

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.536 of 2010

&

M.P.Nos.1 & 2 of 2010

Sudheep Kumar
S/o.Govindasamy

.. Petitioner/ Accused

vs.

State by
Highways Traffic Inspector of Police
Poonamallee
Kancheepuram District

.. Respondent/ Complainant

Criminal Revision filed under section 397 and 401 Cr.P.C. against the judgment of learned Additional District Judge, Fast Track Court I, Poonamallee in C.A.No.67 of 2009 on 19.03.2010 modifying the judgment passed by the learned Judicial Magistrate II, Poonamallee in C.C.No.354 of 2006 on 28.10.2009.

For Petitioner : Mr.V.Balu

For Respondent : Mrs.M.F.Shabana
Government Advocate [Crl.side]

O R D E R

This revision arises against the judgment of learned Additional District and Sessions Judge, Fast Track No.I, Poonamallee, passed in C.A.No.67 of 2009 on 19.03.2010 modifying the judgment of learned Judicial Magistrate II, Poonamallee, passed in C.C.No.354 of 2006 on 28.10.2009.

2. The prosecution case is that the accused, driver of lorry bearing Registration No.TN 45 5700 drove the same in a rash and negligent manner and hit one Arunkumar, who was riding a cycle and caused his death on 06.03.2006 at 04.30pm. A case was registered in Crime No.14 of 2006 on the file of respondent and upon completion of investigation and filing of charge sheet informing commission of offences u/s.279 and 304-A IPC, the case

was tried in C.C.No.354 of 2006 on the file of learned Judicial Magistrate II, Ponnammallee.

3. To prove its case, the prosecution examined eight witnesses and marked seven exhibits. None were examined on behalf of the defence nor were any exhibits marked. The trial Court, under judgment dated 28.10.2009, convicted the petitioner for offences u/s.279 and 304-A IPC and sentenced him to 6 months R.I. and fine of Rs.750/- i/d 1 month S.I. for offence u/s.279 IPC and 1 year R.I. and fine of Rs.3,000/- i/d 2 months S.I. for offence u/s.304-A IPC. There against, the petitioner preferred an appeal in C.A.No.67 of 2009 on the file of learned Additional District and Sessions Judge cum Fast Track Judge I, Poonammallee. Appellate Court, under judgment dated 19.03.2010, while confirming the sentence of the trial Court in respect of offence under Section 304-A IPC, set aside the sentence ordered by the trial Court in respect of offence under Section 279 IPC. Fine imposed by the trial Court was confirmed. Appellate Court directed that the sentences run concurrently. Against such finding, the present revision has been filed.

4. Heard learned counsel for petitioner and learned Government Advocate (Crl.side) and perused the records.

5. This revision is to be allowed for the following reasons:
1. PW1 categorically admits to not being the defacto complainant. Though he claims to have taken the deceased to hospital, it is the evidence of Pws 3 and 4 that it was, they who took the deceased to hospital.
 2. Though PW1 has denied to deposing that he was an eye witness since the deceased Arun Kumar was his friend, it is seen from his cross-examination that they both belonged to the same college. It is the specific case of the defence that the alleged eye witness to the occurrence had not witnessed the same. PW3, another alleged eyewitness has admitted to having known the deceased for over a year.
 3. PW4 has been treated hostile by the prosecution upon deposing that the driver of the offending lorry was not before Court. The Accident Register marked as Ex.P3 discloses that the deceased was brought to hospital by one Mohd. Ligayat Ali, an auto driver and an onlooker, Sathish Kumar, apparently PW1. It also states that they were sent to hospital along with the deceased by a Police Constable at the spot.
 4. When the complaint admittedly has not been preferred by PW1 and he has been to the hospital in the manner informed in the Accident Register, the contention of the defence that he is deposing as an eye-witness to the occurrence since the deceased happened to be a fellow collegemate requires serious consideration. The

cycle allegedly used by the deceased has not been seized and produced before Court.

5. It is the evidence of PW2, the Motor Vehicle Inspector, that the lorry was produced for inspection on the very next day after occurrence, but he did not notice any blood stains on the tyre or any other part of the vehicle. It is the prosecution case that the deceased was crushed to death under the wheels of the lorry. In the above said circumstances, this Court holds that the benefit of doubt should be afforded to the petitioner.

This Criminal Revision is allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court I, Poonamallee, passed in C.A.No.67 of 2009 on 19.03.2010 modifying the judgment of learned Judicial Magistrate II, Poonamallee, passed in C.C.No.354 of 2006 on 28.10.2009, is set aside. Petitioner is acquitted of all charges. Fine amount, if any, paid by petitioner shall be refunded to him. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gpa

To

- 1.The Judicial Magistrate II
Poonamallee.
2. do thro the Chief Judicial Magistrate
Chengalpattu
- 3.The Additional District Judge,
Fast Track Court I, Poonamallee
- 4.Highways Traffic Inspector of Police
Poonamallee
Kancheepuram District
- 5.The Public Prosecutor,
High Court, Madras.

1 cc to Mr. Balu, Advocate,. sr. 3084

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MG (CO)
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