



**BAIL SLIP**

The Petitioner/Accused viz., namely Murugan, S/o.Ramasamy Thevar aged about 32 years was released on Bail vide order of this Court Order dated 07.08.2017 in Crl.M.P(MD)No.7092 of 2017 in Crl.RC (MD)No.627 of 2017

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 08.07.2021**

**Pronounced on : 08.10.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

**Crl.R.C.(MD)No.627 of 2017**

Murugan

S/o.Ramasamy Thevar

... Petitioner/Appellant/Sole Accused

Vs.

State Rep. by

The Inspector of Police,

Theni Police Station,

Theni District.

(Crime No.1638 of 2010)

... Respondent/Respondent/Complainant

**Prayer:** Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to set aside the judgment passed by the Additional District and Sessions Court, Theni at Periyakulam in C.A.No.20 of 2016 dated 19.06.2017 confirming the judgment passed by the learned Judicial Magistrate, Theni in C.C.No.383 of 2010, dated 02.02.2016.

For Petitioner : Mr.P.Senguttuarasan

For Respondent : Mr.K.Sanjay Gandhi

Government Advocate (Crl. Side)

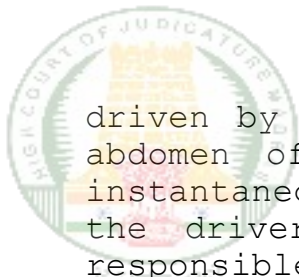
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**O R D E R**

This Criminal Revision has been filed to set set aside the judgment passed by the Additional District and Sessions Court, Theni at Periyakulam in C.A.No.20 of 2016 dated 19.06.2017 confirmed the judgment passed by the learned Judicial Magistrate, Theni, in C.C.No.383 of 2010, dated 02.02.2016.

2. The brief facts, which are relevant, for consideration of this revision are as follows:-

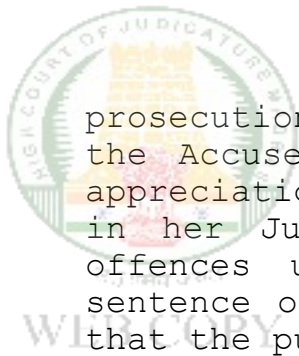
2.1. On 18.06.2010 at about 10.45 p.m., one Mr.Balasubramani, who is the owner of a two wheeler workshop and one Nagaraj, who is the employee of the adjacent workshop by name Kasthuriammal Workshop, were proceeding on his two wheeler bearing Registration No.TN-20-D-2316 wherein Nagaraj is the pillion rider, from Theni to Madurai and on another vehicle bearing Registration No.TN-60-D-1808 belonging to Prabhu wherein one Ravi was a pillion rider. Both the vehicles were proceeding from Theni to Madurai towards West, one by one viz., Balasubramani followed by Prabhu. While so, the Bus bearing registration No.TN-60-C-5799 bearing the name KAS Bus Service coming from West towards East knocked down the two wheeler



driven by Balasubramani and the rear wheel of the bus crushed the abdomen of Balasubramani. The pillion rider Nagaraj also died instantaneously in the same accident due to head injury. Therefore, the driver of the bus bearing Registration No.TN-60-C-5799 was responsible for the accident and a complaint was preferred by P.W-1-Prabhu. Based on the complaint under Ex.P-1, the Sub Inspector of Police, Theni Police Station had registered the FIR under Ex.P-7. The original FIR and the original complaint under Ex.P-1 were sent to the learned Judicial Magistrate, Theni and copy to the Inspector of Police, Theni Police Station. On receipt of a copy of the FIR, P.W-7-Pandi Selvan-the Inspector of Police proceeded with the investigation. He visited the scene of crime i.e., Theni to Madurai Road near Bangalowmedu and prepared Observation Mahazar under Ex.P-4 and rough sketch under Ex.P-8 in the presence of witnesses viz., P.W-5-Rajesh Kannan and one Muthukumar. He also forwarded the two wheeler bearing Registration No.TN-20-D-2316 and the Bus bearing Registration No.TN-60-C-5799 to the Motor Vehicle Inspector regarding the assessment of damage and to find out the efficiency of the brake on the motor vehicles. He obtained report regarding the Motor Vehicle inspection for the Bus under Ex.P-2 and the two wheeler bearing Registration No.TN-20-D-2316 under Ex.P-3 from the P.W-4-Motor Vehicle Inspector. He prepared Seizure Mahazar. He had visited Theni Government Hospital and conducted inquest on the body of the deceased-Balasubramani and prepared inquest report under Ex.P-9 originally he had conducted inquest on the body of Nagaraj and prepared Inquest Report under Ex.P-10. He had addressed the Duty Medical Officer in the Government Hospital to conduct postmortem on the body of the deceased viz., Balasubramani and Nagaraj. Accordingly, P.W-6-Dr.Arunkumar had conducted autopsy on the body of the deceased viz., Balasubramani under Ex.P-5 and Nagaraj under Ex.P-6. On receipt of the FIR, the Inspector of Police arrested the driver of the Bus. Since the offence under Section 304 of IPC is bailable offence, the Inspector of Police released the Accused on bail. He had examined the witnesses P.W-1 to P.W-6 and laid final report under Section 173 of Cr.P.C., before the learned Judicial Magistrate, Theni.

