

Bail Slip

The Petitioner/Accused viz Mr.Elayaraja S/o Panchanatham was released on bail as per order of this court dt 04/04/2014 in Crl.MP.No.1 of 2014 in Crl.RC.No.1546 of 2013 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.1546 of 2013

Elayaraja Revision Petitioner

Vs.

State by Inspector of Police,
Veppan Kuppam Police Station,
Vellore District. ... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 11.09.2013, passed by the Principal District and Sessions Judge, Vellore, in C.A.No.159 of 2012, modifying the judgment, dated 21.08.2012, passed by the Judicial Magistrate No.3, Vellore, in C.C.No.59 of 2011.

For Petitioner : Mr.A.N.Rajan

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

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 11.09.2013, passed by the Principal District and Sessions Judge, Vellore, in C.A.No.159 of 2012, modifying the judgment, dated 21.08.2012, passed by the Judicial Magistrate No.3, Vellore, in C.C.No.59 of 2011.

2.It is the case of the prosecution that, on 14.02.2011 around 08.00 a.m., while Indumathi (deceased) and her sister Praveena were going to school, they were hit from behind by a tractor bearing Registration No.TN-23-BU-4470 that was driven by the petitioner and the tractor ran over Indumathi and caused her death instantaneously and also caused

injuries to Praveena. On the complaint (Ex.P1) given by Shankar (P.W.1), the father of the deceased Indumathi, the police registered a case in Crime No.59 of 2011 and took up investigation.

3.The Investigating Officer went to the place of occurrence and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P6). Inquest was conducted over the body of the deceased and the inquest report was marked as Ex.P7. Dr.K.Selvaraj (P.W.6) performed autopsy on the body of the deceased and in the postmortem certificate (Ex.P3), he has stated as under :

"INJURIES NOTED :

1.Imprint abrasions with tyre marks and surrounding contusion noted on the chest (both sides and upper part of the abdomen)

2.Multiple abrasions are seen on the right shoulder, arm and elbow and forearms and left knee and left leg and right side of back.

On dissection of chest and abdomen : Flail chest. On further dissection, fracture of all the ribs on both sides with crushing of sternum and collar bones on both sides. Both lungs, heart, liver, and stomach are crushed. Both thoracic cavities and peritoneal cavity contain one liter of blood.

Hyoid bone : Intact. Spleen and kidneys : Pale

Bladder : Empty. Uterus : Infantile. Brain : Pale.

OPINION AS TO THE CAUSE OF DEATH :

The deceased would appear to have died of crush injuries on chest and abdomen."

4.The petitioner was arrested on 15.02.2011 and it was found that he did not have a valid driving licence. The tractor was examined by Kaliappan (P.W.11), Motor Vehicle Inspector, who, in his evidence as well in the Motor Vehicle Inspection Report (Ex.P4), has stated that the accident was not due to any mechanical defect of the vehicle.

5.After completing the investigation, the police filed a final report in C.C.No.59 of 2011 before the Judicial Magistrate No.3, Vellore, for the offences under Sections 279, 304-A IPC and Section 3(1) r/w. 181 of the Motor Vehicles Act, against the petitioner.

6.The trial Court framed the aforesaid charges against the petitioner and when questioned, the petitioner pleaded 'not guilty'.

7.To prove the case, the prosecution examined 12 witnesses and marked Exs.P1 to P7.

8. When the petitioner was questioned under Section 313 Cr.P.C., he denied the allegations and stated that, he did not have a valid driving licence as on 14.02.2011; he has two drivers and both of them have valid driving licences; but he does not know as to who, amongst them, had driven the vehicle on that day. No witness was examined nor any document marked from the side of the petitioner.

9. The trial Court examined one Subbarayalu, Inspector of Police, as C.W.1.

10. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.08.2012, in C.C.No.59 of 2011, convicted and sentenced the petitioner as follows:

Provision under which convicted	Sentence
Section 279 IPC	Six months rigorous imprisonment and also to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one month.
Section 304-A IPC	Two years rigorous imprisonment and also to pay a fine of Rs.9,000/-, in default, to undergo rigorous imprisonment for 3 months
Section 3(1) r/w. 181 of the Motor Vehicles Act	Fine of Rs.500/-, in default, to undergo simple imprisonment for one week

11. Challenging the conviction and sentence, the petitioner preferred Criminal Appeal in C.A.No.159 of 2012, which was heard by the Principal District and Sessions Judge, Vellore. The Appellate Court, by judgment and order dated 11.09.2013, acquitted the petitioner of the offence under Section 279 IPC, but confirmed the conviction and sentence with regard to the other offences.

