

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.115 of 2015
M.P.No.1 of 2015

Periyasamy

...Petitioner/Accused

Vs

Inspector of Police,
Attur Police Sttion,
Attur 636 102,
Salem District.
(Cr.No.731 of 2004)

...Respondent/Complainant

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order dated 12.09.2014 passed in C.A.No.138 of 2013, on the file of the Ist Additional District and Sessions Judge, Salem, confirming the order dated 25.11.2013, passed vide order in C.C.No.731 of 2004, on the file of the Judicial Magistrate No.1, Attur.

For Petitioner : Mr.P.Jagadeesan

For Respondent : Mr.R.Govindarajan,
Addl. Public Prosecutor

O R D E R

Aggrieved by the judgments made in C.A.No.138 of 2013, dated 12.09.2014, on the file of the Ist Additional District and Sessions Judge, Salem and C.C.No.731 of 2004, dated 25.11.2013, on the file of the Judicial Magistrate No.1, Attur, the present Criminal Revision Case is filed.

2. The case of the prosecution is that on 19.07.2004, about 8.30 a.m., the deceased, viz., Ravichandran was riding his two wheeler, towards Attur from Salem direction. At that time, near

Narasingapuram bridge, the Accused-Periyasamy drove a goods carriage Auto, bearing Registration No.TN 27 X 9352, came in the opposite direction, on the right side of the road, with high speed and dashed against the two wheeler, driven by the deceased Ravichandran. Due to the said impact, the deceased was thrown away and suffered injuries and died on the spot. The driver of the Auto ran away from the scene of occurrence.

3. PW.1 - Karthikeyan, who witnessed the accident, immediately lodged a complaint to Attur Police Station, which is marked as Ex.P1. PW.2 - Suresh has immediately informed the same to the family members of the deceased. PW.6 - Chinnaasamy, Head Constable attached to Attur Police Station, received the written complaint from PW.1, at 9 a.m. on 19.7.2004 and registered a case in Cr.No.392/2004 and prepared a First Information Report, which is marked as Ex.P4, for the offences under Sections 279 and 304-A IPC and forwarded the same to the Judicial Magistrate. Copy of the First Information Report has been sent to Mr.Sivasubramaniam, Inspector of Police and upon receipt of the same, he rushed to the scene of occurrence at 10.15 a.m., and prepared the Observation Mahazar, in the presence of PW.4 - Prakash and witness, Karthi, marked as Ex.P2. He also prepared Ex.P7 - Rough Sketch. He has enquired Pws.1 to 4 and witnesses, Ramana and Karthick and recorded their statements. He has also conducted inquest on the dead body of the deceased - Ravichandran and prepared an Inquest Report, marked as Ex.P8 and forwarded the dead body of the deceased for postmortem to Attur Government Hospital. PW.5 - Muthukumar, Duty Doctor attached to Attur Government Hospital has received the dead body at about 1.45 p.m., on 19.7.2004 and found various external and internal injuries all over the body, and after examination, has given postmortem certificate, marked as Ex.P3. He gave an opinion that the deceased would have died of shock and hemorrhage, due to the injury on the head and vital organs.

4. Thereafter, on 20.7.2014, about 11 a.m., the Inspector of Police, Mr.Sivasubramaniam, has arrested the accused and subsequently, the Accused was remanded to judicial custody, on the same day. The Inspector of Police, Mr.Sivasubramaniam, enquired the autopsy doctor, PW.5 and recorded his statement. He has also seized both the vehicles and forwarded the same to PW.7 - Mr.Babu, Motor Vehicle Inspector. P.W.7 inspected both the vehicles and certified that there was no mechanical defect in the vehicles and issued Inspection Reports, marked as Exs.P5 and P6. Thereafter, the Inspector of Police, Mr.Sivasubramaniam, has enquired PW.5 - Dr.Muthukumar, Autopsy Doctor, PW.6 - Chinnaasamy, Head Constable and PW.7 - Babu, Motor Vehicles Inspector and recorded their statements and after completing the investigation, filed a final report under

section 279 and 304-A IPC against the Accused.

