

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1004 of 2016
and
Crl.M.P.No.8084 of 2016

Velusamy ... Petitioner/Accused

Vs.

State represented by
Inspector of Police,
Vellodu Police Station,
Erode District.
(Crime No.63/2009)

.... Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, praying to call for the records in Crl.A.No.8 of 2016 on the file of the learned 2nd Additional District and Sessions Judge, Erode, and set aside the order dated 07.04.2016, confirming the judgment of the learned District Munsif/Judicial Magistrate, Perundurai, dated 22.12.2015 in C.C.No.365 of 2009 convicting and sentencing the petitioner, and acquit him from all the charges by allowing this revision.

For Petitioner : M/s.K.R.Samratt

For Respondent : Mrs.M.F.Shabana
Government Advocate (Crl.Side)

ORDER

This criminal revision case is directed against the judgment dated 07.04.2016 passed by the learned II Additional District and Sessions Judge, Erode, in Crl.A.No.8 of 2016 and confirming the judgment passed in C.C.No.365 of 2009 by the learned District Munsif-cum-Judicial Magistrate, Perundurai, on 22.12.2015.

2. The brief facts of the case are as follows:-

The respondent police filed a final report against the accused/revision petitioner herein for the offences punishable under Sections 279, 338, 304(A) IPC before the learned District Munsif-cum-Judicial Magistrate, Perundurai,

and the learned District Munsif-cum-Judicial Magistrate, after analysing the evidence adduced on the side of the prosecution, convicted the accused for the offences under Sections 279, 338 and 304(A) IPC and sentenced him to undergo simple imprisonment for one month for the offence under Section 279 IPC and sentenced to undergo simple imprisonment for two months for the offence under Section 338 IPC and also sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.3,000/-, in default, to undergo one month simple imprisonment for the offence under Section 304(A) IPC and the sentences of imprisonment were ordered to run concurrently. As against the said conviction and sentence, the accused/revision petitioner herein had preferred an appeal in Crl.A No.8 of 2016 before the Sessions Court and the learned II Additional District and Sessions Judge, Erode, after analysing the judgment of the trial Court and the relevant materials, confirmed the conviction and sentence passed by the learned District Munsif-cum-Judicial Magistrate, Perundurai. As against the same, the present criminal revision case is preferred by the petitioner.

3. The learned counsel appearing for the petitioner would mainly contend that the trial Court and the lower Appellate Court failed to look into the fact that the eye witnesses have not stated anything as to the accident and the rash and negligent driving of the revision petitioner and in the absence of any such evidence, the conviction is unsustainable. It is further contended that both the trial Court and the lower Appellate Court completely ignored the fact that the investigation in the case is perfunctory and manipulated. Further, the Courts below have failed to note the fact that the mahazar witnesses P.W.7 and P.W.8 are the close relatives of P.W.1 and the deceased and they are not independent witnesses. It is also contended that the lower Appellate Court had failed to see that the decision of the trial Court was based on surmises and conjectures which were at complete variance with the evidence on record. In the above circumstances, the order passed by the trial Court may be set aside and the accused may be acquitted. The learned counsel for the petitioner further submitted that the accused is in jail from 25.08.2016 and the period already undergone by the petitioner may be treated as punishment and the accused may be set at liberty.

4. The learned Government Advocate (Crl.Side) would contend that in this case, the prosecution clearly proved the case against the present petitioner under Sections 279, 338 and 304(A) IPC. Hence, the trial Court, only after analysing the evidence of the witnesses available on record, came to a conclusion that the charges against the accused were proved beyond reasonable doubt and convicted and sentenced the accused for the offences stated above. There is no infirmity

or illegality in the orders passed by both the Courts below and hence, the criminal revision case may be dismissed.

5. In this case, P.W.1, in his deposition, clearly deposed with regard to the rash and negligent driving of the petitioner/accused. P.W.1 was treated as hostile witness by the prosecution and P.W.3 corroborated the evidence of P.W.1. Hence, the prosecution case was proved by the evidence of P.W.1 which is corroborated by P.W.3. Since the rash and negligent driving of the petitioner/accused was clearly proved by the prosecution beyond reasonable doubt, the trial Court came to a conclusion that the charges against the accused for the offences under Sections 279, 338 and 304(A) IPC are clearly proved by the prosecution. The trial Court had elaborately dealt with the evidence and found the accused guilty. The reasons given by the trial Court for convicting the accused are acceptable and there is no infirmity or illegality in the judgment passed by the trial Court. Therefore, the conviction imposed on the accused by the trial Court which was also confirmed by the lower Appellate Court is confirmed.