2.2. The learned Judicial Magistrate, on receipt of the final report under Section 173 of Cr.P.C., from the Inspector of Police, Theni Police Station, had taken cognizance of the offences under Section 304 (A) (2 Counts) and numbered the case as C.C.No.383 of 2010 and issued summons to the Accused. On appearance by the Accused, copies were furnished under Section 207 of Cr.P.C., and he was questioned, for which, the Accused pleaded not guilty. Therefore, the trial was ordered.

2.3. The prosecution had examined the witnesses P.W-1 to P.W-7 and marked documents Ex.P-1 to Ex.P-10. After closure of the prosecution witnesses, the Accused denied the incriminating evidence against him. The Accused did not let in evidence and examined any defence witness. Therefore, the arguments of the



prosecution was heard and the reply to the prosecution arguments by the Accused was also heard. After hearing the arguments and on appreciation of evidence, the learned Judicial Magistrate, Theni had in her Judgment dated 02.02.2016 convicted the Accused for the offences under Section 304 (A) (2 Counts) of IPC and imposed sentence of one year Rigorous Imprisonment for each count and held that the punishment shall run concurrently.

2.4. Aggrieved by the judgment of conviction by the learned Judicial Magistrate, the Accused had preferred Crl.A.No.20 of 2016 before the learned First Additional District and Sessions Judge, Theni. After hearing the arguments of the learned counsel for the Revision Petitioner/Accused and the learned Public Prosecutor, the learned First Additional District and Sessions Judge, Theni, had by her judgment dated 19.06.2017 dismissed the Crl.A.No.20 of 2016 and confirmed the judgment of conviction and sentence of imprisonment.

3. Aggrieved by the judgment of conviction of the learned Judicial Magistrate, Theni in C.C.No.383 of 2010 dated 02.02.2016 and the dismissal of C.A.No.20 of 2016 by judgment of the learned First Additional District and Sessions Judge, Theni at Periyakulam, dated 19.06.2017, this revision has been filed before this Court.

4. The learned counsel for the Revision Petitioner submitted his oral arguments. As per his arguments, the judgment of conviction pronounced by the learned Judicial Magistrate is perverse. It is against the weight of evidence. The prosecution failed to prove the case beyond reasonable doubt. The dismissal of the appeal by the learned Sessions Judge is also against law. Therefore, the Revision Petitioner seeking to set aside the judgment of conviction pronounced by the learned Judicial Magistrate, Theni.

5. The learned Government Advocate (Crl. Side) had furnished written arguments. As per his written arguments, P.W-1 and P.W-2 are direct witnesses. P.W-1 himself has lodged the complaint under Ex.P-1. The evidence of P.W-1 and P.W-2, who are direct witnesses, proves the case of the prosecution beyond reasonable doubt. The negligence of the Accused had caused the death of Balasubramani and Nagaraj under Section 304 (A) of IPC (2 counts). The learned Judicial Magistrate, Theni had properly assessed the evidence and arrived at a logical conclusion that the guilt of the Accused had been proved beyond reasonable doubt. In the appeal, the learned Additional District and Sessions Judge, Theni at Periyakulam had once again re-assessed the entire materials before the learned Judicial Magistrate and had dismissed C.A.No.20 of 2016 and confirmed the judgment of conviction and sentence of imprisonment imposed by the learned Judicial Magistrate, Theni.



6. Point for Consideration:

Whether the judgment of conviction pronounced by the learned Judicial Magistrate, Theni in C.C.No.383 of 2010 dated 02.02.2016 and the dismissal order in C.A.No.20 of 2016 dated 19.06.2017 by the learned Additional District and Sessions Judge, Theni at Periyakulam are perverse warranting interference by this Court as Revisional Court?