12. Challenging the concurrent findings of the two Courts below, qua the conviction of the petitioner of the offences under Section 304-A IPC and Section 3(1) r/w. 181 of the Motor Vehicles Act, the petitioner has filed the present Criminal Revision Case, before this Court, under Section 397 r/w. 401 Cr.P.C.

13. Heard Mr.A.N.Rajan, learned counsel for the petitioner and Mr.R.Surya Prakash, learned Government Advocate (Crl. Side) appearing for the respondent.

14.Mr.A.N.Rajan took this Court through the evidence of the three eye-witnesses, namely, Vijayan (P.W.3), Chidambaram (P.W.4) and Sivakumar (P.W.10) and contended that they have not seen the accident directly and their evidence is only a hearsay. He also contended that Vijayan (P.W.3) and Sivakumar (P.W.10) came to the place of occurrence after the accident had taken place and they have given an exaggerated story.

15.Per contra, the learned Government Advocate (Crl. Side) refuted the contentions.

16.This Court gave its anxious consideration to the rival submissions.

17.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 Kuldip 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)

18.The prosecution has proved beyond cavil that the accident concerning the tractor bearing Registration No.TN-23-BU-4470 had taken place on 14.02.2011 around 08.15 a.m., in which, Indumathi lost her life. The injuries noted in the postmortem certificate (Ex.P3) clearly show that the tyres of the tractor had ran over her. The report of the Motor Vehicle Inspector (Ex.P4) shows that the vehicle did not suffer any mechanical defect.

19.Mr.A.N.Rajan submitted that, in the Motor Vehicle Inspection Report (Ex.P4), the time of occurrence has been given as 08.15 p.m., which is contradictory to the case of the prosecution.

20.It is true that, in the report (Ex.P4), the time has been typed as 08.15 p.m. In the opinion of this Court, this, by itself, is not sufficient to discard the same, because the Motor Vehicle Inspector was not an eye-witness and

he came into picture only subsequently to examine the tractor and find out if it suffered any brake failure or any other mechanical defect. In fact, he has not been confronted by the defence on this aspect. However, the eye-witnesses have clearly stated that the incident had taken place around 08.15 a.m. on 14.02.2011, when the children were going to school.

21.Now, the question is, whether the petitioner had driven the tractor and caused the accident.

22.The evidence of Vijayan (P.W.3), Chidambaram (P.W.4) and Sivakumar (P.W.10) clearly show that the petitioner was on the wheels, when the accident took place. When the petitioner was questioned under Section 313 Cr.P.C., he has categorically stated that he did not have a valid driving licence as on 14.02.2011 and that he has two drivers, one of whom had caused the accident. The petitioner has accepted that the tractor belongs to him and has only taken a stand that one of his drivers would have caused the accident. However, he has not even given the names of the two drivers in his statement.

23.Now, coming to the contention of Mr.A.N.Rajan that Vijayan (P.W.3) and Sivakumar (P.W.10) had come to the place of occurrence only after the accident took place, this Court carefully perused the evidence of all the three eye-witnesses, namely, Vijayan (P.W.3), Chidambaram (P.W.4) and Sivakumar (P.W.10). Vijayan (P.W.3) has stated that he saw the accident himself and in the cross-examination, he has stated that, on hearing the sound, he saw the accident. However, a close reading of the cross-examination shows that the tractor had hit a stone and on hearing that, Vijayan (P.W.3) looked at that direction and saw the children under the tractor. In fact, he has stated in the cross-examination that, from his brick kiln, one can see the place of occurrence clearly. Chidambaram (P.W.4) has stated that he has a petty shop in the road junction and while the children were walking in the road margin, the tractor came from behind in the opposite side and dashed them. The defence was not able to make any serious dent in the testimony of Chidambaram (P.W.4) in the cross-examination. Sivakumar (P.W.10) has stated that he knows the petitioner and also the families of the two children, as they are all from the same village; on 14.02.2011, around 08.15 a.m., the petitioner was on the wheels of the tractor, which hit the school going children from behind and ran over Indumathi; the other child Praveena sustained injuries. In the cross-examination, he has clearly stated that, when the accident took place, he was standing on the road.

