

P.Muniyasamy Vs. the State

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Court : Chennai

Decided On : Mar-02-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure (CrPC), - Section 397, 401; [Indian Penal Code \(45 of 1860\)](#) - Section 304-A

Appeal No. : CRL.R.C(MD)No.28 of 2012 and M.P(MD)No.1 of 2012

Appellant : P.Muniyasamy.

Respondent : The State.

Advocate for Pet/Ap. : Ms.M.Subash Babu, Adv.

Judgement :

Prayer

Criminal Revision case filed under Section 397 r/w. Section 401 Cr.P.C., praying this Court to call for the records in C.A.No.12 of 2011, dated 21.09.2011, on the file of the Principal Sessions Judge, Ramanathapuram which is confirmed by the judgment passed in C.C.No.16 of 2010, dated 29.06.2011, on the file of the Chief Judicial Magistrate, Ramanathapuram and to set aside the same.

ORDER

1. This Criminal Revision Case has been preferred against the judgment of the appellate court, namely the Principal Sessions Judge, Ramanathapuram, dated 21.09.2011 pronounced in C.A.No.12 of 2011, on the file of his Court, confirming the judgement pronounced by the Chief Judicial Magistrate, Ramanathapuram, dated 29.06.2011, in C.C.No.16 of 2010, both in respect of conviction and in respect of sentence.

2. The petitioner, who figured as the sole accused stood charged for the offence under Section 304-A I.P.C based on the allegation that on 29.04.2008 at about 22.30 hours, he drove the Tractor bearing Registration No. TN 65 F 4152 in the R.S.Mangalam-Ramanathapuram Road rashly and negligently and a caused the death of a child, by name Lakhmi aged about 4 years, who was walking along the road along with her parents. Regarding the said road accident, a case was registered on the file of Thiruppalaikudi Police Station as Cr.No.53 of 2008, for an offence under Section 304-A IPC. The case was charge-sheeted and was taken on file as C.C.No.16 of 2010. As the revision petitioner/accused pleaded not guilty, a trial was conducted and at the end of trial, the learned Chief Judicial Magistrate, Ramanathapuram found the revision petitioner/accused to be guilty of the offence with which he stood charged and sentenced him to undergo imprisonment for a period of six months and to pay a fine of Rs.5000/- with a default sentence of simple imprisonment for three months.

3. The said judgement of the learned Chief Judicial magistrate, Ramanathapuram was pronounced on 29.06.2011. The revision petitioner/accused preferred an appeal in C.A.No.12 of 2011 on the file of the Principal Sessions Judge, Ramanathapuram who, after hearing, concurred with the finding of the trial court and confirmed the conviction as well as the sentence by judgement, dated 21.09.2011. However, the learned Appellate Judge has chosen to refer to the sentence imposed by the trial Court as one of rigorous imprisonment for six months and fine of Rs.5000/- with default sentence of three months rigorous imprisonment.

4. The said judgment of the learned Principal Sessions Judge, Ramanathapuram is sought to be assailed in the present revision case on the grounds set out in the

grounds of revision.

5. Notice before admission was issued and the respondent is represented by Mr.T.Mohan, Additional Public Prosecutor. Records have also been sent for and are available for reference in this case.

6. The submissions made by Mr.M.Subash Babu, learned counsel for the petitioner and by Mr.T.Mohan, learned Additional Public Prosecutor are heard and the materials available on record are also perused.

7. The sole accused in C.C.No.16 of 2010, on the file of the trial Court, who was prosecuted for an offence under Section 304(A) of IPC, found guilty as per the charge and sentenced to undergo the punishments indicated above, after unsuccessfully conducting an appeal before the appellate court, has come forward with the present revision case, questioning the correctness and legality of the judgement of the appellate court dated 21.09.2011 pronounced in C.A.No.12 of 2010.

