

**Ramasamy Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/822014](http://sooperkanoon.com/822014)

**Court :** Chennai

**Decided On :** Nov-03-2000

**Reported in :** 2001CriLJ2391

**Judge :** D. Murugesan, J.

**Acts :** Indian Penal Code (IPC) - Sections 304; Motor Vehicles Act - Sections 112, 130(3) and 251; Code of Criminal Procedure (CrPC) , 1974 - Sections 251 and 482

**Appeal No. :** Cri. O.P. No. 2205 of 1999

**Appellant :** Ramasamy

**Respondent :** State

**Advocate for Def. :** N.R. Elango, Govt. Adv.

**Advocate for Pet/Ap. :** B. Kumarasamy, Adv.

**Disposition :** Petition allowed

**Judgement :**

**D. Murugesan, J.**

1. This petition has been filed under Section 482 Cr. P.C. to set aside the order of the learned Judicial Magistrate No. III, Erode passed in STC No. 2515 of 1997

convicting the petitioner under Section 304 (a) IPC. (2 counts) and under Section 130(3) read with Section 112 of the Motor Vehicles Act and sentenced him to pay a fine of Rs. 2,500/- in default, to undergo 6 months imprisonment under Section 304(a) I.P.C. (2 counts) and Rs. 100/- as fine in default, to undergo two weeks imprisonment under Section 130(3) read with Section 112 of the Motor Vehicles Act.

2. It is the case of the petitioner that he is a holder of driving licence to drive light Motor Vehicles and he is employed as a driver to one T. Kuttiannasamy. The petitioner states that during the course of his employment on 5-4-97 at about 3.30 p.m. when he was returning from Gobichetti-palayam to Erode, the front right side tyre of the vehicle bursted and he lost control of the vehicle which later on dashed against a TVS 50 Moped bearing Registration No. TN 33E 3247. In the result, two persons riding in the said moped by name Karinan and Yuvaraj sustained injuries. Immediately, the petitioner took the two injured persons to the Government Hospital and arranged for their treatment. Later the two injured persons succumbed to injuries and died on 6-4-97 in the hospital. The petitioner immediately gave a complaint before the respondent on 6-4-97 and the same was registered in Crime No. 210 of 1997. When the petitioner was produced before the learned Judicial Magistrate on 1-7-97, he was coerced and threatened to plead guilty for the offence alleged against him. Without knowing the consequences the petitioner pleaded guilty and that is how this sentence has been imposed on the petitioner.

3. The learned counsel for the petitioner submitted that without going to the merits of the complaint, he would restrict his argument by relying upon a judgment of this Court reported in 'Sundaram v. State rep. by Sub Inspector of Police, Adambakkam, Madras-88 (1998) 1 CPC 686' and contended that the learned Magistrate before convicting and sentencing the petitioner did not follow the procedures contemplated under Section 251 of Cr. P.C. inasmuch as the petitioner was not given sufficient time to acquaint himself as to what the prosecution case against him and understand the same, take legal advice and prepare himself either to claim a trial to defend himself or to take a decision to plead guilty. In view of the categorical pronouncement the petitioner is entitled to succeed in the

petition.

4. The learned Government Advocate on the other hand would submit that the petitioner was furnished with the documents in the morning of 1-7-97 and he was given time till the evening to make a decision as to whether he wants to plead guilty or he wants to face the trial. The said time given to the petitioner is reasonable and therefore, the learned Government Advocate submitted that the order of the Magistrate is in accordance with the procedures contemplated under Section 251 of Cr. P.C.

5. I have considered the kind submissions and gone through the judgment cited by the learned counsel for the petitioners. In fact, the learned Judge has also relied upon yet another judgment of this Court reported in 'Ramalingam v. State by S.H.O. 1989 MLW (Cri) 485' wherein this Court has also taken a similar stand that the reasonable opportunity as contemplated under Section 251 Cr. P.C. should be given to the accused to acquaint himself as to what the prosecution case against him was or to understand the same, take legal advice and prepare himself either to claim a trial or to defend himself or to take a decision to plead guilty. The time given in this case namely one day cannot be said to be a compliance of Section 251 Cr. P.C. The opportunity contemplated in law should be a real opportunity in the eye of law and not merely a form. The learned Magistrate has erred in allowing the petitioner after furnishing the documents in the morning and taking up the matter to record the statement of the petitioner as to whether he pleads guilty on the same day. In my considered view, the procedure adopted by the learned Magistrate in convicting the petitioner on the statement of his pleading guilty within a day cannot be considered as reasonable opportunity. Therefore, the conviction and sentence imposed on the petitioner is unsustainable and is liable to be set aside. Accordingly, the order passed by the learned Judicial Magistrate No. III, Erode in STC. No. 2515 of 1997 is set aside and the petition is allowed.