

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1250 of 2015

and

M.P.Nos.1 and 2 of 2015

V.Vijayakumar
S/o.Varadhasan

.. Petitioner

vs.

State represented by
Sub-Inspector of Police,
Mettupalayam Police Station,
Mettupalayam, Coimbatore.

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the judgment of learned Principal District and Sessions Judge, Coimbatore, passed in C.A.No.181 of 2012 on 01.07.2013 modifying the judgment of learned Judicial Magistrate, Mettupalayam, passed in C.C.No.119 of 2008 on 28.05.2012.

For Petitioner : Mr.S.Shankar

For Respondent : Mr.V.Arul,
Government Advocate [Crl.side]

O R D E R

This revision arises against the judgment of learned Principal District and Sessions Judge, Coimbatore, passed in C.A.No.181 of 2012 on 01.07.2013 modifying the judgment of learned Judicial Magistrate, Mettupalayam, passed in C.C.No.119 of 2008 on 28.05.2012.

2. The case of the prosecution is that whilst PW-4 and another were walking on the road, the petitioner/accused drove his TVS 50 bearing registration No.TN-40-B-3064 in a rash and negligent manner, dashed against them resulting in injuries to PW-4 and the death of the other on 04.03.2008 at about 07.30 p.m. A case was registered in Crime No.126 of 2008 on the file of respondent. Upon completion of investigation and filing of charge sheet informing commissions of offences u/s.279, 337, 304-A IPC and 196 of Motor Vehicles Act, the case was tried in C.C.No.119 of 2008 on the file of learned Judicial Magistrate, Mettupalayam.

3. Before the trial Court, the prosecution examined twelve witnesses and marked eight exhibits. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, the trial Court, under judgment dated 28.05.2012, convicted the petitioner for offences u/s.304-A, 279, 337 IPC and 196 of Motor Vehicles Act and sentenced him to undergo 1 year R.I. for offence u/s.304-A IPC and fine of Rs.500/- i/d 1 month S.I. for each offence u/s.279, 337 IPC and 196 of the Motor Vehicles Act. Against such finding, petitioner preferred C.A.No.181 of 2012 on the file of learned Principal District and Sessions Judge, Coimbatore. Appellate Court, under judgment dated 01.07.2013, while confirming the finding of conviction, modified the sentence to one of 6 months R.I. for offence u/s.304-A IPC. Fine imposed by trial Court in respect offences u/s.279, 337 IPC and 196 of the Motor Vehicles Act was confirmed. Hence, this revision.

4. Learned counsel for petitioner submits that PWs.2 and 3, alleged eye witnesses to the occurrence, are the son and immediate relative of the deceased. Their presence at the scene was doubtful inasmuch as while they had deposed to having placed the deceased in a vehicle towards sending her to hospital, Ex.P5, Accident Register, inform that the deceased was brought dead by one Arumugam. The said Arumugam is none other than the father of PW-4, the injured in the case. It is the evidence of PW-4 that she did not know how the accident took place. The said Arumugam has not been examined as a witness. While PWs.2 and 3 have admitted to such person not having been present at the scene, a most unreasonable explanation stands offered by the trial Court to the effect that upon witnessing the occurrence Pws.2 and 3 would have informed the said Arumugam, who in turn would have gone over to the scene and thereafter, taken the deceased by vehicle to the hospital.

5. Heard learned Government Advocate [CrI.side] on the above submissions.

6. In circumstance where the injured witness is unable to inform the manner in which the accident took place and it is seen that one Arumugam, father of PW-4, has taken the deceased to hospital and such person has not been examined, the evidence of PWs.2 and 3, who are immediate relatives of the deceased, to the effect that they caused her to be moved to hospital must be seen to be false and therefore, the contention of their not being witnesses to the occurrence is to be accepted.

This Criminal Revision is allowed. The judgment of learned Principal District and Sessions Judge, Coimbatore, passed in C.A.No.181 of 2012 on 01.07.2013 modifying the judgment of learned Judicial Magistrate, Mettupalayam, passed in C.C.No.119

of 2008 on 28.05.2012, is set aside. Petitioner is acquitted from all charges. Fine amount, if any, paid by petitioner shall be refunded. Bail bonds, if any, executed by petitioner shall stand cancelled. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gm

To

- 1.The Principal District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Mettupalayam.
- 3.The Sub-Inspector of Police,
Mettupalayam Police Station,
Mettupalayam,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.S. Shankar, Advocate, Sr. 65907

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