

BAIL SLIP

The Appellant/Accused Viz; Murugan S/o.Subramani, aged about 41 years was directed released on bail as per order of this court dated 07/3/2014 in Crl.MP.No.1/14 in Crl.RC.No.291/14.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.291 of 2014

Murugan

Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Cithode Police Station,
Erode District.
(Crime No.247/2008)

Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 16.09.2013 passed in C.C.No.358 of 2008 on the file of the Judicial Magistrate Court No.III, Erode, confirmed by the judgment and order dated 20.01.2014 passed in C.A.No.67 of 2013 on the file of the Principal Sessions Court, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

O R D E R

This revision petition has been filed seeking to set aside the judgment and order dated 16.09.2013 passed in C.C.No.358 of 2008 on the file of the Judicial Magistrate Court No.III, Erode, confirmed by the judgment and order dated 20.01.2014 passed in C.A.No.67 of 2013 on the file of the Principal Sessions Court, Erode.

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

2.1 It is the case of the prosecution that on 20.07.2008, around 9.45 a.m., an accident took place, in which, it is alleged that the accused drove the lorry bearing registration No.TN-27-A-3435 in a rash and negligent manner and dashed

against a Mahindra Truck bearing registration No.TN-02-H-4141, resulting in the death of Zahir Hussain and injuries to three persons viz., Rafiq (PW6), Siddiq (PW7) and Ibrahim (PW10), who were travelling in the truck.

2.2 On these allegations, a case in Crime No.247 of 2008 was registered by the respondent/police.

2.3 After completing the investigation, the police filed a final report in C.C.No.358 of 2008, against the accused before the Judicial Magistrate, Erode, for the offences under Sections 279, 337 (2 counts), 338 and 304-A IPC.

2.4 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and charges for the said offences were framed against the accused. When questioned, the accused pleaded "not guilty".

2.5 To prove the case, the prosecution examined fifteen witnesses and marked fifteen exhibits.

2.6 When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same.

2.7 After considering the evidence on record and hearing either side, the Trial Court, by judgment and order dated 16.09.2013 in C.C.No.358 of 2008, has convicted and sentenced the accused as follows:

Provision under which convicted	Sentence
Section 279 IPC	Fine of Rs.500/-, in default to undergo four weeks simple imprisonment.
Section 337 IPC (2 counts)	Fine of Rs.1000/-(Rs.500x2), in default to undergo eight weeks simple imprisonment.
Section 338 IPC	Fine of Rs.1,000/-, in default to undergo eight weeks simple imprisonment.

Provision under which convicted	Sentence
Section 304-A IPC	Six months simple imprisonment and fine of Rs.2,500/-, in default to undergo four months simple imprisonment.

2.8 Aggrieved by the above conviction and sentence, the accused preferred an appeal in C.A.No.67 of 2013 before the Principal Sessions Court, Erode, which was dismissed on 20.01.2014.

2.9 Challenging the concurrent findings of the Courts below, the accused is before this Court.

3. Heard Mr.M.Guruprasad, learned counsel for the accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. The learned counsel for the accused submitted that the accused had died on 14.12.2017 and submitted a copy of the death certificate.

5. The death of the accused will not automatically result in the abatement of this revision petition. Therefore, this Court carefully perused the records and heard the learned counsel on either side.

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:

1 (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."

7. In this case, from the evidence of the injured witnesses viz., Rafiq (PW6), Siddiq (PW7) and Ibrahim (PW10), it is seen that they were travelling along with the deceased Zahir Hussain in the truck and they were coming from Bhavani to Chithode; the

lorry driven by the accused came on the opposite side, crossed the yellow line and hit the truck resulting in a head on collision. In that impact, the occupants in the truck were thrown out and Zahir Hussain died. The evidence of the injured witnesses clearly shows that the accused was driving the vehicle in a rash and negligent manner. In view of the above discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below warranting interference.

Hence, this criminal revision is dismissed as being devoid of merits.

-s/d-

Asst.Registrar (Insp Cell)

/true copy/

Sub Asst. Registrar

nsd

To

1. The Judicial Magistrate No.III,
Erode.
- 2.The Chief Judicial Magistrate Erode(for Information)
3. The Principal Sessions Judge,
Erode.
- 4.The Public Prosecutor
High Court, Madras
5. The Inspector of Police,
Cithode Police Station,
Erode District.

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