

Bail Slip.

The Petitioner/Accused namely Prabhu S/o. Masilamani was released on bail as per order of this Court dated 18.01.2016 made in CrI.M.P. 455/2016 in CrI.R.C. No. 69/2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM

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

CrI.Rc.No.69 of 2016

Prabhu

..Petitioner/Accused

vs.

State by:

Inspector of Police,
Maduranthagam Police Station,
Maduranthagam.

(Crime No.73 of 2007)

..Respondent/Complainant

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC against the judgment dated 23.11.2015 passed by the learned Principal Sessions Judge at Chengalpattu, Kancheepuram District in C.A.No.27 of 2011, confirming the conviction and sentence, passed by the Judicial Magistrate, Maduranthakam, vide judgment dated 11.04.2011 in C.C.No.239 of 2007.

For Petitioner : Mr.M.Rajavelu

For Respondent : Mr.G.Ramar,

Govt. Advocate (CrI.Side)

ORDER

The case of the prosecution, briefly narrated, are as follows:

1.1. On 29.01.2007 at around 9.00 a.m. when Velmurugan, a 7th standard student of Gurukulam Primary School, was walking towards the school, a Minidor three wheeler bearing Registration No.TN21-P-4919, driven by the accused dashed against him and crushed him on the trunk of a Tamarind tree and turned topsy turvy, resulting in instantaneous death of Velmurugan.

1.2. On receiving the information about the accident, Velmurugan's father, namely Shanmugham / PW1 came to the place of occurrence and saw the dead body of his son and also saw the Minidor / offending vehicle lying upside down near the school. On his complaint/Ex.P1, a case in Crime No.73 of 2007 was registered by Maduranthagam Police Station on 29.01.2007 under Sections 279 and 304 (A) I.P.C. against the driver of the offending vehicle. Since the driver of the Minidor van had fled away from the scene of occurrence after the accident, his name was not mentioned in Column No.7 of the Printed F.I.R. which was marked as Ex.P6.

1.3. In the complaint/Ex.P1, Shanmugham/PW1 has stated about the presence of PW2 - Shanthakumar and PW3-Paul Vijayakumar, who are eyewitnesses to the occurrence. After a few days, the accused / petitioner herein surrendered before the Court of Judicial Magistrate, Maduranthagam in Crime No.73 of 2007 and was taken into judicial custody and released on bail after a period of 45 days.

1.4. The investigation of the case was taken over by Murugan- Inspector of Police / PW8, who went to the place of occurrence and prepared the Observation Mahazar - Ex.P7 and Rough Sketch - Ex.P8 in the presence of Krishnamoorthy / PW5 and Elumalai / PW6. The Investigating Officer also recorded the statements of PWs.1 to 3, PW5 and PW6. Inquest was conducted over the body of the deceased and the Inquest Report was marked as Ex.P9. The body of the deceased was sent to the Government Hospital for postmortem. Dr.Arumugham / PW4 conducted autopsy on the body of the deceased and issued the Postmortem Certificate / Ex.P2.

1.5. The offending vehicle was produced before PW7 / Thiru.Sundramoorthy, Motor Vehicle Inspector, who inspected the vehicle and gave the report Ex.P5, wherein he has stated that there was no mechanical failure in the brakes or otherwise. After completing the investigation, the Investigating Officer filed the Charge Sheet in C.C.No.239 of 2007 before the Judicial Magistrate Court, Maduranthagam against the accused.

1.6. On the appearance of the accused, he was furnished with the relied upon documents under Section 207 CrPC. The Trial Court framed charges under Sections 279 and 304(A) I.P.C. and Section 3 r/w. 181 of the Motor Vehicles Act, since the accused did not possess valid driving licence. When questioned, the accused pleaded not guilty.

1.7. The prosecution, in order to sustain its case, examined 8 witnesses and marked 9 exhibits. When the accused was questioned under Section 313 CrPC with regard to the incriminating circumstances appearing against him, he simply denied the same.

1.8. The Trial Court, after considering the evidence on either side, vide judgment dated 11.04.2011 in C.C.No.239 of 2007, convicted and sentenced the accused as under :

Name and Rank of the accused	Conviction for the offences under Sections	Sentence awarded by the Trial Court
Prabhu - Sole Accused	279 I.P.C	Simple Imprisonment for 2 months
	304 (A) I.P.C.	Rigorous Imprisonment for 6 months
	3 r/w. 181 of the Motor Vehicles Act	Simple Imprisonment for 1 month.

The sentences were directed to run concurrently and the accused was also granted set off under Section 428 CrPC.

1.9. Challenging the conviction and sentence, the accused filed C.A.No.27 / 2011 before the Court of Sessions, Chengalpattu. The learned Principal Sessions Judge at Chengalpattu, Kancheepuram District, vide judgment dated 23.11.2015 in C.A.No.27 / 2011, has dismissed the appeal, confirming the conviction and sentence passed by the Trial Court. Hence, the accused is before this Court in the revisional jurisdiction.

2. Heard Mr.M.Rajavelu, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate (Crl. Side) for the respondent and perused the materials.

3. 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., [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.”