6. The learned counsel for the revision petitioner/accused prayed for leniency with regard to the sentence of imprisonment imposed on the petitioner/accused and also submitted that the accused is in jail from 25.08.2016.

7. Considering the facts and circumstances of the case, this Court is of the considered view that the sentences of imprisonment imposed on the petitioner/accused for the offences under Sections 279, 338, 304(A) IPC has to be modified.

8. In the result, the Criminal Revision Case is partly allowed and the sentences of imprisonment imposed on the petitioner/accused by the learned District Munsif-cum-Judicial Magistrate, Perundurai, in C.C.No.365 of 2009, on 22.12.2015, for the offences under Sections 279, 338, 304(A) IPC are modified and reduced to the period already undergone by the accused and the period from 25.08.2016 to 12.09.2016 is treated as punishment. The fine amount imposed on the petitioner/accused by the trial Court has to be increased to Rs.5,000/- and in default of payment of fine amount, the petitioner has to suffer one month simple imprisonment. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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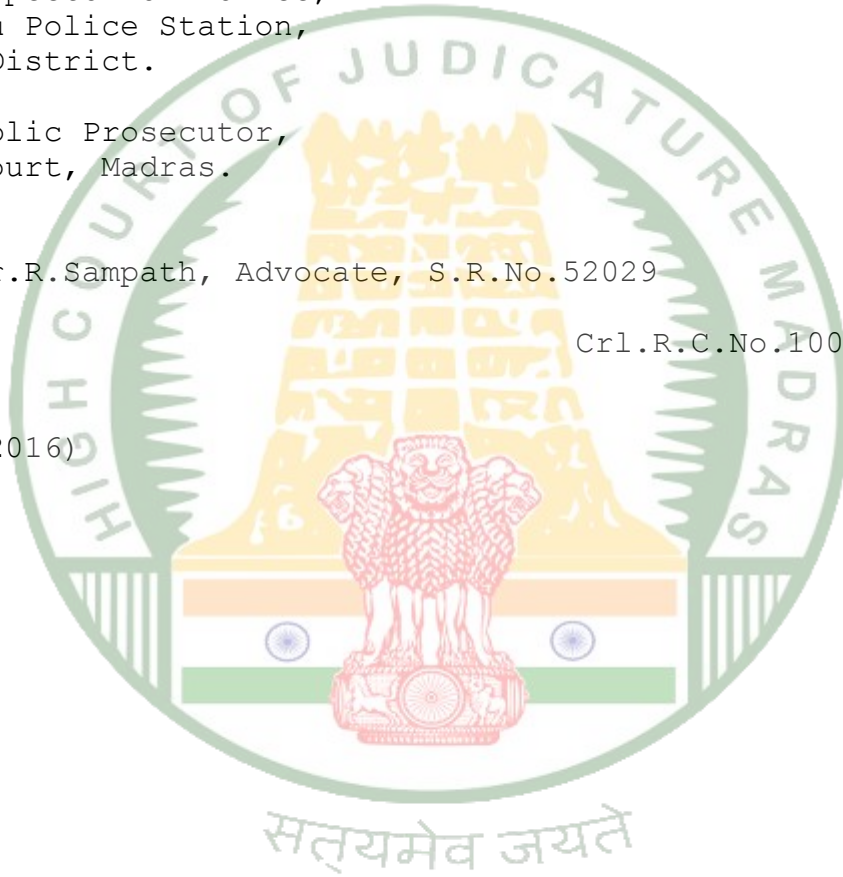
To

1. The II Additional District and Sessions Judge,
Erode.
2. The District Munsif-cum-Judicial Magistrate,
Perundurai.
3. The Inspector of Police,
Vellodu Police Station,
Erode District.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Sampath, Advocate, S.R.No.52029

Cr1.R.C.No.1004 of 2016

RP (CO)
CA(20/09/2016)



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