



Crl.R.C.No.424 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.424 of 2015

R. Sridharan

... Petitioner

Vs.

1.State by,
The Inspector of Police,
R-4, Pondy Bazar Traffic Investigation Wing,
T.Nagar, Chennai - 17.
(Crime No.472/TN.3/09)

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram.
(Suo moto ordered to be impleaded
as per order dated 30.03.2022).

... Respondents

Prayer: Criminal Revision Case is filed under section 397 read with 401 of CR.P.C., to set aside the order dated 12.02.2015 made in C.A.No.46 of 2014 on the file of the IV Additional Sessions Judge, Chennai by confirming the order of conviction dated 06.02.2014 made in C.C.No.5750 of 2010 on the file of IV Metropolitan Magistrate, Saidapet, Chennai and acquit the petitioner by allowing this revision petition.



CrI.R.C.No.424 of 2015

For Petitioner : Mr. S. Lakshmanasamy

For Respondents : Mr. N.S. Suganthan, for R1
Government Advocate
Mr. K.J. Sivakumar, for R2

ORDER

This revision is filed by the accused to set aside the order dated 12.02.2015 made in C.A.No.46 of 2014 on the file of the IV Additional Sessions Judge, Chennai by confirming the order of conviction dated 06.02.2014 made in C.C.No.5750 of 2010 on the file of IV Metropolitan Magistrate, Saidapet, Chennai.

2. The gist of the prosecution case is that

2(i) on 21.12.2009 at about 10.25 hours, near Nerkundram Junction, in the 100 feet road, the petitioner herein while driving the State Transport Corporation Bus, dashed the two wheeler, going ahead to him and caused death of P.Senthil Kumar, aged about 36 years who was riding his two wheeler bearing Registration No.TN 02 AC 9258. A case registered against the driver of the Bus for rash and negligent driving. On completion of investigation, final report filed against Sridharan, the bus driver and it



was taken on file by the IV, Metropolitan Magistrate, Saidapet in C.C.No.5750 of 2010.

2(ii). The trial Court framed charges under Section 279 and 304(A) IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, 5 witnesses were examined as P.W.1 to P.W.5 and 8 documents were marked as Exs.P1 to P8.

2(iii). On appreciating the evidence, the trial Court held the accused/driver of the Transport Corporation Bus bearing Registration No.TN 32 N 2758 guilty of offence under Section 279 and 304(A) IPC. The trial Court convicted him to undergo one year simple imprisonment and Rs.5,000/- fine, for the offence under Section 304(A) IPC in default to pay the fine, one month simple imprisonment. In view of Section 71 of IPC, no separate sentence was imposed for the offence under Section 279 IPC.

2(iv). The trial Court judgment was challenged before the appellate Court by the accused and in C.A.No.46 of 2014 by the IV Additional Sessions Judge, Chennai vide judgment dated 12.02.2015, the appellate Court dismissed the appeal and confirmed the conviction and sentence, imposed by the trial Court.



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3. In the revision, the learned counsel for the petitioner / accused point out that there is no evidence to substantiate the case of the prosecution that the accused caused death of the motorist due to his rash and negligent driving. Both P.W.1 and P.W.4 supposed to be the eye witness to the occurrence had only spoken about the fast driving of the vehicle and not rash or negligent driving. Referring Section 279 IPC and 304(A) IPC, the learned counsel for the revision petitioner empathetically argued that to attract penal provision for causing death, the prosecution ought to prove that the death caused due to rash or negligent act. In the absence of such evidence to show that the petitioner drove the vehicle in a rash or negligent manner, Section 304(A) will not get attracted. Similarly, the prosecution has also not proved that the petitioner herein was driving his vehicle in a manner endangering the life of human being to attract the penal prosecution under Section 279 IPC.

4. Heard both sides.



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5. The occurrence had taken place during the busy hours of the day, in the morning, in the 100 feet Road. The sketch shows that the accident happened in the middle of the road which clearly shows that the fault falls on the two wheeler/rider and not on the bus driver. To substantiate the submission, the learned counsel for the petitioner would state that P.W.1 is not only claiming to be the eye witness but also the brother of the deceased, he states that the bus passed through him and hit his brother. So naturally, the victim had not riding his two wheeler with care and caution anticipating heavy vehicles passing through the 100 feet Road.

6. This Court on perusing the order of the trial Court as well as the appellate Court, finds that both the Courts had not considered the fact that prosecution witnesses has not spoken about the rash or negligence on the part of the accused. They have only said that the bus was driven very fast by the accused. Driving a vehicle in a high speed *per se* is not an inference for rash or negligent driving. There must be evidence to show by driving the vehicle at high speed it likely to endanger the human life.



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7. In this case, none of the witness had disposed that the vehicle was driven in a manner endangering the human life or rashly. For the said reason, this Court finds that there is error in the correctness of the lower Courts finding, which requires interference.

8. Accordingly, the conviction and sentence passed by trial Court in C.C.No.5750 of 2010 as confirmed by the appellate Court in C.A.No.46 of 2014, is set aside and the revision is allowed. Fine amount, if any paid shall be refunded to the petitioner. The bail bonds executed by him, stands cancelled.

15.06.2022

AT
Internet : Yes
Index : Yes/No
Speaking / Non-speaking



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Dr.G.JAYACHANDRAN,J.

AT

To

- 1.The IV Additional Sessions Judge, Chennai.
- 2.The IV Metropolitan Magistrate, Saidapet, Chennai.
- 3.The Inspector of Police,
R-4, Pondy Bazar Traffic Investigation Wing,
T.Nagar, Chennai - 17.

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