5. Upon final report, the case was taken on file in C.C.731/2004. The prosecution has examined Pws.1 to 8 and marked Exs.P1 to P8. On the defence side, no oral and documentary evidence, was let in. The trial court, after considering both oral and documentary evidence, has convicted and sentenced the petitioner/accused to pay a fine of Rs.1,000/- in default, Simple Imprisonment for one month for the offence, under Section 279 IPC., and convicted and sentenced the accused to undergo Simple Imprisonment for one year and to pay a fine of Rs.3,000/-, in default Simple Imprisonment for three months for the offence, under Section 304-A IPC.

6. Being aggrieved by the same, the petitioner/accused has preferred a Criminal Appeal No.138 of 2013, on the file of the 1st Additional District and Sessions Judge, Salem. The appellate Court has framed the following points for consideration,

"(i) Whether the finding of the trial court that the appellant/accused is found guilty for committing the offences punishable under sections 279 and 304-A IPC and sentence thereunder, is correct?

(ii) Whether this appeal can be allowed?"

7. Before the appellate Court, the learned counsel for the petitioner has submitted that the trial court has failed to consider that the witnesses have not identified the Accused and without identifying the Accused, conviction of accused is not sustainable. In that context, he has relied on a judgment reported in 1991 Supreme Court Cases (Crl.) 137 [Gurja Bedia and others vs. State of Bihar]. He has also submitted that, eventhough the witnesses have deposed that a goods carrying Auto was driven at a high speed, that alone is not sufficient to bring home the offence under section 304-A IPC and it must be proved either rash or negligent. To support the said contention, he relied on a decision reported in 2001 M.L.J. (Crl.) 852 [Sekar v. State by Sub Inspector of Police, Ethapur, Salem District].

8. To sustain the conviction and sentence, learned Additional Public Prosecutor, appearing before the appellate Court, has contended that prosecution has proved the case against the prosecution has proved the case, against the accused beyond reasonable doubt and the learned Judicial Magistrate has passed a well considered order and that there was no infirmity in the said judgment.

9. Now, let me now consider, as to how, the appellate Court has considered the rival submissions, as follows:

"14. The prosecution has examined two witnesses, Pws.1 and 2 as eye witness to the occurrence. P.W.1 has deposed that he is residing at Kothampady Ramanathapuram and working as a L.I.C. Agent. The deceased is known person to him. One year prior to the occurrence, one day at about 8.30 a.m. he was going near Narasingauram bridge on the Salem to Attur direction. The deceased was riding his splendor bike on the very same direction. At that time, in the opposite direction, one good carrying Auto bearing Registration No.TN-27-X-9352 came on the right hand side of the road with high speed, dashed against the two wheeler of the deceased. Due to the said impact, the deceased was thrown out of the two wheeler and the deceased was suffered injuries on his head, blood was also oozing from his nose and died on the spot. Immediately he has lodged a complaint-Ex.PI to the Attur Police Station. P.W.2 who has come along with P.W.1 has intimated the same to the house of the deceased.

15. In the cross-examination, P.W.1 has deposed that the deceased is hailing from his village. At the time of accident, he was going behind the deceased two wheeler. P.W.2 has deposed that he is also residing at Kothampady Ramanathapuram and on 19.7.2004 at about 8.30 p.m. he was travelling in a two wheeler along with P.W.1. Before their vehicle, the deceased was riding his two wheeler towards Attur direction in his splendor two wheeler. Under the Narasingapuram bridge, an Auto came in a opposite direction on the right side of the road with high speed and dashed against the deceased. Due to the said impact, the deceased Ravichandran was thrown away from the two wheeler and suffered injuries on his head and other places and died on the spot. He has not seen the driver and the driver was ran away from there immediately after the accident. P.W.1 has lodged the complaint and at the time of lodging the complaint P.W.2 was also present with P.W.1 and he has informed the family members of the deceased. The evidence of P.Ws.1 and 2 shows that they have not identified the Accused before the court. In the complaint-Ex. PI it has been stated by the P.W.1 that the driver of the Auto bearing Registration No.TN-27-X-9352 has caused the accident and immediately he ran away from there and the F.I.R. was also registered as against the driver of the Auto and name of the Accused was not stated. On perusal of the Rough Sketch - Ex.P7 it shows that the occurrence was

