

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

CORAM :

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

CrI.R.C.No.420 of 2010

B.Sekar

... Petitioner

Vs.

State represented by
Inspector of Police,
R4 Soundarapandianar Angadi,
Traffic Investigation Wing Police Station,
Pondy Bazar, Chennai-600 017. ... Respondent

Prayer: Revision filed under Sections 397 & 401 of Cr.P.C against the judgment dated 29.03.2010 in C.A.No.230 of 2009 passed by the learned IV Additional Sessions Judge, Chennai, confirming the judgment dated 16.11.2009 in C.C.No.3380 of 2006 on the file of the the learned IV Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Dr.C.Ravichandran sc for M.R.Radhakrishnan

For Respondent : Mr.V.Arul, Govt Advocate (for R8)

ORDER

This Criminal Revision Case has been filed by the petitioner challenging the concurrent order of conviction passed by the Courts below.

2.The case of the prosecution, in brief, is as follows:- The revision petition is an autorikshaw-driver. On 02.05.2006 at about 4.45 am, in front of the playground of corporation school at Venkatanarayana Salai, T.Nagar, while the victim Sundareswaran, aged 65 years, was crossing the road from west to east at zebra line, the autorikshaw bearing Reg.No.TN-01-Q-0553, driven by the revision petitioner, came from south side in a rash and negligent manner and dashed against the victim, as a result of which the victim sustained multiple grievous injuries on his head and he died on the way to hospital. Hence, a criminal case in Crime No.154/TN/2006 was filed as against the revision petitioner/accused for the offences under Section 304(A) IPC and Section 184 of M.V.Act, 1988. After completion of investigation, the respondent-Police filed a chargesheet against the revision petitioner/accused.

3.The Trial Court, after considering the evidence both oral and documentary adduced on either side, by judgment dated 16.11.2009 in C.C.No.3380 of 2006, has convicted the revision petitioner/accused under Section 304(A) IPC and Section 184 of M.V.Act, 1988 and sentenced the revision petitioner/accused to undergo one year rigorous imprisonment and to pay a fine of Rs.2000/- in default to undergo RI for further period of three months under Section 304(A) IPC and sentenced to pay a fine of Rs.1000/- in default to undergo RI for one month under Section 184 of M.V.Act. Aggrieved over the same, the revision petitioner/accused preferred an appeal in CrI.A.No.230 of 2009 before the learned IV Additional Sessions Judge at Chennai and the same was dismissed by the lower appellate Court on 29.03.2010 concurring with the findings of the trial Court. Hence, the revision petitioner has filed the present revision.

4.The learned counsel for the revision petitioner submitted that there are many contradictions in the evidence adduced by the prosecution. The Courts below have failed to take note of the fact that P.W.1, who is a police constable, is not an eye witness to the occurrence. The Courts below have wrongly presumed the P.W.1 as an eye witness to the occurrence and convicted the revision petitioner for the alleged offence. The learned counsel for the revision petitioner would further submit that in his evidence, P.W.1 did not say that he is an eye witness to the occurrence and he had only stated that he was available in the place of occurrence at the time of occurrence and he had taken the injured/victim to the hospital in the offending vehicle itself. There is a very important contradiction in the statement of P.W.1 that he had taken the injured/victim to the hospital in the offending vehicle; whereas in the evidence of P.W.4, who is really an eye witness to the occurrence, he has clearly stated that the injured/victim was taken to the hospital in an another auto and the Police came to the spot only after 10 minutes of the occurrence.

5.It is further contended by the learned counsel for the revision petitioner that P.W.9, Investigating Officer, in his evidence has categorically stated that after the occurrence, the auto-driver/accused surrendered before him. When that being so, how P.W.1 can say in his evidence that he only took the injured/victim in the offending auto to the hospital and thereafter, handed over the accused to the respondent-Police. Further, P.W.1 has stated in his evidence that he saw the accident only after hearing the accident noise. Therefore, it cannot be presumed that he is an eye witness to the occurrence. The presence of P.W.1 at the time of occurrence is doubtful. Thus, the learned counsel for the revision petitioner submitted that the Courts below ought to have given the benefit of doubt in favour of the revision petitioner/accused and acquitted him from the offence.

6.Per contra, the learned Government Advocate (Crl.Side) would contend that merely on the discrepancies in the evidence of the prosecution, the accused cannot be acquitted from the offence. He would further submit that P.W.1, who is a police constable, was present in the scene of occurrence at the time of occurrence and he is the person, who attended the victim at that point of time and took the victim to the hospital. By considering the evidence adduced by both sides, the trial Court has rightly convicted the accused, which has been concurred by the lower appellate Court. Thus, the learned Government Advocate (Crl.Side) submitted that no interference is required from this Court to the findings rendered by the Courts below.

7.Heard the submissions made on either side and perused the materials available on record.

