

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2019

PRONOUNCED ON : 24.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.27 of 2016

Periyasamy

.. Petitioner

Vs

State rep. by
The Inspector of Police,
Erode South Police Station,
Erode District.

.. Respondent

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment dated 30.10.2015 made in C.A.No.33 of 2015 on the file of the II Additional District Sessions Judge, Erode confirming the conviction imposed in judgment dated 06.04.2015 made in C.C.No.195 of 2013 on the file of the Judicial Magistrate No.III, Erode.

For Petitioners : Ms.Yogalakshmi for Mr. M.Guruprasad

For Respondent : Mrs.P.Kritika Kamal, GA (Crl. Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment dated 30.10.2015 passed by the II Additional District Sessions Judge, Erode in C.A.No.33 of 2015 confirming the conviction and sentence dated 06.04.2015 passed by the Judicial Magistrate No.III, Erode in C.C.No.195 of 2013.

2.It is the case of the prosecution that on 04.12.2011, around 12.30 p.m., while the deceased Chinrasu was going by his bicycle on Erode - Perundurai main road, from East to West, the lorry bearing registration No.TN33 AJ 9438 driven by the petitioner, hit him from behind, resulting in the deceased falling and the back wheel of the lorry running over him, causing his death.

3.On the complaint (Ex.P1) lodged by Sakthi (PW1), the respondent police registered a case in crime No.1337 of 2011 on 04.12.2011 under Section 279, 304A IPC. Vijayan (PW11),

Inspector of Police took up the investigation of the case and went to the place of occurrence and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P6). He conducted inquest over the body of the deceased and the inquest report was marked as Ex.P7. The body was sent to the Government Hospital for postmortem, where Dr.Jeyakavitha (PW10) performed autopsy and issued the postmortem certificate (Ex.P5). In her evidence as well in the postmortem certificate, she has stated that the head of the deceased including the skull was found crushed. The police arrested the accused and after examining the witnesses and collecting various reports, completed the investigation and filed a final report in C.C.No.393 of 2011 on 23.12.2011 before the Judicial Magistrate No.III, Erode. On the orders of the Chief Judicial Magistrate, the case was transferred to the Court of the Chief Judicial Magistrate and on the administrative orders of the High Court, the case was retransferred in C.C.No.195 of 2013 to the Court of the Judicial Magistrate No.III, Erode. The trial Court framed charges under Section 279 and 304A IPC against the petitioner. When questioned, the petitioner pleaded 'not guilty'.

4.To prove the case, the prosecution examined 11 witnesses, marked 7 exhibits. When the petitioner was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same. No witness was examined on behalf of the petitioner or any document marked.

5.After considering the evidence on record, the trial Court, by judgment and order dated 06.04.2015 in C.C.No.195 of 2013, convicted and sentenced the petitioner as follows.

Provision under which convicted	Sentence
Section 279 IPC	fine of Rs.500/- in default, to undergo 1 week simple imprisonment
Section 304A IPC	6 months years simple imprisonment and fine of Rs.4,500/- in default, to undergo 2 months simple imprisonment

Aggrieved by the verdict, the petitioner filed C.A.No.33 of 2015, which has been dismissed by the II Additional District and Sessions Judge, Erode on 30.10.2015, aggrieved by which, the petitioner is before this Court.

6. Heard Ms. Yogalakshmi, learned counsel for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the State.

7. Before advertg 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. [(2004) 7 SCC 659.]

"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."

8. Ms. Yogalakshmi, learned counsel for the petitioner contended that, no independent witness was examined and all the witnesses examined were interested witnesses and chance witnesses. In support of this contention, she stated that all the witnesses are from the same locality and were known to each other and therefore, their testimony should not be accepted. She placed reliance upon the following judgments :

- i. Satbir Vs. Surat Singh [(1997) 4 SCC 192]
- ii. Harjinder Singh Vs. State of Gujarat [(2004) 11 SCC 253]
- iii. Acharaparambath Pradeepan & Another Vs. State of Kerala [(2006) 13 SCC 643]
- iv. Sarvesh Narain Shukla Vs. Daroga Singh and Others [(2007) 13 SCC 360]
- v. Shankarlal Vs. State of Rajasthan [(2004) 10 SCC 632]

