



Bail Slip

The Revision petitioner/Sole Accused namely Manikandan, male, aged 23 years, S/o.Naganathan was directed to be released on bail as per the order of this Court dated 5.7.2017 in Crl.MP(MD)5692/2017 in Crl.Rc(MD)510/2017 on the file of this court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.03.2021

Pronounced on : 30.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC (MD) .No. 510 of 2017 and

Crl.M.P (MD) .No. 5693 of 2017

Manikandan : Petitioner / Appellant/Sole Accused

Vs.

State rep. by

The Inspector of Police,

Nagudi Police Station,

Pudukkottai District.

(Crime No. 72 of 2012)

: Respondent/Respondent Complainant

PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records of the learned Additional District and Sessions Judge, Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai in Crl.A.No.76 of 2014 by its Judgment dated 12.04.2017, by which confirming the conviction and sentence imposed by the learned Judicial Magistrate, Aranthangi in C.C.No. 295 of 2012 by the Judgment dated 14.11.2014 and set aside the Judgments of the Courts below.

For petitioner : Mr. D. Ramesh Kumar

For respondent : Mr. V. Neelakandan

Additional Public Prosecutor

ORDER

This Criminal Revision is directed against the concurrent Judgments of the conviction passed in Criminal Appeal No.76 of 2014 dated 12.04.2017 on the file of the Additional District and Sessions Court / Special Court for EC and NDPS Act cases, Pudukkottai, confirming the judgment made in C.C.No. 295 of 2012 dated 14.11.2004 on the file of the Court of the Judicial Magistrate, Aranthangi.



2. The revision petitioner is the sole accused in C.C.No.295 of 2012 facing the charge for the offence under Section 304-A IPC before the Court of Judicial Magistrate, Aranthangi.

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3. The case of the prosecution is that on 19.08.2012 the defacto complainant along with his son-in-law Kalimuthu had proceeded to Subramaniyapuram Saw Mill to purchase Wooden scrabs in the Tata Ace vehicle bearing Regn.No.TN 55P 9922 driven by the accused and while proceeding near Nagudi to Kuganoor Kammaikarai, the driver had driven the vehicle in a rash and negligent manner and as a result of which, the complainant's son-in-law Kalimuthu, who was standing backside of the vehicle, lost his control and fell on the road, that he sustained serious head injury and other injuries and later succumbed to the injuries at Thanjavur Medical College Hospital and that the accident was occurred only due to the rash and negligent driving of Tata Ace Driver. After completing the investigation, the respondent has laid a final report against the accused for the offence under Section 304A IPC before the Court of Judicial Magistrate, Aranthangi.

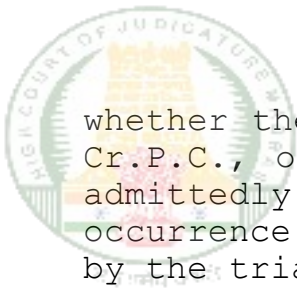
4. During trial, the prosecution in order to prove its case, examined 9 witnesses as PW.1 to PW.9 and exhibited 7 documents as Exs.P1 to P7. The accused has adduced neither oral nor documentary evidence .

5. The learned Judicial Magistrate, upon considering the evidence adduced and on hearing the arguments of both sides, passed the Judgment on 14.11.2014 convicting the accused for the offence under Section 304A IPC and sentenced him to undergo one year imprisonment and to pay a fine of Rs.500/- in default to undergo one month simple imprisonment. Aggrieved by the Judgment of conviction, the accused has preferred an appeal in Crl.A. 76 of 2014 and the learned Additional District and Sessions Judge, Pudukkottai, upon considering the evidence and on hearing the arguments of both sides has passed the impugned Judgment on 12.04.2017 dismissing the appeal and thereby, confirming the judgment of the conviction passed in C.C.No.295 of 2012, dated 14.11.2014 by the trial Court. Aggrieved by the Judgment of the dismissal of the appeal, the accused has come forward with the present revision.

6. The point for consideration are as follows:

(1) Whether the concurrent Judgments, passed by the trial Court and appellate Court convicting the accused for the offence under Section 304-A IPC are liable to be set aside?