taken place on the Salem to Attur road which is running west to east and the deceased has driven his two wheeler on the eastern direction. The driver of the Auto has driven his vehicle just opposite towards the western direction and the accident has occurred on the northern side of the road, and it supports the evidence of P.Ws.1 and 2 that the driver of the Auto driven his vehicle on the opposite direction, instead of going in the left hand side he has driven his vehicle on the right hand side direction which the way allotted for the vehicles coming in the opposite direction of offending vehicle.

16. It is the evidence of P.W.8, that the Investigating Officer namely Sivasubramaniam has arrested the Accused on 20.7.2004, at about 11 p.m. and remanded to judicial custody and it nowhere the defence has disputed that the Accused has not driven the Auto. It is the evidence of P.Ws 1 and 2 that immediately after the accident, the Accused had ran away from there, hence the complaint was lodged against the driver of the Auto. The evidence of P.W.8 shows that the Accused herein has been arrested and remanded to judicial custody and since it was not disputed that he has not driven the Auto, the evidence of P.W.8 shows that the Accused is the one who has driven the Auto at the time of occurrence.

17. The next contention of the Accused is that the evidence of speed alone is not sufficient and the prosecution has proved that the act of the Accused must either rash or negligent act. As discussed in earlier paragraph that the driving of the Auto by the Accused in the opposite direction endangering the persons coming in the opposite direction of the road itself is sufficient to prove the fact that the act of the driver is a rash driving. The evidence of P.Ws 1 and 2 clearly shows that the Accused has driven his Auto not only rash and also high speed which resulted in throwing away the deceased from the vehicle and causing instant death.

18. The evidence of P.W.7 - Motor Vehicle Inspector shows that the Auto has suffered damages on the right hand side and left hand side indicators were damaged and entire front portion also damaged. Similarly the two wheeler of the deceased was also severely damaged and there is no mechanical defect in the Auto or in the two wheeler.

19. The evidence of autopsy doctor is also shows that the deceased was died only due to the shock and hemorrhage and injury on the head and vital organs. This medical evidence is also corroborates the oral evidence of P.Ws 1

and 2 that the deceased was died only due to the injuries suffered by him in the accident which was rashly caused by the Accused.

20. The trial court after analyzing the evidence adduced by the P.Ws 1 to 8 has come to the conclusion that the negligent act of the accused is resulted in causing death of the deceased Ravichandran. Hence, this court finds that the prosecution has proved the charge against the accused beyond reasonable doubt and the appellant herein is rightly convicted under sections 279, and 304-A IPC. Hence, this court finds no merit in this appeal. There is no warrant for interference with the judgment of the lower court. Therefore, the appeal is dismissed. The points are answered accordingly.

21. In the result, the judgment of the lower court passed in C.C.731/2004 dated 25.11.2013 is confirmed and this appeal is dismissed. The lower Court is directed to issue NBW on the appellant/accused and commit him to jail to undergo the unexpired portion of sentence."

10. Assailing the correctness of both the judgments, learned counsel for the petitioner submitted that Pws.1 and 2 have not spoken that the vehicle was driven in a rash and negligent manner, which caused the accident and thus, the prosecution has failed to prove the case. He further submitted that witnesses have not identified the person. Identification parade was not conducted. Pws.1 and 2 are known to the victim and therefore, they are interested witnesses.

