

BAIL SLIP

THE APPELLANT/ACCUSED namely A.B.Masthan S/o.A.Badesahib was released on bail dated 05/11/2013 in CrI.MP.No.1/2013 in CrI.RC.1367/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1367 of 2013

A.B.Masthan

..

Petitioner/Appellant/
Accused

Vs.

State represented by
The Inspector of Police,
K.K.Chatram Police Station
Kanakammachatram,
Tiruvallur District
(Cr.No.55 of 2006)

..

Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 28.05.2012 passed in C.C.No.130 of 2006 on the file of the Judicial Magistrate Court, Tiruttani, Tiruvallur District, confirmed by the judgment and order dated 12.09.2013 passed in C.A.No.44 of 2012 on the file of the I Additional District and Sessions Judge, Tiruvallur.

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mr.R.Surya Prakash
Government Advocate
(CrI.Side)

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 28.05.2012 passed in C.C.No.130 of 2006 on the file of the Judicial Magistrate Court, Tiruttani, Tiruvallur District, confirmed by the judgment and order dated

12.09.2013 passed in C.A.No.44 of 2012 on the file of the I Additional District and Sessions Court, Tiruvallur.

2. It is the case of the prosecution that the petitioner herein had driven his tipper lorry bearing Registration No.TN-63-Y-4878 in a rash and negligent manner at 9.30 a.m. on 25.03.2006 in Tiruvallur-Tiruttani Highway and hit Munuswamy, Ellappan, Venkatesan, Muniammal, who were shepherding three bullocks and also one Sarojammal, who was walking ahead, resulting in the death of two bullocks and Sarojammal and injuries to Ellappan.

3. On the complaint (Ex-P1) lodged by Damodaran (PW1), son of Sarojammal, the police registered a case in Crime No.55 of 2006 and prosecuted the petitioner in C.C.No.130 of 2006 before the Judicial Magistrate, Tiruttani, for the offences under Sections 279, 337 and 304-A IPC.

4. To prove the case, the prosecution examined eleven witnesses and marked eleven exhibits.

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

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 28.05.2012 in C.C.No.130 of 2006, convicted and sentenced the petitioner as under:

Provision under which convicted	Sentence
Section 337 IPC	Six months rigorous imprisonment.
Section 304 IPC	Two years imprisonment.
Section 279 IPC	No separate sentence.

The aforesaid sentences were ordered to run concurrently.

7. The appeal in C.A.No.44 of 2012 filed by the petitioner was dismissed by the I Additional Sessions Court, Tiruvallur, on 12.09.2013.

8. Aggrieved by the concurrent findings of fact arrived at by the Courts below, the petitioner has preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

9. Heard Mr.R.Karthikeyan, learned counsel for the petitioner and Mr.R.Surya Prakash, learned Government Advocate

(CrI.Side) for the respondent/State.

10. Before advertng to the rival submissions, it is necessary to state here 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 Kuldip Singh Anand and Others, etc.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², 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)

11. Coming to the case at hand, the learned counsel for the petitioner submitted that the evidence on record does not show that the petitioner had driven the tipper lorry rashly and negligently. He also submitted that the witnesses had failed to identify the petitioner as the person who had driven the offending tipper lorry.

12. Per contra, the learned Government Advocate (CrI.Side) refuted the submissions made by the learned counsel for the petitioner.

13. This Court perused the evidence of the prosecution witnesses especially that of Munuswamy (PW2). It may be relevant to state here that the presence of Munuswamy (PW2) has been mentioned in the complaint (Ex-P1) by Damodaran (PW1).

14. Munuswamy (PW2), in his evidence, has clearly stated that he, along with his relatives Ellappan, Thulukanammal and Venkatesan, were shepherding their bullocks in the left margin of Tiruvallur-Tiruttani road (Ramancherry road) and at that time, a tipper lorry came from behind and dashed against the bullocks and also against his brother's son Ellappan and a lady, who was walking ahead of them.

15. The learned counsel for the petitioner took this Court through the cross-examination of Munuswamy (PW2) and submitted

1(2004) 7 SCC 659

2(2019) 4 SCC 197

that Munuswamy (PW2) did not properly see the lorry.

16. The answer given by Munuswamy (PW2) should not be seen in isolation. A complete reading of his evidence shows that he was walking along with others from east to west and the lorry had come from behind and hit them. Had he (PW2) seen the lorry coming behind, his first instinct would have been to save himself.

17. The evidence of Durai (PW6), Motor Vehicle Inspector, who inspected the lorry and issued the report (Ex-P3), shows that the lorry had serious damages in the front side. Durai (PW6) has also stated that the brake system in the lorry was in good condition. After mowing down humans and animals, the lorry dashed against a tamarind tree and came to a grinding halt.

18. It may be relevant to extract paragraph no.19 of the trial Court judgment:

"19. On going through the M.V. Report, it is crystal clear that the vehicle which caused the accident was in a heavy damaged condition and it was also certified that the accident was not due to any mechanical defects of the vehicle. The question is if at all the driver had not driven the vehicle in a rash and negligent manner, how these damages would have been sustained by the vehicle. When the brake system also was in a good condition, then the defect is on the part of the driver, i.e. the accused who drove the vehicle."