7. Perused the judgment of the learned Judicial Magistrate, Theni and the judgment of the learned Additional District and Sessions Judge, Theni at Periyakulam. On consideration of the judgment of the learned Judicial Magistrate, it is found that the learned Judicial Magistrate had properly assessed the evidence of P.W-1 to P.W-7 and documents under Ex.P-1 to Ex.P-10, arrived at a just conclusion. The learned Judicial Magistrate pronounced the judgment of conviction against the Accused. Similarly, the learned Sessions Judge on proper appreciation of the materials available before the learned Judicial Magistrate, re-assessed and arrived at a just conclusion that the judgment of conviction pronounced by the learned Judicial Magistrate, Theni does not warrant interference.

8. It is laid down as guidelines by the Hon'ble Supreme Court that the appellate Court while exercising discretion shall re-assess the evidence available before the learned trial Judge. While re-assessing the evidence on the same set of evidence, if the appellate Court arrives at a just opposite conclusion, still the appellate Court shall not impose its conclusion on the finding recorded by the learned trial Judge. This is because the trial Judge had an advantage of appreciating the demeanour of witnesses and the Accused which advantage is not available to the appellate Court. Therefore, finding arrived at by the learned trial Judge has more weightage. In the light of the above principle, the learned appellate Judge had not disturbed the finding of guilt recorded by the learned trial Judge against the Accused. Therefore, the arguments of the learned counsel for the Revision Petitioner that the finding of guilt recorded by the learned trial Judge and confirmed by the learned appellate Judge is perverse, cannot at all be accepted considering the Judgment of the learned trial Judge in C.C.No.383 of 2010 and the learned appellate Judge in C.A.No.20 of 2016.

9. Moreover, as per the ruling of the Hon'ble Supreme Court reported in the case of **State represented by the Drugs Inspector -vs- Manimaran**, in (2019) 13 SCC 670, the Revision Court cannot go into the concurrent findings. The relevant portion of the said decision is extracted as under:

"D.Criminal Procedure Code, 1973 - S.401 -  
Revisional jurisdiction - Scope - Revisional  
Jurisdiction of High Court different from



*appellate jurisdiction - High Court, in revisional jurisdiction cannot interfere with concurrent findings of facts unless perverse or arrived at ignoring material evidence."*

Therefore, the revision Court shall exercise its discretion only if there is any flaw in applying the law and facts of the case and on wrong appreciation of evidence and if the judgment of either the trial Judge or Appellate Judge is found perverse. In the light of the above guidelines issued by the Hon'ble Supreme Court, this Court as Revision Court can exercise its discretion only if there is a perverse finding either before the Court of learned Judicial Magistrate or before the Additional District and Sessions Judge. Since the judgment pronounced by the appellate Judge confirming the judgment of the learned trial Judge is found proper and not found to be perverse, this Court cannot interfere with the finding recorded by the learned trial Judge and confirmed by the appellate Judge.

10.The point for consideration is answered in favour of the prosecution and against the Revision Petitioner/Accused. The judgment of conviction pronounced by the learned Judicial Magistrate, Theni, in C.C.No.383 of 2010, and the dismissal order in C.A.No.20 of 2016 by the learned Additional District and Sessions Judge, Theni at Periyakulam, are not perverse warranting interference of this Court as Revision Court.

**In the result, this Criminal Revision is dismissed as having no merits.**

The judgment of conviction recorded by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.20 of 2016 dated 19.06.2017 confirming the Judgment and Sentence imposed upon the petitioner in C.C.No.383 of 2010 dated 02.02.2014 by the learned Judicial Magistrate, Theni, is confirmed.

**The learned Judicial Magistrate, Theni, is directed to issue warrant to secure the petitioner/Accused to undergo the remaining period of sentence.** The period of detention already undergone by the Revision Petitioner/Accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To:

- 1.The Judicial Magistrate,  
Theni.
- 2.The Additional District and Sessions Judge,  
Theni at Periyakulam.
- 3.The Inspector of Police,  
Theni Police Station,  
Theni District
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**COPY TO:-**

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

**Order in**  
**Crl.R.C. (MD) No. 627 of 2017**  
**08.10.2021**

AM(CO)  
GC/SKN(23.11.2021) 6P 7C