

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19-10-2016

CORAM

THE HONOURABLE DR. JUSTICE P.DEVADASS

Criminal Revision Case No.184 of 2011

P.Janakiram

..Petitioner/Accused

vs.

State Represented by
Inspector of Police,
Mahalingapuram Police Station,
Pollachi

..Respondent/Complainant

This Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code as against the judgment dated 2.9.2010 made in Criminal Appeal No.138 of 2010 on the file of the Additional District cum Sessions Court, Fast Track Court No.III, Coimbatore, confirming the judgment dated 9.6.2010 made in C.C.No.8 of 2010 on the file of the Court of the Judicial Magistrate No.II, Pollachi.

For petitioner : Mr.S.Vadivel Murugan

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

ORDER

The revision petitioner is the accused in C.C.No.8 of 2010 on the file of the learned Judicial Magistrate No.II, Pollachi.

2. This revision arose under the following circumstances:-

(a) The deceased, aged about 73 years, on 18.7.2009, left Pollachi in the Negamam bound Town Bus driven by the accused/revision petitioner. His son/PW1 also travelled along with the deceased. In between Pollachi and Negamam, there is Cheran Nagar. Cheran Nagar has got a separate bus stop. At about 1.40 p.m., the said Bus passed away the said Bus Stop without stopping it. The deceased was thrown out from the bus. He died of mortal wounds. PW-1 lodged complaint with PW-8 Head Constable, Mahalingapuram Police Station in Pollachi;

(b) PW-9 Inspector took up his investigation. PW-6 MV Inspector inspected the bus and reported that there is no mechanical defect in the bus. The dead man's body was dissected by PW-5 Dr.Muthiah and he reported that he died of fatal injuries.

(c) PW-4 has been examined to speak about the Observation Mahazar drawn out by the Investigation Officer/PW-9.

3. Referring to the prosecution evidence, learned Judicial Magistrate No.II, Pollachi convicted the revision petitioner under Section 304-A IPC and sentenced him to 6 months S.I.

4. Aggrieved, the revision petitioner challenged his conviction and sentence in C.A.No.138 of 2010. The learned Additional Sessions Judge (Fast Track Court No.III), Coimbatore, after hearing both sides, dismissed the appeal and confirmed the conviction and sentence.

5. Challenging the said conviction and sentence, the accused is before us.

6. The learned counsel for the revision petitioner would contend that the conviction recorded and the sentence awarded by both the Courts below suffers from legality. Both the Courts have recorded the findings, disregarding certain vital aspects emanated from the evidence adduced. Certain vital aspects in the evidence of PWs-1 and 2, if considered, would not have resulted in conviction, however, they were brushed aside by both the Courts below. In this view of the matter, the learned counsel for the revision petitioner would try to impress upon this Court that the findings of both the Courts below suffers from perversity.

7. On the other hand, the learned Government Advocate would contend that the rashness with which the bus was driven by the revision petitioner has been amply spoken to by PWs-1 and 2 and the technical evidence has been given to by PW-6 the MV Inspector. In the circumstances, the learned Magistrate as well as the learned Additional Sessions Judge, have rightly convicted the accused and appropriately punished him.

8. I have given my deep consideration to the submissions of both sides, perused the impugned judgments and also the materials on record.

9. At this stage, under Section 397 read with Section 401 Cr.P.C., this Court has to see whether the judgments rendered by both the Courts below suffer from any legality, whether they have taken into account evidence which they ought not to have taken into, whether they have left out any piece of evidence which they were required to take into account.

10. There is no doubt that at the Cheran Nagar bus stop, the bus did not stop. It stopped only after the said bus stop. PW-1's father was found on the road with injuries. It is an incident of road accident.

11. But to mulct the accused with criminal liability for the death of the deceased, it is incumbent upon the prosecution to establish that the bus driver/accused was rash and negligent in driving the bus. Then only Section 304-A IPC got attracted.

12. The specific version of the prosecution is that the accused had failed to stop the bus at the Cheran Nagar bus stop even after the hue and cry of the passengers. However, the accused has to stop the bus after the bus stop applying sudden brake and because of that, the deceased sitting on the rear side of the bus, was suddenly thrown out of the bus and that is how the deceased had died.

13. The evidence of PW-1 would show that when the bus was stopped, the deceased was sitting in the middle of the bus. Then the question arises whether the deceased could have been thrown out from the bus. It would go as against the common sense. PW-1 did not say that then his father sitting in a seat near the rear side gate entry of the bus. This vital aspect has been missed by both the Courts below.

14. PW-2 is a co-passenger. His evidence would show that only after PW-7 whistled the bus stopped. In this connection, the learned counsel for the revision petitioner submitted that only on the Conductor raising the whistle sound, the driver could stop the bus. Thus, there must be a direction in the form of whistle sound from the Conductor to stop the bus. The evidence of PW-2 is very crystal clear that only after the whistle from PW-7, the accused has stopped the bus. In this connection, the learned counsel for the revision petitioner would submit that in such circumstances, the accused cannot be faulted in he having stopped the bus.

15. A technical point also has been raised by the learned counsel for the revision petitioner that in the facts and circumstances of the case, in order to implicate the accused under Section 304-A IPC, the velocity and the force with which the sudden brake has been applied by the accused also has to be established. This cannot be through oral evidence. It has to be established through a technical person. However, it was not so established. This aspect also has not been considered by both the Courts below.

16. PW-9 has investigated this case. He admits that he has not examined any co-passengers other than PWs-1 and 2 that the passengers have raised hue and cry to stop the bus.

17. Thus, we find great force in the submissions of the learned counsel for the revision petitioner that both the Courts below have failed to take note of the vital piece of evidence and they have not viewed the evidence in proper perspective.

18. We have convinced that the findings recorded by both the Courts below suffers from legality and regularity and it amounts to legal perversity, calling for our interference.

19. In view of the foregoing, ordered as under:-

(a) This Criminal Revision is allowed;

(b) The conviction and the sentence awarded by the learned Judicial Magistrate No.II, Pollachi in C.C.No.8 of 2010 which has been confirmed by the learned Additional Sessions Judge (Fast Track Court No.III), Coimbatore, in C.A.No.138 of 2010 are set aside;

(c) The revision petitioner/accused is acquitted under Section 304-A IPC.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

Copy to:

- (i) Principal Sessions Judge,
Coimbatore.
- (ii) Additional Sessions Judge,
(Formerly Fast Track Court No.III),
Coimbatore.
- (iii) Judicial Magistrate No.II,
Pollachi.
- (iv) Superintendent,
Central Prison,
Coimbatore.
- (v) Inspector of Police,
Mahalingapuram Police Station,
Pollachi,
Coimbatore District.
- (vi) The Public Prosecutor, High Court, Madras.

+ 1 cc to M/s. S. Vadivel Murugan, Advocate SR.59311

Cr1.RC No.184 of 2011

THS (CO)

Eu 17.11.16