

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.7.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.246 of 2010  
and  
MP.No.1 of 2010

Nijamudheen

.. Petitioner/Accused

Versus

State of Tamil Nadu  
Rep.by Inspector of police  
Vazhapadi Police Station  
Salem District  
(Crime No.215/2003).

.. Respondent/Complainant

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C., to call for the records in C.A.No.154 of 2009 on the file of the Additional District of Sessions Judge, Salem (Fast Track Court No.1, Salem) and set aside the judgment dated 15.2.2010 passed thereon confirming the order dated 02.12.2009 in C.C.No.14 of 2005 by the Judicial Magistrate No.VI, Salem, convicting the petitioner herein for offences under Section 304 - A IPC, 337 IPC (2 Counts) and 279 IPC and sentencing him to undergo simple imprisonment for 2 years, to pay a fine of Rs.200/- in default to undergo simple imprisonment of one month and to undergo simple imprisonment for 6 months respectively.

For Petitioner : No Appearance

For Respondent : Mr.V.Arul  
Government Advocate (Crl.side)

ORDER

The revision petitioner herein, who is the accused in C.C.No.14 of 2005 on the file of Judicial Magistrate No.VI, Salem, was convicted for the offence under Sections 279, 337 and 304(A) of I.P.C. and sentenced to undergo simple imprisonment for six months for the offence under Section 279 IPC and to pay a fine of Rs.200/- for two counts under Section 337 IPC, in default, to undergo simple imprisonment of one month and to undergo simple imprisonment for two years for the offence under Section 304(A) IPC. The order of conviction against the revision petitioner was confirmed by the learned Additional District Sessions Judge, Salem in C.A.No.154 of 2009. Aggrieved by the said conviction, the petitioner/accused has preferred this criminal revision.

near Vasantha Mahal marriage Hall, the accused herein, who was driving the vehicle lorry bearing Registration No.TN 33 Q 1836 from Attur towards salem, had driven it in a rash and negligent manner and dashed against an Indica Car bearing registration No.KA 01 P 7841, which came from salem towards Attur, on the left side of the Road and in the impact, the driver of the Indica Car by name, Suresh Raj was severally injured and died on the way to Salem Government Hospital. In the said accident, the occupants of the Car, by name, Ravi and Anandan, sustained injuries. Therefore, the petitioner/accused committed offence punishable under Sections 279, 337 and 304(A) IPC.

3. On the side of the prosecution, ten witnesses were examined apart from marking Exs.P1 to P12. On the side of the defence, no witness was examined and no exhibit was marked. On considering the oral and documentary evidence, the Trial Court, found the accused guilty of offences as aforesaid and punished him accordingly. The Appellate Court confirmed the conviction and sentence imposed by the Trial Court, against which the petitioner is before this Court.

4. From the docket sheet, it appears that the petitioner took several adjournments from the year 2010. When the matter was called on 19.6.2015, there was no representation on behalf of the petitioner. Therefore, the matter was directed to be listed today under the caption 'for dismissal'. Even today, there is no representation on behalf of the petitioner. Hence, as per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same. Accordingly, this matter is taken up for disposal on merits.

5. The main ground raised in the grounds of revision is that the Courts below ought to have accepted the case of the petitioner that one Anandan, who is a heart patient, drove the Car at the time of accident. It is also stated in the grounds that non production of the driving licence of the alleged car driver is fatal to the prosecution. It is further stated that the other occupants of the Car were not examined. Hence, according to the revision petitioner, the Judgments of the Courts below are wrong.

6. The learned Government Advocate would contend that P.W 1 has given cogent and natural evidence in support of the case of the prosecution. P.W.1 has categorically stated about the entire occurrence. Though the other injured witnesses have been admitted in the hospital, they were absconding from the hospital and hence, they were not examined. P.W.1 and P.W2 have clearly stated that the car was driven by the deceased Suresh Raj. The learned Government Advocate would also contend that the accused has not chosen to examine any witness to prove that the said Anandan drove the vehicle. Further, as per the mahazar witness as well as the plan, it is very clear that the petitioner alone drove the tanker lorry in a rash and negligent manner and dashed against the Car. It is also submitted by the learned Government Advocate that the accident took place at

about 5.45 p.m and, therefore, it cannot be said that the driver felt sleepy and thereby, accident had occurred. Therefore, the Courts below have rightly convicted the accused and no interference is warranted.

7. I have heard the learned Government Advocate and perused the materials placed on record.

8. On a careful perusal of the entire evidence and the judgment of the Courts below, it is seen that P.W.1 is one of the occupants in the Car and he escaped unhurt and is an eye witness. From the evidence of P.W.1, it is very clear that the petitioner/ accused has not proved that Anandhan alone drove the vehicle. It is also clear that the accident had occurred only due to the rash and negligent driving of the driver of the tanker lorry. In fact, the petitioner has not taken a defence that he was not driving the vehicle at the time of accident. The only defence made by the petitioner is that the deceased was not driving the car and the same was driven only by Anandhan, who is a heart patient, and that due to the sudden chest pain, the accident had occurred and in that he also sustained injuries. But, the accused has not chosen to examine any witness or produce any documents to establish his case. There is no evidence to show that the said Anandhan suffers from heart ailment. The mere fact that ECG shows Acute Anterior Wall MI, cannot be stated to be the reason for the occurrence or to presume the theory of the petitioner that he was only driving the vehicle and the due to his chest pain, the accident had occurred. The chest condition of Anandhan might have arisen due to the injuries suffered by him in the accident.

9. The petitioner has taken a ground that the other occupants, who were also injured in the accident, were not examined. Non examination of the said injured does not affect the root of the case of the prosecution, as there are reliable and credible case made out by the prosecution through the documentary evidences and the oral testimonies of the eye witnesses.

10. The petitioner has also taken a ground in the revision that when the observation Mahazar was not proved in the manner known to law, the liability cannot be fastened on him. As rightly pointed out by the learned Government Advocate, though the observation mahazar and rough sketch witnesses have turned hostile, it does not affect the root of the prosecution in view of the reliable and credible case made out through P.W.1

11. It is pertinent to point out that the occurrence took place at about 5.45 p.m.in the evening. As rightly pointed by the learned Government Advocate, the accident had not occurred in the early morning, so as to allege that the driver had felt sleepy and drowsy. The occurrence cannot also be attributed to mechanical defect of the lorry because the Motor Vehicle Inspector would opine that the accident could not have occurred due to any mechanical defect.

12. In view of the above, it has to be concluded that the prosecution has proved the guilt against the revision petitioner/accused beyond reasonable doubt. The conviction imposed by the Courts below is also very reasonable.

13. Therefore, I do not find any reason to interfere with the reasoned order of the Courts below. The Criminal Revision Case is dismissed. In view of the dismissal of the Criminal revision case, the trial court is directed to take necessary steps as are necessary to secure the presence of the petitioner for undergoing the remaining period of sentence. It is needless to say that the sentence already undergone by the petitioner, if any, can be given set off as contemplated under Section 428 of Cr.P.C. Connected M.P is also closed.

Sd/-

Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

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To

1. The Additional District Sessions Judge, Salem cum  
Fast Track Court No.I, Salem.
2. do thro The Principal sessions Judge, Salem.
3. Judicial Magistrate No.VI, Salem.
4. do thro The Cheif Judicial Magistrate, Salem.
5. The Inspector of Police,  
Vazhapadi Police Station,  
Salem District.
6. The Public Prosecutor, High court, Madras.

Cr1 RC No. 246 of 2010

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kra(29/07)

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