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Crl.RC No.411 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.411 of 2023
and Crl.M.P.No.3118 of 2023

Dinesh ... Petitioner/accused

Vs.

State by
The Inspector of Police,
Vellore Taluk Police Station,
Vellore District.
(Cr.No.430 of 2014) ... Respondent /Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C, to call for the records in C.A.No.60 of 2021 dated 15.11.2022 by the learned Principal District and Sessions Judge at Vellore, Vellore District, confirming the order passed in C.C.No.657 of 2014 dated 05.10.2021 by the learned Judicial Magistrate No.I, Vellore and acquit the revision petitioner from all the charges.

For Petitioner : Mr.K.Gandhi Kumar

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl.Side)

ORDER

The Criminal Revision Case has been filed challenging the judgment dated 15.11.2022 made in Crl.A.No.60 of 2021 on the file of



the learned Principal District and Sessions Judge at Vellore, Vellore District , confirming the order of conviction and sentence passed by the learned Judicial Magistrate No.I, Vellore in C.C.No.657 of 2014 dated 05.10.2021.

2. It is the case of the prosecution that the petitioner was the driver of Tamil Nadu State Transport Corporation bus bearing Regn.No.TN32 N 3674; that on 07.10.2014 at about 11.00p.m., he was driving on the Arni-Vellore road in the newly constructed bridge near Nelvoy village; and that he had driven the vehicle in a rash and negligent manner and when he crossed the bridge, there was a heavy jerk inside the bus, as a result of which, the passengers who were seated on the back seats of the bus were thrown out of their seats and witnesses PW1 to PW4 sustained simple injuries and the deceased sustained head injury and died at the hospital later.

3. On the complaint given by one of the victims [PW1], a case was registered in Cr.No.430 of 2014 against the petitioner/accused for offences under Sections 279, 337 and 304(A) of the IPC



4. The case was investigated by PW11 and a final report was filed against the petitioner/accused for the offences under Sections 279, 337 (4 counts) and 304(A) of the IPC. The prosecution had examined 11 witnesses as PW1 to PW11 and marked 15 documents viz., Ex.P1 to Ex.P15.

5. The trial Court after examining all the witnesses found the petitioner guilty of the offences under Sections 337 (4 counts) and 304(A) of the IPC and convicted and sentenced him as follows:

Offence Section	under	Sentence imposed
337 IPC (4 counts)		To pay a fine of Rs.300/- in default to undergo SI for one month for each count.
304(A) IPC		To undergo RI for six months

6. The appellate Court confirmed the conviction and sentence imposed by the trial Court.

7. Heard Mr.K.Gandhi Kumar, learned counsel for the petitioner/accused and Mr.C.E.Pratap, learned Government Advocate (Crl. Side), appearing for the respondent/State.



8. (i) The learned counsel for the petitioner/accused would submit that both the Courts below had ignored certain vital evidences which would show that the petitioner/accused cannot be guilty of either rashness or negligence; that there was a height difference between the bridge and the road to an extent of one foot and stones which were placed to fill up the gap, were displaced due to rain and since it was night, the petitioner could not assess the height difference; and that therefore, the judgments of the Courts below are liable to be set aside.

(ii) The learned counsel also relied upon the evidence of the investigating officer admitting the difference in the height and also the rough sketch [Ex.P12] which confirms the said fact.

9. The learned Government Advocate (Crl. side) *per contra* submitted that the eyewitnesses injured viz., PW1 to PW3 have stated that because of the impact, all of them were thrown out of their seats and sustained injuries; that the principle of *res ipsa loquitur* has to be applied in this case considering the nature of injuries sustained by the witnesses and the deceased; and that the Courts below had correctly convicted the petitioner for the offences under Sections 337 and 304 (A) of the IPC and



prayed for dismissal of the revision.

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10. This Court has considered the rival submissions and perused the evidence on record.

11. As stated earlier, the prosecution had examined 11 witnesses and marked Ex.P1 to Ex.P15. PW1 to PW3 are the passengers who had travelled in the bus and injured due to the accident. PW4 and PW5 are the son-in-law and brother-in-law of the deceased respectively. PW6 and PW7 are mahazar witnesses. PW8, the conductor who travelled in the bus, turned hostile. PW9 is the doctor, who treated the injured witnesses PW1 to PW3. PW10 is the Sub Inspector of Police, who registered the FIR and PW11 is the investigating officer.