4. The learned counsel for the petitioner submitted that PWs.2 and 3 were not the eyewitnesses to the occurrence and they were planted subsequently by the police to be cited as eyewitnesses. This Court is unable to agree with the said submission because the presence of both PWs.2 and 3 finds reference in the complaint/Ex.P1 given by PW1 to the police.

That apart their evidence is in consonance with the theory propounded by the prosecution that the vehicle had hit the boy and crushed him on the trunk of a Tamarind tree and immediately turned turtle. Both the Courts have appreciated the evidence of PWs.2 and 3 and have not disbelieved their testimony.

5. This Court has perused the evidence of PWs.2 and 3, who were subject to cross examination by the accused. In the cross examination of PW2, it was merely suggested to him that there may be speed breakers near the school, which he denied and stated further that the speed breakers were installed after the accident to avoid any such accident in future. No suggestion was put even to PW2 that he was not present at the place of occurrence. The learned counsel for the petitioner submitted that both PWs.2 and 3 have not identified the accused as the person, who had driven the offending vehicle.

6. A reading of the evidence of the witnesses would show that after the incident, they saw the accused fleeing. Thereafter, the accused surrendered before the Trial Court, which conduct is relevant under Section 8 of the Evidence Act. Even in the statement under Section 313 CrPC, he did not deny that he was not the driver.

7. Under such circumstances, this Court cannot come to the conclusion that the judgment and order passed by the Trial Court and the Lower Appellate Court suffer from infirmities warranting interference by this Court in exercise of revisional jurisdiction. Therefore, the conviction awarded by the Courts below stands confirmed. However, taking into consideration the overall facts and circumstances of the case, the maximum sentence of 6 months imprisonment imposed by the Courts below for the offence under Section 304(A) IPC is reduced to four months rigorous imprisonment. The sentence imposed for the other offences shall remain the same and the accused is entitled to set off under Section 428 CrPC.

8. With the above modification of sentence, this Criminal Revision Petition is partly allowed. The Trial Court is directed to take the accused into custody for serving the remaining period of sentence.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Jvm

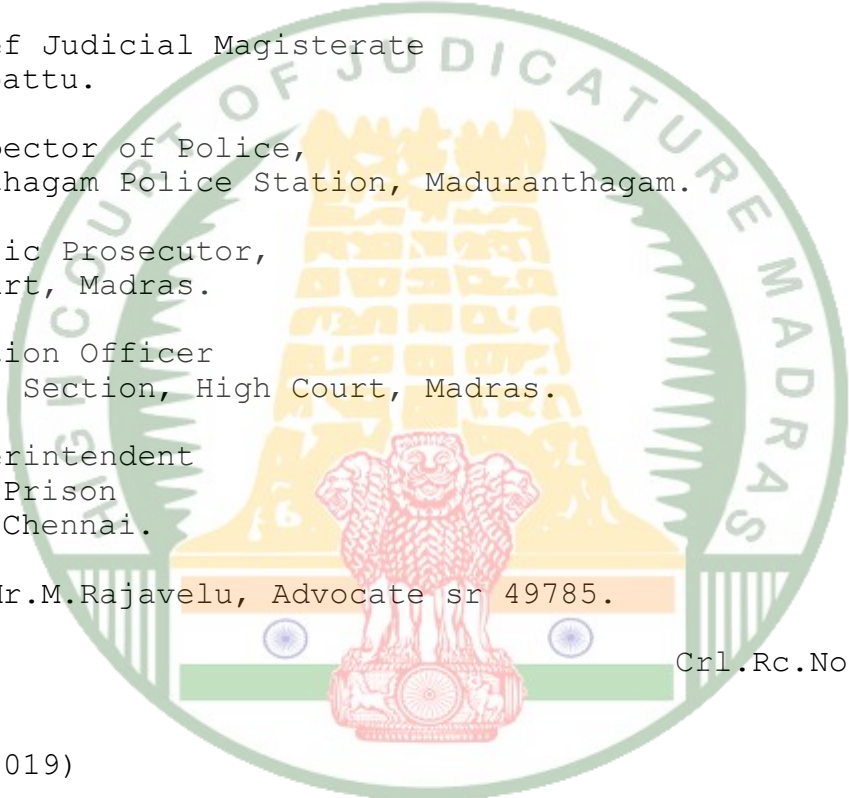
Note: The Deputy Registrar, Criminal Section, High Court, Madras is directed to send the records to the Lower Court.

To

- 1.The Principal Sessions Court,
Chengalpattu, Kancheepuram District.
 - 2.The Judicial Magistrate
Maduranthakam.
 - 3.The Chief Judicial Magistrate
Chengalpattu.
 - 4.The Inspector of Police,
Maduranthagam Police Station, Maduranthagam.
 - 5.The Public Prosecutor,
High Court, Madras.
 - 6.The Section Officer
Criminal Section, High Court, Madras.
 - 7.The Superintendent
Central Prison
Puzhal, Chennai.
- +1 CC to Mr.M.Rajavelu, Advocate sr 49785.

Crl.Rc.No.69 of 2016

KK(CO)
SP(23/07/2019)



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