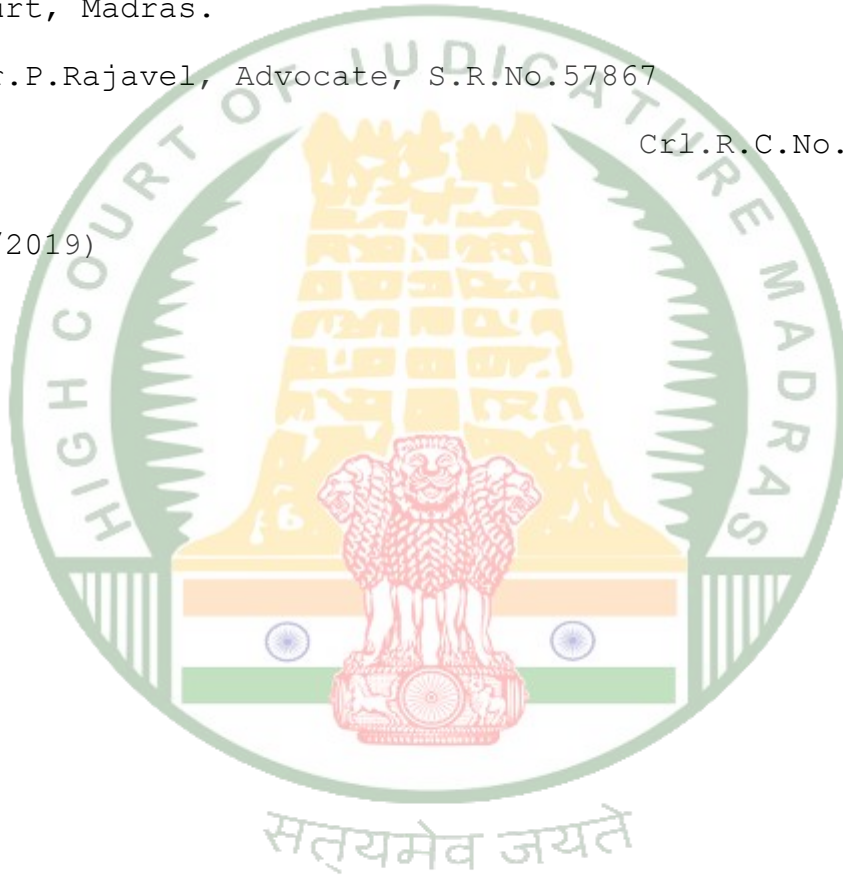
5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Rajavel, Advocate, S.R.No.57867

Cr1.R.C.No.190 of 2016

KK(CO)

RRS (27/08/2019)



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