8.On a careful perusal of the materials available on record, this Court finds that as rightly pointed out by the learned counsel for the revision petitioner/accused, there are many contradictions in the evidence adduced on the side of the prosecution. Mainly, P.W.1 being a constable, has stated in his evidence that at the time of occurrence he was going near the spot, in opposite direction to the offending vehicle, and he heard the accident noise and saw a person lying on the ground with injuries and he rushed to the spot; thereafter, he took the victim to the hospital in the offending auto itself. But, the Courts below have mistakenly presumed as if P.W.1 is an eye witness to the occurrence. This is the first fallacy in the case of the prosecution. Further, P.W.4, who is the eye witness to the occurrence, in his evidence has clearly stated that the victim was taken to the hospital in another auto and that police constable came to the spot only after 10 minutes of the incident. Therefore, the presence of P.W.1 in the scene of occurrence at the time of occurrence has been contradicted by the evidence of P.W.4. These contradictions in the evidence of P.W.1 and P.W.4 ought to have been taken note of by the Courts below. Further, the Investigating Officer-P.W.6 in his evidence has stated that the driver of the offending vehicle surrendered before him after the accident. But, according to P.W.1, after taking the victim to the hospital in the offending vehicle itself, he handed over the driver of the offending vehicle to the respondent-Police. Therefore, the statement given by P.W.6 is totally different from the statement of P.W.1. From the above contradictions, this Court is of the view that the presence of P.W.1 in the scene of occurrence is highly doubtful. The prosecution has failed to prove the guilt of the accused by produced sufficient evidence.

9.Further, in the present case, there is no evidence to show that the revision petitioner/accused had driven the vehicle in a rash and negligent manner. In the decision of the Honourable Supreme Court reported in (Mohammed Aynuddin @ Miyam vs. State of Andhra Pradesh) (2000) 7 Supreme Court Cases 72, it was categorically held that in the absence of any evidence to show that the driver of the offending

vehicle had driven it in a rash and negligent manner or in any way responsible for the accident, the conviction and sentence imposed on him are unsustainable. It was further held that negligent of the driver of the offending vehicle cannot always be presumed to be a rash and negligent one. In para-7 of the said decision, it was held as follows:-

"7.It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus."

The dictum laid down in the above decision would squarely apply to the present facts of the case.

10.From the contradictions in the evidence adduced on the side of the prosecution, as pointed in the earlier paragraphs, this Court is of the view that benefit of doubt has to be given in favour of the accused/revision petitioner. Hence, only on the ground of benefit of doubt, the revision petitioner is entitled to be acquitted from the charges.

11.In the result, the Criminal Revision Petition is allowed and the conviction and sentence imposed on the revision petitioner by the Courts below are set aside and the revision petitioner is acquitted from the charges.

Sd/-
Asst.Registrar (J)

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Sub Asst. Registrar

ssv

To

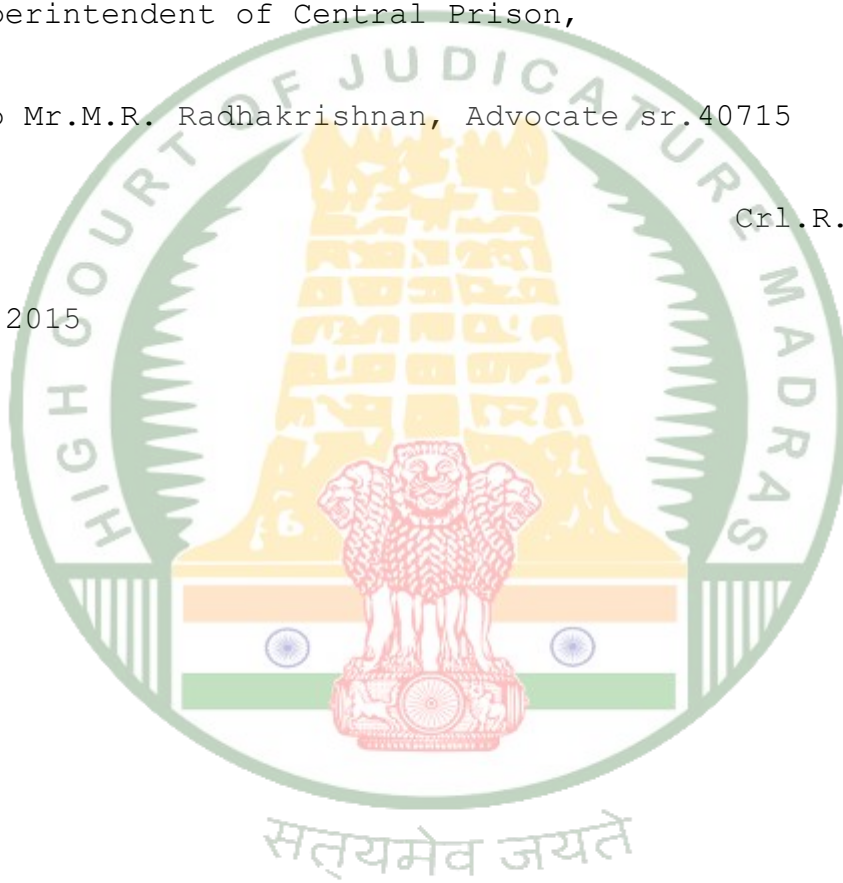
1. The IV Additional Sessions Judge,
Chennai.
2. -Do- thro The Principal Sessions Judge,
Chennai.
3. The IV Metropolitan Magistrate,
Saidapet, Chennai.

4. -Do- Thro The Metropolitan Politan Magistrate,
Egmore,
Chennai.
5. The Inspector of police,
R4, Soundarapandianar Aagadi,
Traffic Investigation wing police station,
Pondy Bazar, Chennai-600 017.
6. The Public Prosecutor,
High Court, Madras.
7. The Superintendent of Central Prison,
Puzhal.

+lcc to Mr.M.R. Radhakrishnan, Advocate sr.40715

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srg 21.08.2015



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