Heard the learned counsel for the parties and perused the materials available on record.

11. Merely because Pws.1 and 2 are hailing from the same village and are known to the deceased, that alone cannot be a reason to reject their cogent evidence, on the ground that they are interested persons. Consciously, nobody would be interested to convict a person, if he is not involved. PW.1 has seen the accident and immediately has reported to the police, based on which, FIR has been lodged. PW.2, was also present, when he was travelling along with PW.1, in a two wheeler. Thus, persons, who have witnessed the accident, have adduced evidence. They are the eye-witnesses to the accident and their testimony cannot be thrown out, simply because, they were resident of the same village. Both of them have categorically stated that the driver of the vehicle, ran away from the scene of occurrence. At this juncture, this Court deems it fit to extract Section 134 of the Motor Vehicles Act, dealing with the duty of the driver in case of an accident and injury to a person,

which is as follows:

"134. Duty of driver in case of accident and injury to a person:- when any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall -

(a) unless it is not practicable to do so on account of mob fury or any reason beyond his control, take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desires otherwise,

(b).....

(c)....."

12. It is a fact that Pws.1 and 2 have not seen the accident and identified the accused in the Court. Reason is obvious. Because the driver had ran away from the scene of occurrence and he was not seen. But on investigation, the police had traced out the accused and arrested him on 20.07.2014, on the next day itself. Added to that, the appellate Court has also observed that no where, it was the defence of the accused that the vehicle involved in the accident was not driven by him. In the abovesaid circumstances, finding of rash and negligence, on the part of the petitioner that he had driven the vehicle, which caused the accident, cannot be said to be perverse, warranting interference.

13. On the aspect of speed and negligence, both the Courts below have found that the vehicle was driven in the opposite direction by the petitioner, in a rash and negligent manner, endangering human life and that is sufficient to hold a person, guilty of offence, to which, he is charged. Pws.1 and 2, eye-witnesses have categorically deposed that after the collision, the deceased was thrown away from the two-wheeler, sustained fatal injuries and died on the spot.

14. Though it is contended by the learned counsel for the petitioner that mere speed driving would not constitute an offence and that the prosecution ought to have proved rash and negligence, evidence of the prosecution witnesses that the goods carriage auto, which came in the opposite direction, was on the right side of the road, with a high speed, would itself prove that there was not only

rashness, but there was recklessness and negligence on the part of the accused. In India, driving is on the left side of the road. There is clear evidence by Pws.1 and 2, eyewitnesses that the goods carriage auto was driven on the right side of the road, when the accident occurred.

15. Moreover, after causing the accident, the driver had ran away from the scene of occurrence. The sketch produced by the Police also indicates that the accident occurred on the Northern side of the road, supporting the evidence of Pws.1 and 2, eyewitnesses. Going through the material on record, this Court is of the view, all the contentions raised by the learned counsel for the petitioner, have been properly addressed by the Courts below, while recording a clear finding of rash and negligent driving by the petitioner, which resulted in the death of the deceased.

16. Though the learned counsel for the petitioner contended that in the event of this Court, dismissing the case of the petitioner, there shall be a reduction in the sentence. Considering the conduct of the petitioner, in running away from the scene of occurrence, after the accident and the failure to help the injured, in taking him to a nearest hospital, for treatment, this Court is not inclined to reduce the sentence. Hence, it is confirmed.

17. In the result, the Criminal Revision Case is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To

1. The 1st Additional District and Sessions Judge, Salem.
2. The Judicial Magistrate No.1, Attur.

3. The Inspector of Police,
Attur Police Station,
Attur 636 102, Salem District.

4. The Public Prosecutor,
High Court, Madras.

1 CC to Mr.P.Jagadeesan, Advocate SR.No. 27604

Cr1.R.C.No.115 of 2015

KM (CO)
PSI (22.06.2015)



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