2) Whether the Courts below erred in not deciding as to



whether the accused is entitled to get the benefits of Section 360 Cr.P.C., or the provisions of the Probation of Offenders Act, when admittedly the accused was aged 18 years on the date of alleged occurrence and was aged 20 years on the date of conviction recorded by the trial Court?

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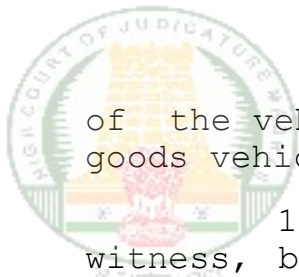
POINT : 1

7. The learned counsel appearing for the revision petitioner would contend that the Courts below failed to appreciate the fact that there are material contradictions with regard to ocular witnesses of PW.1 to PW.3, that they have failed to observe that PW.1 father-in-law of the deceased contradict the evidence of other prosecution witnesses and he admits that he had travelled by sitting in the Cabin and as such, he cannot claim himself to be an eye witness, that the Courts below failed to consider the fact that no where in the evidence of prosecution that the accused had driven the vehicle in a rash and negligent manner and that the Courts below have failed to appreciate the fact that it is highly impossible for anyone to drive the vehicle with speed in the occurrence place, as the same is the busiest area in that locality.

8. Admittedly, the deceased Kalimuthu is the son-in-law of PW.1 - defacto complainant and according to PW.1, himself and his son-in-law Kalimuthu had proceeded in the Tata Ace Vehicle bearing Regn.No. TN 55 P 9922 for purchasing wooden scrabs from a sawmill at Subramaniyapuram. He would further say in his evidence that the he was given a seat in the Cabin next to the driver and his son-in-law Kalimuthu was made to stand in the backside of the vehicle. At the outset, it is pertinent to mention that Tata Ace Vehicle is a goods carriage vehicle and no one can be allowed to travel in that vehicle as a passenger except the owner or person in charge of the goods that are loaded in that vehicle.

9. During the cross examination of PW.1, a suggestion was made that since the vehicle is a goods vehicle no one will be permitted to travel in that vehicle, he would reply that he was not aware of the same. When the Investigating Officer PW.9 was in the witness box, a suggestion was made to him that no one is permitted to travel on the backside of the said vehicle, he would admit the same.

10. As rightly contended by the learned Additional Public Prosecutor, the driver of the goods vehicle is duty bound to allow the person such as owner or person incharge of the goods in their vehicles along with the goods to be transported and in tune with the Motor Vehicle Rules and the conditions imposed in the Insurance Policy. As rightly contended by the prosecution, the very driving

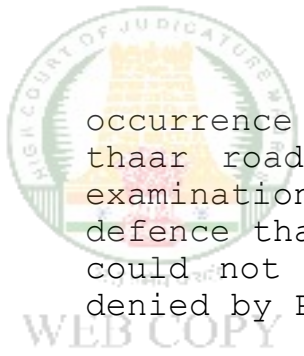


of the vehicle by allowing a person to stand in the backside of the goods vehicle would go to prove the negligence of the driver.

11. According to the prosecution, PW.1 is the only direct witness, but, no doubt, as rightly pointed out by the defence, he has not seen the occurrence directly since he was seated in the Cabin of the van next to the driver. PW.1 in his evidence would say categorically that when the vehicle was proceeding in Kanmaikarai, the driver had driven the vehicle with great speed and while the vehicle was crossing the pit of the road, the vehicle suffered a jolt and as a result of which, his son-in-law was thrown away to the road. During cross examination, he would say that he was not aware as to whether his son-in-law was travelling, talking on his cellphone and immediately he would add that his son-in-law was not having cellphone at that time. He would deny the suggestion that his son-in-law alone travelled talking in cellphone and lost his control and fell on the ground due to his carelessness.