12. The case therefore rests on the evidence of PW1 to PW3 and that of PW11 and the documents filed on the side of the prosecution. PW11 had admitted in the cross examination that there was a height difference between the bridge and the road connecting the bridge. The relevant portion reads as follows:

“.....சம்பவயிடத்தில் பாலம் கட்டும் பணி நடந்தது என்றால்



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அந்த பாலம் கட்டிமுடிக்கப்பட்டு பயன்பாட்டில் இருந்தது. சம்பவம் நடந்தன்று மழை பொழிந்ததாக எனது விசாரணையில் தெரியவில்லை. மழையினால் சாலை பள்ளம்மேடுகளுடன் இருந்ததாலும் வாகனம் வேகத்தடையின் மீது ஏறி இறங்கியதாகவும் எனது விசாரணையில் தெரியவந்தது என்றால் வேகத்தடையிருந்ததாக தெரியவில்லை. சாலை குண்டும் குழியுமில்லாமல் சமதளமாகவே காணப்பட்டது என்றால் சாலையும் பாலம் சேருமிடத்திலும் உயரம் வித்தியாசம் இருந்தது. சாலையில் தண்ணீர் தேங்கியிருந்ததால் பாலம் சற்றும் உயரமாக இருந்ததை அறிய முடியாது என்றால் சாலையில் தண்ணீர் தேங்குவதற்கு வாய்ப்பில்லை. அதனால் அந்த உயரம் மறைக்கப்படுவதற்கும் வாய்ப்பில்லை,,,,,”

13. Though the investigating officer had stated that the petitioner/accused could have anticipated the difference in height, the fact that there was a difference in height, is admitted by the investigating officer. The rough sketch [Ex.P12] confirms the fact that the height difference between the bridge and the road connecting the bridge is around one foot. PW1 in his deposition had admitted that the bus was driven by the petitioner/accused at a normal speed and that there was rain at the relevant point of time. The relevant portion reads as follows:

“.....மழை பெய்துக்கொண்டு இருந்ததால் பிரிட்ஜுக்கு கீழேயிருக்கும் பள்ளம் தெரியவில்லை என்று சொன்னால் அது தெரியவில்லை தூக்கி போட்டபிறகு தான் தெரியும். ஓட்டுநர் சாதாரண வேகத்தில் தான் ஓட்டிக்கொண்டு வந்தார் என்றால் நார்மலாக ஓட்டிக்கொண்டு வந்தார்....”



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14. Similarly, PW2 had stated in his cross-examination as follows:

“...Speed Breaker-க்கு முன்னால் மழை பெய்துக்கொண்டு இருந்தது. அன்று ஓட்டுநர் சாதாரண வேகத்தில் தான் ஓட்டிக்கொண்டு வந்தார் என்றால் நார்மலாக ஓட்டிக்கொண்டு வந்தால் என்றால் சரிதான். பள்ளத்தில் தூக்கிப்போட்டது...”

15. The occurrence took place at night hours. It is also admitted by the witnesses and the investigating officer that at the relevant point of time, it was raining. In order to bridge the gap between the road and the bridge, stones were placed and defence of the petitioner/accused that the stones were displaced due to rain and there was a huge height difference of one foot, is confirmed by the evidence of the investigating officer and the rough sketch. The witnesses, as stated above, have stated that the petitioner/accused had driven the vehicle at a normal speed and that it was only because of the fall from the bridge the witnesses and the deceased were thrown out of their seats and sustained injuries.

16. In the light of the above evidence, it can be seen that the petitioner cannot be attributed with either 'rashness' or 'negligence' and in any event, with 'gross negligence' or 'gross rashness', which is essential to prosecute a person for the offence under Section 304 (A) or 337 of the



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IPC. Therefore, this Court is of the view that the judgment of conviction by the Courts below are liable to be set aside.

17. Accordingly, the Criminal Revision Case is allowed. The conviction and sentence imposed upon the petitioner/accused in C.C.No.657 of 2014 dated 05.10.2021 by the learned Judicial Magistrate No.I, Vellore and the judgment in C.A.No.60 of 2021 dated 15.11.2022 by the learned Principal District and Sessions Judge at Vellore, Vellore confirming the conviction and sentence, are set aside. The petitioner/accused is acquitted of the charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the petitioner shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

05.12.2024

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.
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SUNDER MOHAN, J.

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To

1. The Principal District and Sessions Judge,
Vellore.
2. The Judicial Magistrate No.I,
Vellore.
3. The Inspector of Police,
Vellore Taluk Police Station,
Vellore District.
4. The Public Prosecutor,
High Court, Madras.

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