

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-11-2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.1072 of 2011

Venkatesh

.. Petitioner/Accused

Vs.

State by

Inspector of Police,
Bagalur Police Station,
Hosur Taluk,
Krishnagiri District.

.. Respondent/Complainant

This Criminal revision is preferred under Section 397 r/w Section 401 of Cr.P.C., against the judgment, dated 22.11.2010 made in C.A.No.132 of 2007 by the Additional Sessions Judge, Krishnagiri, confirming the judgment, dated 21.11.2007 made in C.C.No.26 of 2007 by the Judicial Magistrate No.I, Hosur.

For Petitioner : Mr.A.Balamurugan for
Mr.A.P.Venkatachalapathy

For Respondent : Mr.R.Sekar,
Government Advocate (Crl.Side)

O R D E R

The revision petitioner is the accused in C.C.No.26 of 2007 on the file of the learned Judicial Magistrate No.I, Hosur, Krishnagiri District.

2. The accused was prosecuted before the said Magistrate for offences under Sections 279 and 304-A IPC.

3. On 10.3.2007, at about 7 p.m., near Chandra Stores on the Malur-Hosur Road, Krishnagiri District, a road accident took place. In this accident, the father of PWs-1 to 3 sustained serious injuries. He died of road accident injuries at the Hospital.

4. According to prosecution, the accused who came driven a Tempo Van from the opposite side, namely, from Malur side in a rash and negligent manner dashed against PW-1's father

and that is how he died. PWs-1, 4 and 5 have been examined as eye-witnesses in this case.

5. PW-1 had lodged Ex.P1 complaint with PW-9. The dead body of the deceased has been dissected by PW-8. PWs-10 and 11 have investigated this case. Final Report for offences under Sections 279 and 304-A IPC has been filed as against the accused.

6. The Trial Court believing the evidence of the prosecution witnesses convicted the accused under Sections 279 and 304-A IPC and sentenced the accused to 6 months R.I with a fine of Rs.4,000/-, i/d 1 month S.I under Section 304-A IPC. However, no separate sentence has been imposed under Section 279 IPC.

7. The accused challenged the said conviction and sentence in C.A.No.132 of 2007 before the learned Additional Sessions Judge, Krishnagiri. The learned Appellate Judge, after hearing both side, dismissed the appeal and confirmed the said conviction and sentence. In such circumstances, challenging the conviction and sentence awarded by both the Courts below, the accused has directed this revision.

8. The learned counsel for the revision petitioner would contend that it is the duty of the prosecution to establish beyond all reasonable doubts that the Driver has drove the Tempo Van on that day at the accident place in a rash and negligent manner and caused the road accident and death of PW-1's father by proper and acceptable legal evidence. In this case, the evidence of PWs-1, 4 and 5 would clearly show that they have not witnessed the actual manner of road accident. There is material contradiction in their evidence. They are planted witnesses and their evidence cannot be accepted. This aspect has been missed by both the Courts below.

9. On the other hand, the learned Government Advocate submitted that the evidence of PWs-1, 4 and 5 is clinching. They have also seen the manner in which the accused came driven the Tempo Van. The accused has caused the accident and it is because of him, PW-1's father has lost his life. Both the Courts have rightly appreciated the evidence and punished him.

10. I have anxiously considered the rival submissions, perused the impugned judgments and also the entire materials on record.

11. In Criminal Law it is basic that it is the duty of the prosecution to establish the offences alleged as against the accused beyond all reasonable doubts by letting in proper

evidence, may be direct evidence or circumstantial evidence. Now, in this case, it is based on the direct evidence of PWs-1, 4 and 5. They were examined as eye-witnesses in this case.

12. PW-1 is the son of the deceased. He is also the author of FIR in this case. According to him, at the time of accident, his father was riding a Bicycle on the North-South road from South to North, namely, he was proceeding from Hosur side to Malur side and he was behind his father at 10 feet away and at about that time, the accused came driven the Tempo Van from the opposite side, overtaken another vehicle and dashed from the right side on the Bicycle of his father and his father had sustained serious injuries.