12. No doubt, PW.2 - Suresh has also been cited as an occurrence witness by the prosecution but he would admit that he had not seen the actual occurrence but remained as a witness, for how the vehicle was driven at that point of time. PW.2 in his evidence before the trial Court would say that while he was proceeding in two wheeler towards Purankadu and at the place near the Kooganur Kanmaikarai, Tata Ace Vehicle, driven by the accused came with great speed and crossed him and that after travelling for a ½ Kilometer he came to know that a person has fallen down from the Tata Ace vehicle and immediately went to the occurrence place and sent the injured to the hospital in that Tata Ace vehicle. In cross examination, he would admit that he had not seen falling of the deceased from the vehicle and he would deny the suggestion that the deceased alone had travelled negligently and fell down. No doubt, as rightly contended by the defence, both PW.1 and PW.2 would admit that they had not seen the actual occurrence of falling from the vehicle, but, would narrate in clear terms, how the vehicle was driven. Moreover, as rightly pointed out by the defence, PW.1 and PW.2 have not deposed specifically that the accused had driven the vehicle in a rash and negligent manner, but, admittedly, both of them would say that the accused had driven the vehicle with great speed.

13. As rightly contended by the learned Additional Public Prosecutor, we cannot expect from the illiterate and semi-illiterate persons to give evidence using apt and correct words so as to attract the ingredients of a particular offence, such as rashness and negligence for the offence under Section 304-A IPC and it is for the Court to decide by considering the evidence adduced and the materials produced, as to whether the vehicle was driven rashly and negligently. PW.1 in his cross examination would say that



occurrence road is a thaar Road and PW.2 would say that it is a thaar road, but, it was looking like a mud road. During cross examination of PW.1, a specific suggestion was made to him by the defence that since the occurrence place is Kanmaikarai, the vehicles could not be driven speedily, but that the same was specifically denied by PW.1.

14. As rightly pointed out by the prosecution, the occurrence road is not a straight road. As already pointed out, the defence has taken a stand that the occurrence place was a Kanmaikarai and hence, the vehicles could not be driven speedily. But, PW.1 and PW.2 would say specifically that the accused had driven the vehicle with high speed. Moreover, as already pointed out, the accident was occurred when the vehicle was crossing a pit of the road and consequently, there was jolting and as a result of which, the said Kalimuthu, who was in the backside of the vehicle, got lost his control has and fell on the road. As rightly contended by the learned Additional Public Prosecutor, the way in which the accident was occurred would go to show that the accused alone was responsible for the accident.

15. Considering the evidence adduced by the prosecution, this Court has no hesitation to hold that the prosecution has proved the guilt of the accused beyond reasonable doubt. The trial Court as well as the Appellate Court have discussed the prosecution evidence in detail and the Appellate Court has re-assessed the entire evidence and gave its finding concurring with the trial Court.

16. It is pertinent to mention that this Court while exercising the revisional jurisdiction is not required to examine the materials on record meticulously. The revision petitioner / accused has not shown any other reason or ground to interfere with the findings recorded by the Courts below and therefore, this Court decides that the conviction of the accused under Section 304-A IPC is liable to be sustained.

POINT 2:

17. As already pointed out, the trial Court has convicted the accused under Section 304-A IPC and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.500/- in default to undergo one month imprisonment and the Appellate Court has also confirmed the same.



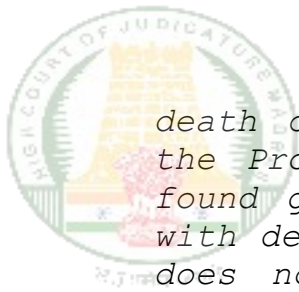
18. The learned counsel appearing for the revision petitioner would strongly contend that the Courts below failed to appreciate the fact that the petitioner was aged 18 years on the date of alleged occurrence and was 20 years on the date of conviction and the Courts below failed to invoke the provisions under Section 360 Cr.P.C., which is mandatory.

19. No doubt, the learned Appellate Judge has dealt with that issue, but came to the conclusion that these type of cases warranted stringent punishment as laid down by the Hon'ble Supreme Court and that no error has been committed by the trial Court in awarding punishment to the accused.

