

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.4.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 994 of 2008

S.Thirumoorthy

.. Petitioner/Accused

Versus

The State rep by

The Inspector of Police (Crime)

Tirrupur North

(Crime No.1045/2006)

.. Respondent/Complainant

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the judgment of the learned Judicial Magistrate No.I, Tirupur in S.T.C.No. 244 of 2007 dated 29.01.2008 convicting the accused for an offence under Section 338 IPC and an Appeal in Additional District and Session Judge, Fast Track Court No.V, Coimbatore at Tirupur in Criminal Appeal No.38 of 2008 dated 31.3.2008.

For Petitioner : Mr. B.Rajagopal

For Respondent : Mr. D.Sivaramkumar
Government Advocate (Crl.side)

ORDER

The petitioner, who was arrayed as accused in S.T.C. No. 244 of 2007 on the file of the learned Judicial Magistrate No.I, Tiruppur, was tried for the offence punishable under Section 279 and 338 of IPC. After trial, the trial court convicted the petitioner for the offence under Section 279 of IPC and sentenced to pay fine of Rs.1,000/-, in default, to undergo one month imprisonment and also convicted him under Section 338 of IPC and sentenced to undergo one month rigorous imprisonment. Aggrieved by the judgment of the trial court, the petitioner filed an appeal before the appellate Court. The appellate Court, while setting aside the sentence of one month rigorous imprisonment imposed on the petitioner for the offence under Section 338 of IPC directed the petitioner to surrender himself before the trial Court and to undergo imprisonment till the raising of the trial Court on any one of the days and to pay a sum of Rs.5,000/- (Rupees Five Thousand only) by way of compensation for the offence committed by him. As against the same, the present Criminal Revision Case is filed.

2. The facts of the case, as could be unfolded from the records, is that on 21.6.2006 at 11 A.M. at Thiruppur, Avinashi Road near Bishop School, the appellant/accused rashly and negligently moved his bus while P.W.3 was alighting down from the bus and because of his rash and negligent, she fell down and sustained grievous injuries. In this context, a complaint was given by PW1 to the respondent police based on which, the case in Crime No. 1045 of 2006 came to be registered for the offences punishable under Section 279 and 338 of IPC on 22.06.2006. Based on the registration of the case, PW8, Sub-Inspector of Police commenced investigation and recorded the statement of witnesses.

3. The learned counsel for the petitioner would contend that Courts below failed to consider the contradictory statement made by P.W.1 to P.W.3. The learned counsel submitted that P.W.1 in his evidence has stated that himself and his father-in-law were alighting from front entrance and P.W.3, his mother-in-law was alighting from rear entrance of the bus whereas P.W.3 had deposed that all of the three were alighting down from rear entrance of the bus. Once there is a discrepancy in the evidence, the courts below ought to have given the benefit of doubt in favour of the revision petitioner, instead of convicting him for the offence under Section 279 IPC. The learned counsel further submitted that the duty of the driver is to move the vehicle, after getting signal from the conductor by his whistle and in this case, the conductor has not been examined to show that the petitioner moved the bus without getting whistle sound. Therefore, the learned counsel prays that the revision has to be allowed.

4. On the other hand, the learned Government Advocate appearing for the respondent would contend that Pws 1 to 3 they have categorically stated that because of the rash and negligent driving of the bus by the petitioner, P.W.3 fell down and sustained injuries. The trial Court has rightly pointed out that there is no mention with regard to the alighting down of P.W.3 from the bus in the 161(3) statement given by P.W.1 to 3 and, therefore, the discrepancies pointed out by the accused cannot be construed as a material discrepancy so as to affect the case of the prosecution. The learned Government Advocate further submitted that the courts below analysed the evidence available on record and came to a correct conclusion. Therefore, the order passed by the courts below need not be interfered with.

5. I heard the counsel for both sides. By consent of both sides, the Criminal Revision itself is taken up and disposed of.