13. PW-1 had stated that after the accident, the accused has escaped and took away the Tempo Van from the scene place. However, it is the evidence of PW-4 that the accused took the injured in his Tempo Van to the Hospital. Further, in their evidence, both PWs-4 and 5 have not mentioned the presence of PW-1 at the place of accident.

14. In his chief-examination, PW-4 came forward with a new version. He had stated that then the deceased was walking along the road. However, in his cross-examination, PW-4 had stated that then the man was riding the Bicycle. PW-4 also stated that at about the time of accident, he was discussing with his friend/PW-5 and both have witnessed the actual manner of the road accident. However, PW-5 says that he has not actually seen the accident and he came to the place only after hearing the sound. Thus, there is contradictory version in the evidence of PWs-4 and 5.

15. The eye-witnesses in this case, namely, PWs-1, 4 and 5 are inconsistent. There are material contradictions in their evidence. In such circumstances, it is quite unsafe to place reliance on their evidence and recorded a finding of guilty. The Trial Court as well as the Appellate Court have completely missed these aspects. Both the Courts have not appreciated the evidence in proper perspective. Thus, their findings suffers from legality. The sentence awarded based upon such a flawed finding must go.

16. In view of the above, ordered as under:-

- (1) This Criminal Revision is allowed;
- (2) The conviction and sentence awarded by the Trial Court as well as the Appellate Court are set aside;

(3) The accused/revision petitioner is acquitted under Sections 279 and 304-A IPC;

(4) The fine amount shall be refunded to the revision petitioner.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

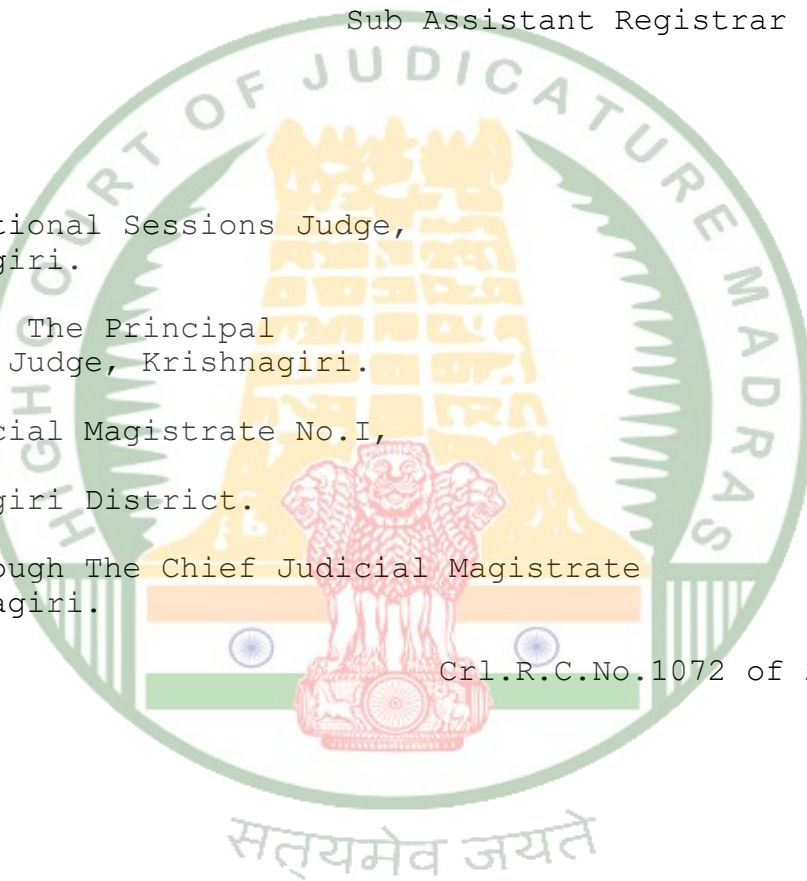
Svn

To

1. The Additional Sessions Judge,
Krishnagiri.
- 2.-do- Thro' The Principal
Sessions Judge, Krishnagiri.
3. The Judicial Magistrate No.I,
Hosur,
Krishnagiri District.
4. -do- through The Chief Judicial Magistrate
Krishnagiri.

Cr1.R.C.No.1072 of 2011

LRS (CO)
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