20. It is pertinent to mention that since the provisions of Probation of Offenders Act are applicable, the question of invoking Section 360 Cr.P.C., does not arise at all. The Hon'ble Supreme Court, in the case of **Ramesh Dass Vs. Raghu Nath and Ors.**, reported in **2008(4) SCC 588** has specifically held that where the provisions of Probation of Offenders Act are applicable, the employment of Section 360 of Cr.P.C., is not to be made and the relevant passage is extracted hereunder;

"5. Where the provisions of the Probation Act are applicable the employment of Section 360 of the Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, who gave birth to the Probation Act and the Code wanted to obviate. Yet the legislature in its wisdom has obliged the Court under Section 361 of the Code to apply one of the other beneficial provisions; be it Section 360 of the Code or the provisions of the Probation Act. It is only by providing special reasons that their applicability can be withheld by the Court. The comparative elevation of the provisions of the Probation Act are further noticed in Sub-section (10) of Section 360 of the Code which makes it clear that nothing in the said Section shall affect the provisions of the Probation Act. Those provisions have a paramountcy of their own in the respective areas where they are applicable.

6. Section 360 of the Code relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of



death or imprisonment for life. The scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Section 360 of the Code does not provide for any role for Probation Officers in assisting the Courts in relation to supervision and other matters while Probation Act does make such a provision. While Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the Probation Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 of the Code are wholly inapplicable.

7. Enforcement of Probation Act in some particular area excludes the applicability of the provisions of Sections 360, 361 of the Code in that area.

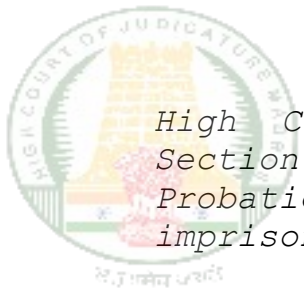
The aforesaid position was highlighted in *Chhanni v. State of U.P.* MANU/SC/8838/2006 : 2006CriLJ4068 and *Daljit Singh and Ors. v. State of Punjab* MANU/SC/8238/2006 : (2006) 6SCC159 .

8. Further, Section 360(1) of the Code itself provides that if for any offence life sentence is provided for, Section 360 of the Code would have no application.

Undisputedly, in *Jagdev Singh v. State of Punjab* MANU/SC/0115/1973 : 1973CriLJ1614 it was held that Section 360 has no application since under Section 326 IPC the said offence carries life imprisonment. In any event, that question is academic.

9. In view of what has been stated above, Section 360 of the Code has no application to the facts of the present case. The High Court seems to have lost sight of the correct position in law.

10. Above being the position, the matter is remitted to the



High Court to consider about the non-applicability of Section 360 of the Code both on the ground that the Probation Act has application and Section 326 carries life imprisonment.

The appeals are allowed with no order as to costs."

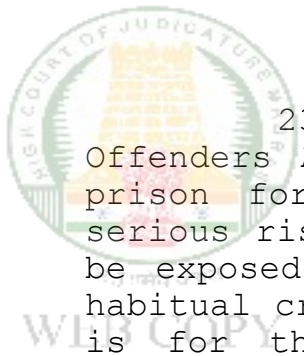
21. Considering the above, it is very much clear that Section 360 Cr.P.C., has no application to the case on hand and consequently, this Court has to necessarily invoke the provisions of Probation of Offenders Act, 1958. In the case on hand, admittedly, the accused was aged 18 years on the date of occurrence and he was aged 20 years when he was charge sheeted and was convicted for the first time by the trial Court.

22. No doubt, the Hon'ble Supreme Court in Catena of decisions, has deprecated the practice of awarding lenient punishment for the offence under Section 304-A IPC. In **Dalbir Singh Vs. State of Haryana (2000 Cr.L.J., 2283)**, the Hon'ble Apex Court directed the Criminal Courts not to treat the nature of the offence under Section 304A of IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. At this juncture, it is necessary to refer Section 6 of the Probation of Offenders Act.

6.Restrictions on imprisonment of offenders under twenty-one years of age.-

(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.



23. The very object of Section 6 of the Probation of Offenders Act is to see that young offenders are not sent to the prison for the commission of less serious offence, because of serious risk to their attitude to life to which they are likely to be exposed as a result of their closeness with the hardened and habitual criminals who may happen to be the inmates of prison. It is for the said reason that the mandatory injunction against imposition of sentence of imprisonment has been incorporated in Section 6 of the said Act. The above Section contemplates that no offender under 21 years of age shall be sentenced to imprisonment if he is found guilty of an offence not punishable with imprisonment for life.