24.Mr.A.N.Rajan placed reliance on a stray statement of Sivakumar (P.W.10) that all the people rushed to the place of occurrence, only after the accident took place and

submitted that this witness (P.W.10) also had gone to the spot only after the accident took place and had not witnessed it. A thorough reading of the deposition of Sivakumar (P.W.10) does not show that he was not present at the place of occurrence. He (P.W.10) has only stated that the other people ran near the place of occurrence on hearing the sound.

25.The evidence of the eye-witnesses, read with the aid of the Observation Mahazar and Rough Sketch, show that the tractor came behind the children in the wrong direction, i.e. from North to South, while the children were walking towards South. Both the Courts below have appreciated the evidence of the three eye-witnesses in the right perspective and this Court does not find any infirmity or perversity in the findings of fact arrived at by the two Courts below, warranting interference.

26.In view of the above discussion, the conviction of the petitioner of the offences under Section 304-A IPC and Section 3(1) r/w. 181 of the Motor Vehicles Act is confirmed.

27.Mr.A.N.Rajan pleaded for some leniency in the sentence. Considering his submission, the sentence of two years rigorous imprisonment qua Section 304-A IPC is reduced to one year rigorous imprisonment. Fine and default sentence shall remain the same.

In fine, this Criminal Revision Case is partly allowed. The trial Court is directed to secure the petitioner and commit him to prison to undergo the remaining sentence.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to :

- 1.The Principal District and Sessions Judge,
Vellore.
- 2.The Judicial Magistrate No.3,
Vellore.
- 3.The Inspector of Police,
Veppan Kuppam Police Station,
Vellore District.
- 4.The Chief Judicial Magistrate(For information)
Vellore.

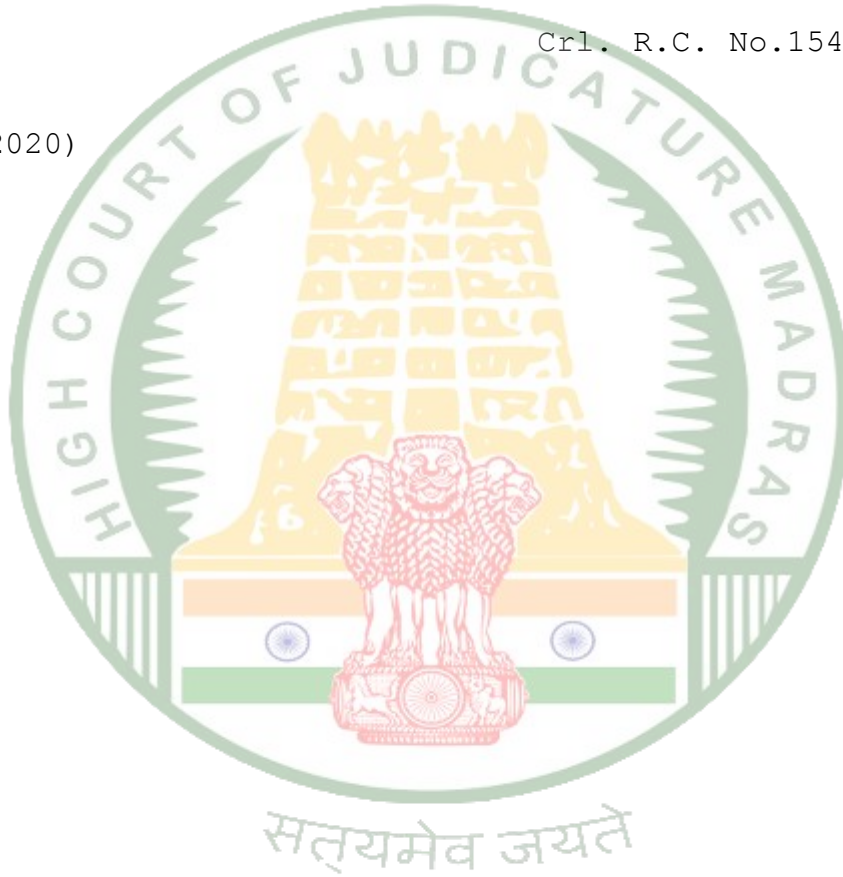
5.The Public Prosecutor,
High Court, Madras.

6.The Deputy Registrar |with a direction to send back the
(Criminal Section), |original records, forthwith, to the
High Court, Madras. |respective Courts below

7.The Section Officer,
Criminal Section,
High Court, Madras.

Crl. R.C. No.1546 of 2013

SPD(CO)
CB(12/03/2020)



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