

Bail Slip

The Petitioner/Accused Viz., Sampath S/o Rajagopal was released on bail vide order of this Court made in M.P.No.1/2013 in Crl RC No.1255/2013 dated 09/10/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1255 of 2013

Sampath ... Petitioner/ Accused

Vs

State
The Inspector of Police
Kaveripakkam Police Station
Vellore District
(Crime No.472/2009) Respondent/Complainant

Prayer:Criminal revision preferred under Section 397 and 401 of Cr.P.C. against the judgment dated 29.07.2013 passed by the II Additional District and Sessions Judge, Vellore in Crl.A.No.161 of 2011 confirming the conviction and reducing the sentence imposed by the District Munsif-cum-Judicial Magistrate No.I, Walajah in C.C.No.24 of 2010 dated 04/07/2011.

For Petitioner : Mr.K.S.Kaviarasu

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

O R D E R

This Revision Petition has been preferred challenging the judgment dated 29.07.2013 passed by the learned II Additional District and Sessions Judge, Vellore in Crl.A.No.161 of 2011 confirming the conviction and reducing the sentence imposed by the District Munsif-cum-Judicial Magistrate No.I, Walajah in C.C.No.161 of 2011 vide judgment and order dated 29.07.2013.

2.It is the case of the prosecution that while the deceased Tamilarasan was waiting to go to Sriperumbudur on 02.09.2009

around 10.15 p.m., the accused came by his motorcycle on the wrong side of the road and dashed him, resulting in the former's death.

3.On the complaint lodged by Chandramouli (P.W.1), the police registered a case in Crime No.472 of 2009 and after completing the investigation, filed a final report in C.C.No.24 of 2010 in the Court of the District Munsif-cum-Judicial Magistrate No.I, Walajah for the offence under Sections 279 and 304-A IPC against the accused.

4.The petitioner pleaded 'not guilty' to the charges and therefore, the prosecution examined 12 witnesses and marked 8 exhibits. From the side of the accused, one Ramachandran was examined as D.W.1 and an Advocate notice dated 15.12.2009 that was issued by the accused to the Inspector of Police was marked as Ex.D1.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 04.07.2011 in C.C.No.24 of 2010, convicted the petitioner and sentenced him as under :

Provision under which convicted	Sentence
Section 279 IPC	Pay a fine of Rs.1000/-, in default to undergo two weeks simple imprisonment
Section 304-A IPC	One year rigorous imprisonment

In the appeal in C.A.No.161 of 2011, the learned II Additional District and Sessions Judge, Vellore, by judgment and order dated 29.07.2013, confirmed the conviction, but reduced the substantive sentence of imprisonment for the offence under Section 304-A IPC from one year rigorous imprisonment to six months rigorous imprisonment. Challenging the concurrent findings of the two Courts below, the accused has preferred the present criminal revision under Section 397 r/w 401 Cr.P.C.

6.Heard Mr.K.S.Kaviarasu, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

7.It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], the

Supreme Court has held as under:

"17.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

8.Mr.Kaviarasu submitted that, except the evidence of P.W.1 and P.W.2, there are no other materials on record to fasten criminal liability on the petitioner. He also took this Court through the depositions of P.W.1 and P.W.2 and submitted that the cross-examination of these two witnesses have been identically typed and this does cast a doubt on the perversity of their testimony. He further submitted that both the Courts below have failed to appreciate the defence evidence in the right perspective.

9.Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the petitioner.

10.This Court carefully perused the evidence of P.W.1 and P.W.2. They have stated that they were standing in the bus stand along with the deceased at the relevant point of time; when the accused came by his motorcycle bearing registration No.TN31 E 6096 on the wrong side and dashed against the deceased; the public there, caught the accused and handed him over to the police. These two witnesses were examined in-chief on 15.07.2010 and at that time, the counsel for the accused reported no cross. Thereafter, they were recalled under Section 311 Cr.P.C. and were cross-examined on 15.12.2010.

11.It is true that the cross-examination of both these witnesses are identical, but that cannot be a ground to reject their testimony because, the counsel who had defended the accused had adopted this procedure. Had the chief examination of these two witnesses been a cut and paste matter, this Court would not have hesitated to interfere. That apart, the evidence has been recorded using a typewriter and not by a computer, where cut and paste technique is feasible.

12.The accused examined one Ramachandran, President of the Panchayat as D.W.1, to show that there was no bus stand at the place of occurrence. However, in the cross-examination, Ramachandran (D.W.1) admitted that there is a bus stand in which, town buses stopped. Therefore, the evidence of

Ramachandran (D.W.1) is of no avail to the accused. That apart, the accused has marked the legal notice that was issued to the Inspector of Police as Ex.D1, in which, he has stated that he and another person were coming by their motorcycle and found the deceased on the road and tried to help him and that, the police have turned the tables against him by foisting the present case, for getting motor vehicle compensation.

13.Both the Courts have rightly rejected this defence because, apart from marking the legal notice as Ex.D1, the accused did not produce any other credible material to probablise this plea. However, this Court does not find any infirmity in the concurrent findings of fact arrived at by the Courts below warranting interference.

14.Mr.Kaviarasu pleaded for leniency in sentence. This Court is of the view that interests of justice will be served, if the substantive sentence of imprisonment imposed on the petitioner under Section 304-A IPC is reduced to three months rigorous imprisonment from six months rigorous imprisonment.

In the result, this Criminal Revision is partly allowed by reducing the substantive sentence of imprisonment imposed on the petitioner under Section 304-A IPC by the appellate Court to three months rigorous imprisonment. The conviction and sentence for the offence under Section 279 IPC shall remain the same. The trial Court is directed to secure the petitioner to undergo the remaining period of sentence, if any. Registry is directed to send the original records if any, to the Courts concerned forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The II Additional District and Sessions Court,
Vellore.

2.The District Munsif-cum-Judicial Magistrate Court No.I,
Walajah.

3.The Inspector of Police,
Kaveripakkam Police Station,
Vellore District.

4.The Public Prosecutor,
High Court, Madras.

5.The Deputy Registrar,
Criminal Section,
High Court, Madras.

+1cc to M/s.K.S.Kaviarasu, Advocate Sr.7896

CRL.R.C.No.1255 of 2013

ssv[co]
srg 25/02/2020



WEB COPY