

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.687 of 2010

Albert  
S/o.Thangavelu

.. Petitioner/Appellant/Accused

vs.

State represented by  
Inspector of Police,  
Traffic Investigation Wing (Central),  
Coimbatore.

Crime No.191 of 2006 .. Respondent/Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the judgment of learned Additional District and Sessions Judge, Fast Track Court III, Coimbatore, passed in C.A.No.187 of 2009 on 18.06.2010 confirming the judgment of learned Judicial Magistrate VIII, Coimbatore, passed in C.C.No.150 of 2006 on 09.12.2009.

For Petitioner: Mr.T.Munirathnam Naidu

For Respondent: Mr.C.Iyyapparaj

Government Advocate [Crl.side]

O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offences u/s.279, 337 and 304-A IPC and sentencing him to 3 months S.I. for offences u/s.279 and 337 IPC and 1 year S.I. and fine of Rs.3,000/- i/d. 3 months S.I. for offence u/s.304-A IPC.

2. The case of the prosecution is that on 29.05.2006 at about 01.00 p.m., the petitioner, a driver with the State Transport Corporation, rashly had driven the bus bearing registration No.TN-38-N-1359 and dashed against a motorcycle bearing registration No.TN-37-AC-8607 from behind, owing to which the pillion rider fell off the vehicle and was run over by the bus and the rider of the motorcycle sustained injuries. A case was registered in Crime No.191 of 2006 on the file of the 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.150 of 2006 on the file of learned Judicial Magistrate VIII, Coimbatore.

3. Before the trial Court, the prosecution examined fourteen witnesses and marked eleven exhibits. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, the trial Court, under judgment dated 09.12.2009, convicted the petitioner and sentenced to 3 months S.I. for each of the offences u/s.279 and 337 IPC and 1 year S.I. and fine of Rs.3,000/- i/d 3 months S.I. for offence u/s.304-A IPC. The trial Court directed that sentences run concurrently. The appeal in C.A.No.187 of 2009 on the file of learned Additional District and Sessions Judge, Fast Track Court III, Coimbatore, came to be dismissed under judgment dated 18.06.2010. Hence, this revision.

4. Learned counsel for petitioner submits that the prosecution case is of this petitioner, driver of the bus, driving the same in a rash and negligent manner and dashing against the motorcycle driven by PW-2, husband of the deceased, as a result of which the deceased fell off the motorcycle and was run over by the rear wheel of the bus. Learned counsel submits that though PWs.2, 3, 5 and 6 allegedly are eye-witnesses, PW-6 has admitted to having been at the scene only after the occurrence and the other alleged eye witnesses are also not to be believed as the evidence of PW-9, Motor Vehicle Inspector and Ex.P5, Motorcycle Inspection Report, would justify the defence case. The Motorcycle Inspection report informed the following damages to the motorcycle:

"Front wheel mudguard pressed and broken.  
Rear right indicator light glass broken.  
Rear danger light glass broken. Right side  
crash glass pressed and bend. Fork,  
handlebar bend in the right side and  
damaged."

5. It is the defence case that both the motorcycle and bus were travelling in the same direction. The motorcycle which was in front of the bus dashed against another vehicle as a result of which the deceased fell off the vehicle and came under the wheels of the bus.

6. Heard learned Government Advocate [Crl.side] on the above submissions. Learned Government Advocate [Crl.side] submits that the case of the prosecution stands proved through the evidence of PWs.2, 3, 5 and 6, eye witnesses. The Courts below have, on fair appreciation of materials, arrived at a finding of conviction and the same did not call for any interference.

7. This Court would accept the submission of learned counsel for petitioner. As oft stated witnesses may lie but

circumstances will not. The motorcycle on which the deceased was travelling has suffered extensive damage to its front and has suffered no damage to the rear as could be made an issue of, the damage being only to the rear brake light. It is not the prosecution case that the motorcycle suffered damage to its front by being pushed against another vehicle before it as a result of it having been hit from behind by the bus. While so, the defence contention offers a probable explanation on how the front end of the motorcycle suffered damage. In the circumstance, this Court is inclined to interfere with the finding of conviction arrived at by Courts below.

This Criminal Revision shall stand allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court III, Coimbatore, passed in C.A.No.187 of 2009 on 18.06.2010 confirming the judgment of learned Judicial Magistrate VIII, Coimbatore, passed in C.C.No.150 of 2006 on 09.12.2009, shall stand set aside. Petitioner is acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate VIII,  
Coimbatore.
- 2.The Chief Judicial Magistrate,  
Coimbatore.
- 3.The Additional District and Sessions Judge,  
Fast Track Court III, Coimbatore.
- 4.The Inspector of Police,  
Traffic Investigation Wing (Central),  
Coimbatore.
- 5.The Public Prosecutor,  
High Court, Madras.

Cr1.R.C.No.687 of 2010

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srg 04/02/2016