9. In a criminal case, judicial precedents have a minimal role because, facts of no two cases will be identical. Every criminal case has to be decided on the facts proved via legal evidence. It may not be out of place to quote from Dalip Singh and Others Vs State of Punjab [AIR 1953 SC 364] on "interested witness" and the relevant portion reads as under :

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high

and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

10. Who is a chance witness ? This has also been answered by the Supreme Court in Rana Partap Vs State of Haryana [(1983) 3 SCC 327], wherein, it is held as follows :

"3. ... If murder is committed on a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witnesses" is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are "chance witnesses", even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence."

11. In the case at hand, we have the evidence of Sakthi (PW1), Rajesh (PW3) and Veluchamy (PW4), who have spoken about the accident. Sakthi (PW1) has stated that, he knows the deceased; on 04.12.2011, around 12.30 noon, he and the deceased were going by their bicycles to market and were proceeding from East to West in Erode - Perundurai road and at that time, the lorry driven by the petitioner caused the accident, due to which, the deceased fell down and the back tyre of the lorry ran over him, resulting in his death instantaneously; he identified the petitioner, as the person who was on the wheels of the lorry.

12. In the cross-examination, Sakthi (PW1) has stated that, apart from him, one Selvam (PW5), Rajesh (PW3) and Jais (PW6) were also there with him, at the time of the accident. Thus, what he did not state in the chief, was elicited in the cross-examination and thereby, the defence themselves have established the presence of Rajesh (PW3), Selvam (PW5) and Jais (PW6) and other eyewitnesses, at the place of occurrence.

13.Learned counsel for the petitioner further submitted that, a motorcycle suddenly came on the wrong side and on seeing it, the deceased, out of fear, lost his balance and fell on the left side of the lorry and therefore, there is no rashness or negligence on the part of the petitioner.

14.When Sakthi (PW1) was asked as to whether, he saw any motorcycle coming on the opposite side, he stated that he did not notice any such vehicle. Learned counsel submitted that, Sakthi (PW1) should have either stated that no such motorcycle came or should have denied it. On the contrary, his answer that he did not notice any vehicle coming on the opposite side, as suggested by the defence, probabalises the defence case.

15.This Court is unable to agree with this contention because, one cannot expect a person to notice everything that is happening around him. Human eye does not even have 180° vision like some animals. Even the petitioner has not given any such explanation when he was examined under Section 313 Cr.P.C.

16.Learned counsel for the petitioner placed strong reliance on the judgment of this Court in Nachimuthu Vs. State by the Inspector of Police [2011(1) MWN (Cr.) 74] and contended that, prosecution has failed to prove that the petitioner has driven the lorry in a rash and negligent manner.

17.It is true that just because, the witness has stated that the offending vehicle was driven at a high speed, the Court cannot infer that it was driven in a rash and negligent manner. However, in this case, a perusal of the rough sketch and the nature of injuries sustained by the deceased, it is obvious that the vehicle was driven in a rash and negligent manner. The petitioner did not even apply the brake so as to prevent the rear wheel from running over the deceased. In the light of the overwhelming evidence on record, this Court does not find any infirmity on the finding of facts rendered by the Courts below warranting interference.

18.Learned counsel for the petitioner submitted that the petitioner is 67 years old and prayed for leniency in sentence.

19.Accepting his submission, the period of sentence is reduced to 3 months rigorous imprisonment.

In the result, this Criminal Revision is partly allowed by reducing the sentence imposed on the petitioner by the trial Court and the appellate Court to 3 months rigorous imprisonment.

The trial Court is directed to secure the revision petitioner to undergo the remaining period of sentence, if any. Registry is directed to send the original records to the Sessions Court and the trial Court forthwith.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

- 1.The II Additional District Sessions Judge, Erode.
- 2.The Judicial Magistrate No.III, Erode.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Inspector of Police,
Erode South Police Station,
Erode District.

Copy To :

- 1.The Deputy Registrar,
Criminal Section,
High Court, Madras.
2. The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.M.Guruprasad, Advocate SR.No.63436

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PA (CO)
GMY (20/08/2019)

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