19. As regards the submission of the learned counsel for the petitioner that there is no evidence to show that the petitioner had driven the offending tipper lorry, the fact that the petitioner surrendered to the police after the incident, is a conduct relevant under Section 8 of the Evidence Act.

20. That apart, Muniyammal (PW3), a relative of Munuswamy (PW2), who was also present at the scene of occurrence, has identified the petitioner as the person who had driven the tipper lorry.

21. In this case, Ellappan, who sustained injuries in the accident, died during trial and therefore, he was not examined in the trial Court.

22. Dr.Anand (PW7) performed autopsy on the body of the dead animals and issued post-mortem certificates (Exs-P4 & P5).

Dr.Nedunchezian (PW8), examined Ellappan and noted the injuries sustained by him in the accident register, a copy of which, was marked as Ex-P6. He (PW8) also conducted autopsy on the body of Sarojammal and has noted the injuries found on her body in the post-mortem certificate (Ex-P7).

23. In the light of such overwhelming materials against the petitioner, it cannot be stated that the findings of the Courts below are perverse warranting interference.

24. The learned counsel for the petitioner pleaded for leniency in the sentence. Accepting his submission, the substantive sentence of two years rigorous imprisonment for the offence under Section 304-A IPC is reduced to one year rigorous imprisonment.

Resultantly, this criminal revision is partly allowed. The conviction of the petitioner for the offence under Section 304-A IPC is confirmed, but the sentence is reduced to one year rigorous imprisonment. The sentence of fine and the default sentence, if any, shall remain the same. Further, the conviction and sentence of the petitioner of the offences under Sections 337 and 279 IPC are confirmed. The trial Court is directed to secure the petitioner and commit him to prison to serve out the remaining period of sentence, if any.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nsd

To

1. The Inspector of Police,
K.K.Chatram Police Station
Kanakammachatram,
Tiruvallur District.

2. The Judicial Magistrate,
Tiruttani, Tiruvallur District.

5/6

3.The Chief Judicial Magistrate Thiruvallur

4. The I Additional District
and Sessions Judge,
Tiruvallur.

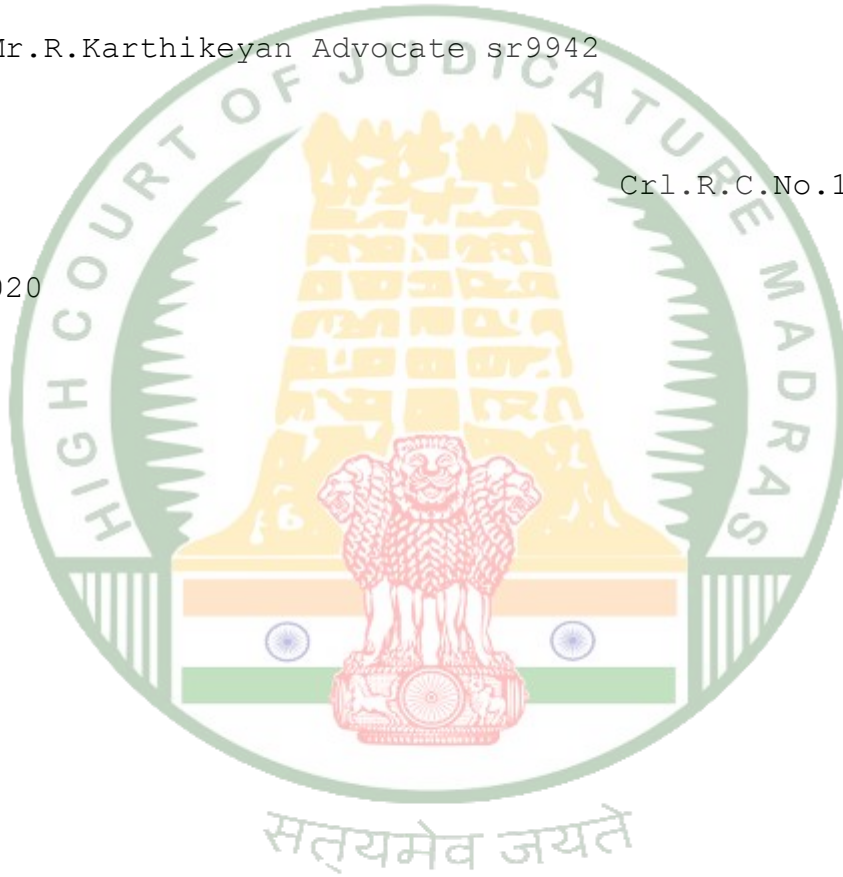
4. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

} with a direction to return the
original records to the Courts
below concerned

+1 cc to Mr.R.Karthikeyan Advocate sr9942

Crl.R.C.No.1367 of 2013

aa19/03/2020



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