

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1350 of 2015

and

M.P.Nos.1 & 2 of 2015

Rajasekar
S/o.Rajagopal

... Petitioner

vs

The State of Tamil Nadu
represented by
Inspector of Police,
Kiliyanur Police Station,
Villupuram District.
Crime No.487 of 2002

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of learned II Additional District and Sessions Judge, Tindivanam, passed in C.A.No.14 of 2015 on 26.11.2015 confirming the judgment of learned District Munsif cum Judicial Magistrate, Vanur, passed in C.C.No.5 of 2003 on 31.03.2015.

For Petitioner : Mr.Paul Kanagaraj
For Respondents: Mr.C.Iyyapparaj,
Government Advocate [Crl.side]

O R D E R

सत्यमेव जयते

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offences u/s.279, 337 and 304-A (3 counts) IPC and sentencing him to 1 year S.I. for each count u/s.304-A IPC, 3 months S.I. for offence u/s.337 IPC and 1 month S.I. for offence u/s.279 IPC.

2. The prosecution case is that on 03.09.2002 at about 05.30 p.m., the petitioner/accused rashly had driven a lorry bearing registration No.TN-28-1404 and dashed against the Ambassador Car

bearing registration No.KA-02-C-3555, resulting in the death of three persons and injuries to one. A case was registered in Crime No.487 of 2002 on the file of respondent. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.279, 337 and 304-A IPC, the case was tried in C.C.No.5 of 2003 on the file of learned District Munsif cum Judicial Magistrate, Vanur.

3. Before the trial Court, the prosecution examined twelve witnesses and marked eight exhibits. None were examined on behalf of the defence nor were any exhibits marked.

4. On appreciation of materials before it, the trial Court, under judgment dated 31.03.2015, convicted the petitioner and sentenced him to 1 year S.I. for each count u/s.304-A (3 counts) IPC, 3 months S.I. for offence u/s.337 IPC and 1 month S.I. for offence u/s.279 IPC. There against, petitioner preferred an appeal in C.A.No.14 of 2015 on the file of learned II Additional District and Sessions Judge, Tindivanam, which came to be dismissed under judgment dated 26.11.2015. Hence, this revision.

5. The first contention of learned counsel for petitioner is that the trial Court wrongly has arrived at a conclusion that the rash and negligent driving of the lorry by the petitioner/accused was the cause of the accident since the other vehicle involved in the accident was a Car. Such a presumption is not sustainable. Learned counsel next contended that in the absence of eye witnesses to the occurrence, the trial Court fell into error in convicting the petitioner merely on the say so of the witnesses.

6. Heard learned Government Advocate [Crl.side] on the above submissions.

7. On consideration of rival submissions, this Court finds that there is no certainty regards the vehicle involved in the accident as also the actual accused. Though the trial Court has reasoned that non-examination of investigation officer would not affect the prosecution case as the evidence of PW-1 was sufficient to arrive at a finding of conviction, this Court is of the view that non-examination of the investigation officer is fatal to the prosecution case.

This Criminal Revision Petition shall stand allowed. The judgment of learned II Additional District and Sessions Judge, Tindivanam, passed in C.A.No.14 of 2015 on 26.11.2015 confirming the judgment of learned District Munsif cum Judicial Magistrate, Vanur, passed in C.C.No.5 of 2003 on 31.03.2015, shall stand set aside. Petitioner is acquitted of all charges. Bail bond(s), if any, executed by petitioner shall stand cancelled. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The II Additional District and Sessions Judge,
Tindivanam.
- 2.Thro' The Principal District & Sessions Judge,
Villupuram.
- 3.The District Munsif cum Judicial Magistrate,
Vanur.
- 4.The Inspector of Police,
Kiliyanur Police Station,
Villupuram District.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.C.Paul Kanagaraj, Advocate sr.5425

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nm(CO)
srg(17/03/2016)

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