

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

CORAM:

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

CrI.R.C.No.810 of 2016

C.Gandhimani
S/o.Chinnathambi

.. Petitioner

VS.

State by
The Inspector of Police,
Bommidi Police Station,
Dharmapuri District.
(Crime No.430 of 2013)

.. Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment dated 26.04.2016 passed by the learned Principal Sessions Judge, Dharmapuri, in C.A.No.21 of 2015 confirming the conviction and passed by the learned Judicial Magistrate, Pappireddipetti, in C.C.No.43 of 2014 on 01.10.2015.

For Petitioner : Mr.R.Shanmugasundaram,
Senior Counsel for Mr.R.Subramanian

For Respondent : Mr.K.Madhan
Government Advocate (Crl.side)

ORDER

This revision arises against the judgment of learned Principal Sessions Judge, Dharmapuri, passed in C.A.No.21 of 2015 on 26.04.2016 confirming the finding of conviction passed by learned Judicial Magistrate, Pappireddipetti, in C.C.No.43 of 2014 on 01.10.2015.

2. Prosecution case is that on 24.12.2013 at 09.00 p.m., when the deceased/Pavunu, S/o.Narasimha Reddy Sungarahalli riding TVS-50 XL vehicle bearing registration No.TN-29B-8024 was on the Bommidi to Dharmapuri Main Road, a Tata Indica Car bearing registration No.TN-25S-7599, driven in a rash and negligent manner dashed against the two wheeler near the house of one Raman on the Vathalamalai Service road, resulting in death. Upon the complaint of PW-1, a case in Crime No.430 of 2013 on the file of respondent was registered. Upon completion of investigation and filing of charge sheet, the case was tried in C.C.No.43 of 2014 on the file of learned Judicial Magistrate, Pappireddipetti.

3. Before trial Court, prosecution examined 17 witnesses and marked 8 exhibits. None were examined on behalf of defence nor were any exhibits marked. Trial Court, under judgment dated 01.10.2015, convicted petitioner for offences u/s.279 and 304-A IPC and sentenced him to fine of Rs.1,000/- i/d

2 weeks S.I. for offence u/s.279 IPC and 6 months S.I. for offence u/s.304-A IPC. There against, petitioner preferred appeal in C.A.No.21 of 2015 on the file of learned Principal District and Sessions Judge, Dharmapuri, which came to be dismissed under judgment dated 26.04.2016. Hence, this revision.

4. Heard learned senior counsel for petitioner and learned Government Advocate [Crl.side].

5. Learned senior counsel for petitioner submitted that while the occurrence had taken place on 24.12.2013 at 7.30 p.m., the First Information Report had been registered only on 27.12.2013, i.e., 3 days after the occurrence. According to the prosecution PWs.2 and 4 were eye witnesses. Learned senior counsel submitted that the prosecution case bristles with infirmities. The evidence of PW-15, postmortem Doctor, informs the case to be one of death owing to septicemia. Learned senior counsel contended that in the circumstances, petitioner ought to have been acquitted.

6. Heard learned Government Advocate [Crl.side], who submits that petitioner is the cause of the accident which resulted in death.

7. PW-17, investigation officer, has deposed to having registered the case on intimation had from hospital and thereafter, proceeding thereto. He has admitted that neither the vehicle was seized nor was the petitioner arrested on the date of occurrence. PW-1 has admitted to requesting the police to trace the vehicle involved in the accident involving his father, the deceased. PW-2, who allegedly witnessed the occurrence has admitted to not knowing who the driver was. PW-4 examined to speak of having witnessed the accident had turned hostile. The evidence PW-15, postmortem Doctor, reveals that the deceased died several days after the accident and owing to septicemia.

8. The mere possibility of the deceased having died owing to septicemia would not avoid the attraction of offence u/s.304-A IPC. None of the witnesses have spoken with any definiteness on the vehicle involved in the accident. The First Information Report has been registered on intimation received from hospital and it is thereafter that PW-17, investigation officer, proceeded to hospital and recorded the statement of PW-1, son of the deceased. The falsity of the First Information Report is borne out by the fact that it informs the number of the vehicle involved in the accident. If indeed, the vehicle number had been informed, there would be no occasion for PW-1 requiring police to ascertain the number of vehicle involved in the accident. While PW-2 admits to not knowing who the driver was, another witness examined to speak to have

witnessed the occurrence has turned hostile. Neither is there definiteness of the vehicle involved in the accident nor the manner in which it took place. In the circumstances, petitioner/accused is entitled to the benefit of doubt.

The Criminal Revision Case shall stand allowed. The judgment of learned Principal Sessions Judge, Dharmapuri, passed in C.A.No.21 of 2015 on 26.04.2016 confirming the finding of conviction passed by learned Judicial Magistrate, Pappireddipetti, in C.C.No.43 of 2014 on 01.10.2015, shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

08.11.2016

Index:yes/no
Internet:yes/no
ub/gm

To

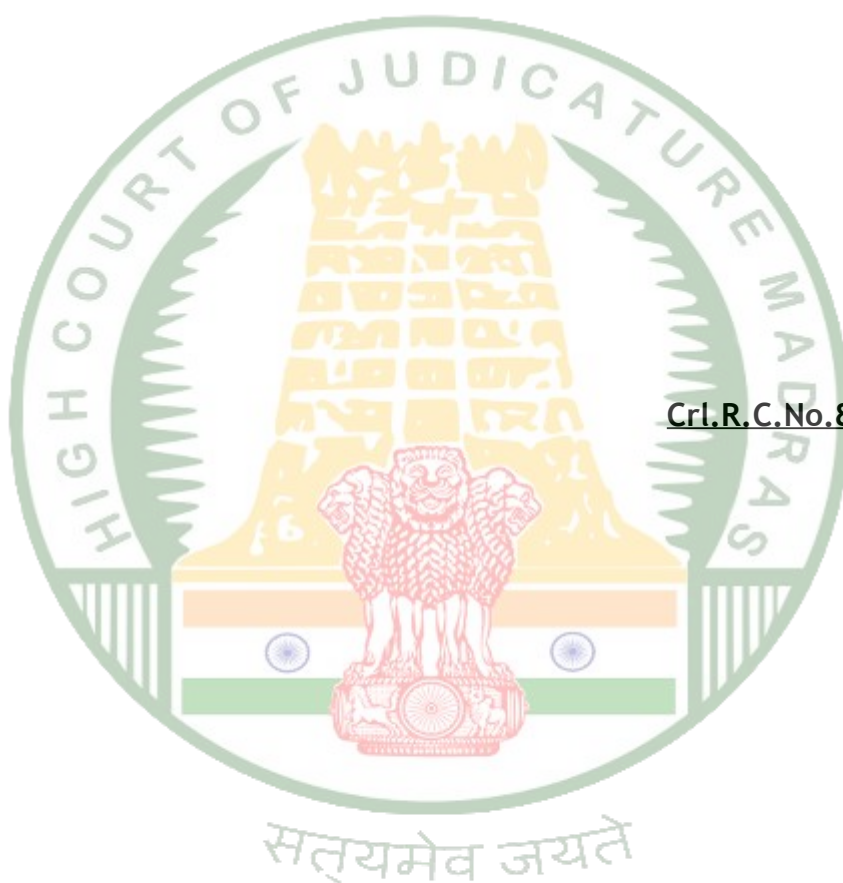
1.The Principal Sessions Judge,
Dharmapuri.

2.The Judicial Magistrate,
Pappireddipetti.

3.The Inspector of Police,
Bommidi Police Station,
Dharmapuri District.

4.The Public Prosecutor,
High Court, Madras.

C.T.SELVAM, J



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