

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.764 of 2010

V.Kumar

S/o.Varadaraj

... Petitioner/ Accused

vs

State represented by
The Inspector of Police,
Pothaturpet Police Station.
Crme No.129 of 2005

... Respondent/ Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of learned Additional District Judge, Fast Track Court III, Thiruvallur, passed in C.A.No.57 of 2007 on 02.07.2010 confirming the judgment of learned Judicial Magistrate, Tiruttani, passed in C.C.No.344 of 2005 on 29.11.2007.

For Petitioner : Mr.R.Jaikumar

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/accused for offences u/s.279 and 304-A IPC and sentencing him to 6 months R.I. and fine of Rs.1,000/- i/d 1 month R.I. for offence u/s.279 IPC and 2 years R.I. and fine of Rs.5,000/- i/d 3 months R.I. for offence u/s.304-A IPC.

2. The prosecution case is that on 27.09.2005 at about 2.30 p.m., the petitioner/accused, a driver with the ABT Parcel Service, rashly had driven the lorry bearing registration No.TAB 8094 and dashed against a motorcyclist, owing to which the motorcyclist met his death. A case in Crime No.129 of 2005 on the file of respondent was registered. 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.344 of 2005 on the file of learned Judicial Magistrate, Tiruttani.

3. Before the trial Court, the prosecution examined nine witnesses and marked seven 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 29.11.2007, convicted the petitioner and sentenced him to 6 months R.I. and fine of Rs.1,000/- i/d 1 month R.I. for offence u/s.279 IPC and 2 years R.I. and fine of Rs.5,000/- i/d 3 months R.I. for offence u/s.304-A IPC. The appeal preferred by petitioner in C.A.No.57 of 2007 on the file of learned Additional District Judge, Fast Track Court III, Thiruvallur, came to be dismissed under judgment dated 02.07.2010. Hence, this revision.

5. Learned counsel for petitioner submits that PW-7, Motor Vehicle Inspector, had admitted to not having inspected the motorcycle driven by the deceased. PW-7 had also admitted to the lorry driven by this petitioner not having suffered so much as a scratch. The Doctor, who conducted postmortem has been examined as PW-6. Ex.P3, Postmortem Report, informs that the deceased had suffered no injuries. It was also admitted by PW-6 that there was no tyre marks over the body. The motorcycle driven by the deceased neither had been registered nor did the deceased hold a driving license. In the circumstances, Courts below ought not to have applied the res ipsa loquitor theory, particularly, where it is the admission of PW-6, Doctor, that there was no tyre mark on the body of the deceased and that the deceased could have died owing to the injuries sustained due to dashing against a tree or stone.

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

Finding merits in the submissions of learned counsel for petitioner, this Court allows this revision. This Criminal Revision shall stand allowed. The judgment of learned Additional District Judge, Fast Track Court III, Thiruvallur, passed in C.A.No.57 of 2007 on 02.07.2010 confirming the judgment of learned Judicial Magistrate, Tiruttani, passed in C.C.No.344 of 2005 on 29.11.2007, shall stand set aside. Petitioner is acquitted of all charges. Bail bond(s), if any, executed by petitioner shall stand cancelled. Fine amount, if any paid, shall be refunded.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gm

To

1.The Additional District Judge,
Fast Track Court III,
Thiruvallur.

2.The Judicial Magistrate,
Tiruttani.

3.The Inspector of Police,
Pothaturpet Police Station.

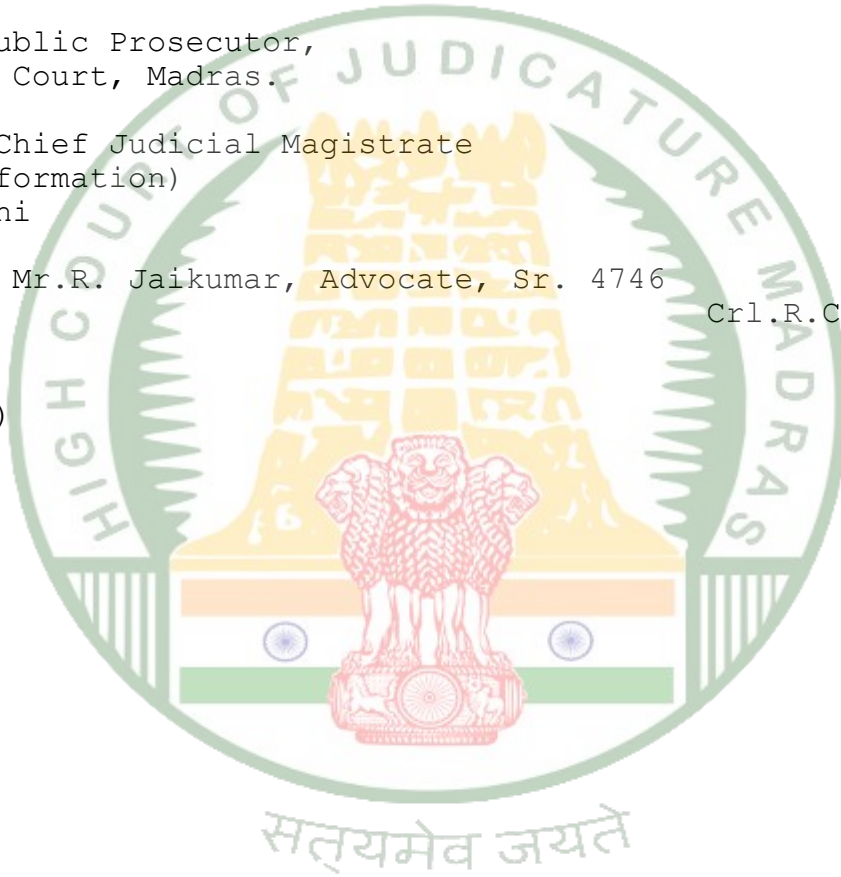
4.The Public Prosecutor,
High Court, Madras.

5. The Chief Judicial Magistrate
(For information)
Tiruttani

1 cc to Mr.R. Jaikumar, Advocate, Sr. 4746

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