8. At the first instance, the learned counsel for the petitioner made an attempt to contend that the finding of the trial court which was confirmed by the appellate Court holding the revision petitioner guilty of the offence with which he stood charge is erroneous and liable to be set aside insofar as there is discrepancy in the evidence adduced on the side of the prosecution as to the direction in which the vehicle was proceeding at the time of accident. But upon perusing the evidence both oral and documentary, especially the observation mahazar and the rough sketch marked as Ex.P1 and Ex.P6 and also the evidence of the eyewitnesses, this Court is of the considered view that a slip of tongue of a particular witness, namely P.W.10 sought to be taken advantage of as a result of which such an argument was sought to be made. This Court considers the said argument to be untenable. However, the learned counsel for the petitioner, at the later stage of his arguments would submit that the contention regarding the question of negligence and also the challenge made against the conviction is not pressed and on the other hand, the revision petitioner would simply plead for indulgence and reduction of sentence.

9. Canvassing such indulgence and reduction of sentence, the learned counsel would submit that the petitioner is having young wife, two children aged about 7 and 4 years respectively and he alone is the bread-winner of the family. In addition, the learned counsel for the petitioner would also point out a discrepancy found in the appellate court judgment, wherein, the learned Appellate Judge misconstrued the nature of imprisonment awarded as sentence by the trial Court. The learned counsel for the petitioner took the Court through the operative portion as well as the calendar of the trial Court judgement, wherein the learned Trial Judge directed the petitioner to undergo imprisonment(without specifying whether rigorous or simple) for six months and pay a fine of Rs.5000/- and to undergo simple imprisonment for a further period of three months in case of default in payment of the fine amount. The learned counsel for the petitioner would rightly contend that in case the court simply refers to the sentence as imprisonment simpliciter, it should to be interpreted to mean only simple imprisonment and not rigorous imprisonment. The learned Appellate Judge, while referring to the sentence awarded by the trial Court, in the opening part of the judgement and also the calendar portion, has referred to the sentence as rigorous imprisonment not only in respect of substantive part of sentence but also in respect of the default sentence. The same shows total non-application of mind. Even then, the same shall not be enough to interfere with the judgment of the appellate Court confirming the conviction. As pointed out supra, the challenge made to conviction has been given up and challenge is restricted to the sentence part of the judgment alone. As pointed out supra The learned Chief Judicial Magistrate, Ramanathapuram awarded six months simple imprisonment and a fine of Rs.5000/- However the same was sought to be converted into one of rigorous imprisonment by the appellate court by inadvertence. Hence, there is substance in the submission made by the learned counsel for the petitioner that it is a fit case in which this Court has to interfere with the judgment of the appellate court regarding sentence.

10. The learned counsel for the petitioner has also pleaded for the indulgence of the Court to minimise the sentence taking into account the family situation of the petitioner and the fact that the petitioner is not alleged to have committed any other offence similar to which he was prosecuted in this case. This Court

considers the said ground to be a valid one for seeking reduction of sentence. At the same time, the sentence should have some kind of deterrent effect. We come across road accidents every day which occur due to human error, especially rash and negligent driving of the vehicles. As such, while accepting the request for reduction of sentence, this Court deems it appropriate to reduce the sentence of imprisonment to three months from six months. Regarding the fine and default sentence, no interference is needed except pointing out the fact the default sentence awarded by the trial court is simple imprisonment and not rigorous imprisonment.

11. In the result, the revision case is partly allowed. The conviction recorded by the trial court and confirmed by the appellate court shall stand confirmed by this Court also. The substantive part of sentence of imprisonment awarded by the trial Court namely, sentence of simple imprisonment for six months which was referred to as rigorous imprisonment by the appellate court, is modified into a sentence of simple imprisonment for three months. The fine amount imposed by the trial Court and confirmed by the appellate Court is confirmed. But the default sentence awarded by the trial Court, namely three months simple imprisonment, which was inadvertently referred to as three months rigorous imprisonment by the appellate court, is modified as simple imprisonment and thereby the original position of the default sentence as awarded by the trial Court is restored. Sentence already undergone shall be set off. Consequently, connected Miscellaneous Petition is closed.

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