24. Considering the above, it is very much clear that the Courts below are duty bound to give the benefit under the Probation of Offenders Act to the offenders under 21 years of age, convicted for the offence not punishable with the imprisonment for life and in case of denial of the benefit, the Courts are required to specify the reasons. To put it in other way, a person who is under the age of 21 years and who is found guilty of having committed the offence punishable with imprisonment, but not with imprisonment for life, should not be sentenced to imprisonment unless the Court is satisfied having regard to the circumstances of the case and nature of offence and character of the offender that it would not be desirable to deal with him under Sections 3 or 4 of the Probation of Offenders Act. In such a case, if the Court passes any sentence of imprisonment, it shall record its reason for doing so. It is necessary to refer the decision of the Hon'ble Supreme Court reported in **CDJ 2014 SC 892 (State through CBI Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla and another)** wherein the Supreme Court has dealt with Section 6 of Probation of Offenders Act.

Para 20:

"20. To sum up:

(a) For awarding a just sentence, the Trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Code of Criminal Procedure;

(b) When it is not possible to release a convict on probation, the Trial Judge must record his or her reasons;

(c) The grant of compensation to the victim of a crime is equally a part of just sentencing;



(d) When it is not possible to grant compensation to the victim of a crime, the Trial Judge must record his or her reasons; and

(e) The Trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case.

21. The appeals are dismissed."

25. In the present case, though the accused was below 21 years of age on the date of first conviction, the trial Court as well as Appellate Court have failed in their duty to invoke the provisions of Probation of Offenders Act and mechanically imposed the sentence of imprisonment. Though they are duty bound to record the reason for not applying the provisions of Probation of Offenders Act, the trial Court has not at all dealt with the issue, but, whereas the Appellate Court, by giving a general observation that stringent punishment is to be awarded in the accident cases as per the dictum of Hon'ble Supreme Court, has failed to consider the issue.

26. The learned counsel appearing for the petitioner would submit that the accused has no previous conviction and his character is good. The learned Additional Public Prosecutor would also endorse the same.

27. Considering the nature of offence and also the age of the accused on the date of occurrence as well as on the date of conviction, this Court is inclined to invoke Section 4 of Probation of Offenders Act and hence, it has become necessary to call for a report from the Probation Officer.

28. Accordingly, I called for the report from the District Probation Officer, Pudukkottai under Section 4 of the Probation of Offenders Act and after enquiry, the Probation Officer submitted a report stating that the accused is not having a previous conviction and that his character and conduct is good and that therefore, he is recommending that it is a fit case for invoking Section 4(1) and 4(3) of Probation of Offenders Act. Report of the Probation Officer is accepted. Considering the unblemished personal history and good character and conduct of the accused, this Court is inclined to invoke the provisions of Probation of Offenders Act.



29. Hence, the conviction passed against the revision petitioner stands confirmed, but, instead of sentencing him at once, in exercise of Section 4 of the Probation of Offenders Act, the accused is ordered to be released on his entering into a bond for a sum of Rs.20,000/- (Rupees Twenty Thousand only) with two solvent sureties each for the like sum to appear and receive the sentence, as and when called upon during a period of one year. He shall be under the supervision of the District Probation Officer during that period. The District Probation Officer shall send periodical report to the trial Court quarterly. The revision petitioner is directed to keep peace and good behaviour during that period. Further, the revision petitioner is directed to deposit a sum of Rs.15,000/- as compensation under Section 5 of the Probation of Offenders Act and is directed to deposit the same to the credit of C.C.No. 295 of 2012 on the file of the learned Judicial Magistrate, Aranthangi and on such deposit, the trial Court is directed to disburse the same to the legal heirs of the deceased.

30. The Criminal Revision Case is disposed of accordingly. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

trp

To

1. The Additional District and Sessions Judge, Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai.
2. The Judicial Magistrate, Aranthangi.
3. -Do-Through the Chief Judicial Magistrate, Pudukkottai.
4. The Inspector of Police, Nagudi Police Station, Pudukkottai District.



5. The District Probation Officer, Pudukkottai.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:-

The Section Officer,
Criminal Section (Record)
Madurai Bench of Madras High Court, Madurai. (2 Copies)

order made in
CRL.RC(MD).No. 510 of 2017 and
Crl.M.P(MD).No. 5693 of 2017

30.04.2021

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