

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-11-2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.591 of 2011

M.Saravanan

.. Petitioner/Accused

Vs.

State by Inspector of
Police Traffic Investigation,
Poonamallee
(Cr.No.217 of 2008)

... Respondent/Complainant

This Criminal revision is preferred under Sections 397 & 401 of Cr.P.C., against the judgment, dated 12.4.2011 made in C.A.No.7 of 2011 by the Principal District and Sessions Judge, Trivellore, confirming the judgment, dated 2.2.2011 made in C.C.No.331 of 2009 by the Judicial Magistrate No.I, Poonamallee.

For Petitioner : Mr.V.K.Sathiamurthy for
Mr.C.Rajan.

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

O R D E R

The revision petitioner is the accused in C.C.No.331 of 2009 on the file of the learned Judicial Magistrate No.I, Poonamallee, Tiruvellore District.

2. On 23.4.2008, at about 11.15 a.m., near Porur Roundana, just opposite to City Park Hotel, a road accident took place. In this, PW-1's father was seriously injured. He was first treated by PW-4/Doctor in Sri Ramachandra Medical College Hospital, Porur. Subsequently, the injured died of road accident injuries.

3. The prosecution version of the case is that on that day when the deceased was attempting to cross the road, the accused came driven his Motorbike TN-09-AM 8454 in a rash and negligent manner and dashed against him.

4. The main witness is PW-1. He is the author of FIR. He is an ocular witness in this case. PWs-2 and 3 are mahazar witnesses. They have not witnessed the accident. There was no mechanical defect in the said Motorbike (PW-5/M.V. Inspector). PW-7/S.I of Police registered this case. PW-8/Inspector investigated this case and filed the Final Report for offences under Sections 279 and 304-A IPC as against the accused.

5. Relying on the said evidence, the Trial Court convicted the accused on both the counts. It sentenced him to 1 year R.I and also fined him Rs.1,000/- i/d 1 month S.I under Section 304-A IPC. However, it did not impose any separate sentence under Section 279 IPC.

6. The said conviction and sentence were challenged by the accused in C.A.No.7 of 2011 before the learned Principal Sessions Judge, Trivellore. The learned Appellate Judge confirmed the said conviction and sentence and dismissed the appeal. In the circumstances, the accused has directed this revision.

7. The learned counsel for the revision petitioner contended that both the Courts below have thoroughly failed in appreciating the evidence in proper perspective. The evidence of PW-1 and other witnesses, would clearly show that PW-1 would not have seen the actual manner of road accident. PW-1's evidence is of no use to the prosecution. Less of him, no case for prosecution as no other witnesses testified before the Trial Court as to the actual manner of this road accident. There is no evidence to sustain the allegations that the accused has driven the Motorbike in a rash and negligent manner.

8. The learned counsel for the revision petitioner further submitted that the prosecution evidence does not link the accused with this case. In appreciating the evidence, both the Courts have erred in relying on the evidence of PW-1. The findings recorded and the sentence awarded by both the Courts below suffers from legality.

9. On the other hand, the learned Government Advocate (Criminal Side) would submit that PW-1 is none other than the son of the deceased. At about that time, he accompanied his father. He had witnessed the accident. In the facts and circumstances, his testimony is quite sufficient to convict the accused.

10. I have given my anxious considerations to the submissions of both sides, perused the impugned judgments and also the entire materials on record.

11. Now the question before us is whether the findings recorded by the Trial Court and the Appellate Court suffers from any legality, propriety and regularity, calling for our interference under Section 397 r/w Section 401 Cr.P.C.

12. The prosecution case is solely rest on the evidence of PW-1. Sections 279, 304-A IPC seek to punish a person who commits a rash and negligent act, who causes death of a person by his such rash and negligent act.

13. Now, in this case, PW-1 had stated that he had seen the accused came driven his Motorbike and hit against his father while his father was crossing the road near the Porur Roundana. PW-1 had also stated that he took his injured father to Sri Ramachandra Medical College Hospital, Porur. However, PW-4, the Doctor had stated that one Saravanan had brought the injured to the Hospital. The said Saravanan is the accused in this case. Before the Trial Court also PW-4 reiterated the same. In Ex.P-4/Accident Register Copy also the same has been mentioned. The accused was arrested by PW-8/Inspector on 29.4.2008. PW-8 also stated that on that day at the Police Station, PW-1 had identified the accused. The cross-examination of PW-1 shows that he has seen the accused for the first time only at the Police Station. Thus, PW-1 had simply bluffed. A close reading of his evidence would show that he had not witnessed the accident because at that time, he was near a Book Shop. He came to the place of accident after hearing the sound. All would go to show that PW-1 had not witnessed the actual manner of this road accident. However, the Trial Court as well as the Appellate Court have failed to notice these aspects in the prosecution evidence. Eschewing the evidence of PW-1, there is nothing incriminating to implicate the accused with the death of the deceased. Thus, the findings recorded by both the Courts below suffers from legality. So they are required to be revised.

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

- (1) This Criminal Revision is allowed;
- (2) The conviction recorded and the sentence awarded by the Trial Court as well as by the Appellate Court are set aside;
- (3) The accused is found not guilty under Sections 279 and 304-A IPC;

(4) He shall be refunded the fine amount.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Principal District and Sessions Judge,
Tiruvellore.
2. The Judicial Magistrate No.I,
Poonamallee.
- 3 The Chief Judicial Magistrate, Thiruvallur
4. Inspector of Police,
Traffic Investigation,
Poonamallee.
5. Superintendent,
Central Prison,
Puzhal.
- 6 The Public Prosecutor
High Court,
Madras.

+2cc to Mr. C. Rajan, Advocate Sr.No63797(27/12/2016)

kji(CO)
md(28/11/2016)

Cr1.R.C.No.591 of 2011