6. The trial Court convicted the petitioner for the offence under Section 279 of IPC and sentenced to pay fine of Rs.1,000/- in default, to undergo one month imprisonment and also convicted him under Section 338 of IPC and sentenced to undergo one month rigorous imprisonment. The appellate Court, modified the sentence to one of imprisonment till the raising of the trial Court on any one of the days and to pay a sum of Rs.5,000/- (Rupees Five Thousand only) by way of compensation.

7. Admittedly, the revision petitioner /accused has already paid the compensation amount and the same has not been questioned in this revision. The petitioner has come forward with this revision questioning the imprisonment till the raising of the trial Court on any one of the days, as he is a Government employee and the said punishment will affect his future career.

8. The main ground of attack raised by the learned counsel for the petitioner is that there are some discrepancies regarding the manner of alighting down of P.W.3 and the conductor has not been examined to prove that the driver moved the bus even before the conductor gave signal by his whistle, which resulted in falling down of P.W.3 while alighting down from the bus. Admittedly, P.Ws.1 to 3 have not deposed that the driver moved the bus before the conductor gave his signal for moving. P.W.1 in his evidence has stated that himself and his father-in-law, P.W.2 were alighting down from the front entrance of the bus whereas P.W.3 has stated that all the three were alighting down from the rear entrance of the bus.

9. This Court in SEKAR V. STATE BY SUB INSPECTOR OF POLICE, ETHAPUR, SALEM DISTRICT (2001 (2) M.W.N. (Cr1) 249), has held that mere driving of the vehicle in a high speed alone is not sufficient to bring the offence under Section 304 (A) of IPC and the said judgment is squarely applicable to this case.

10. In SUDALAIMUTHU V. STATE (1997 Cr1.L.J. 1038), it is held that when there is a clear evidence that the bus was stopped immediately at the spot itself would make it clear that it was not started with speed and rash manner.

11. In the case on hand, no doubt, there are many discrepancies in the evidence of P.Ws 1 to 3 with regard to alighting down from the bus. Therefore, the evidence of Pws 1 and 3 are not trustworthy, believable and based on their version, the courts below ought not to have convicted the petitioner.

12. Though the appellate Court pointed out that such discrepancies are curable and that it will not affect the rights of the parties, when we analyse the facts as a whole, it is the duty of the driver to move the vehicle after getting signal from the conductor. Admittedly, in this case, there is no evidence that the driver moved the bus even before the conductor gave the signal by his whistle which resulted in falling down of P.W.3. More over, the conductor has not been examined and non examination of the Conductor is fatal to this case. This vital point has not been taken into consideration by the Courts below. Further, one of the witness has stated that P.W.3 got down from the bus on its own accord in the motion. Therefore, there is a total contradiction in the FIR as well as in the evidence.

13. The Hon`ble Supreme Court in MOHAMMED AYNUDDINA ALIAS MIYAM V. STATE OF ANDHRA PRADESH 2001 (2) M.W.N.(CR.)SC.77 has held "merely a passenger fell down while boarding the bus, no presumption of negligent was against the driver of the bus." The said judgment is squarely applicable to the facts of the present case.

14. That apart, the revision petitioner has paid a sum of Rs.5,000/- as compensation and the same has not been challenged. Only, the petitioner has filed this revision as against the punishment of imprisonment till the raising of the Court. Since the petitioner is a Government Employee, the said punishment will affect his legal right .

15. Considering the same, the sentence imposed by the trial Court and as modified by the appellate Court into one of imprisonment till the raising of the trial Court on any one of the days are set aside. However, insofar compensation is concerned, the order of the appellate Court is confirmed. It is represented that the said compensation has already been paid.

16. With the above observation, the Criminal Revision case is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Inspector of Police (Crime)
Tirrupur North

2. The Additional District and Sessions Judge
Fast Track Court, No.V, Coimbatore at Tiruppur

3. The Judicial Magistrate No.1,
Tiruppur

4. Do thro the Chief Judicial Magistrate
Coimbatore

5. The Public Prosecutor,
High Court, Madras

1 cc to Mr.G.B. Saravanabhavan, Advocate, Sr. 21688

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