

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.29 of 2014

R.Raghavan

... Petitioner

Vs.

The State by the Inspector of Police
Traffic Investigation Wing
Salem City Police Station
Crime No.37 of 2003

... Respondent

Prayer:- This Criminal revision is filed under Section 397 & 401 of Cr.P.C., against the judgment and conviction imposed in C.A.No.37 of 2013 on the file of the 3rd Additional District and Sessions Judge, Salem dated 30.07.2013 modifying the judgment of conviction imposed in C.C.No.15 of 2011 on the file of the Judicial Magistrate No.IV, Salem dated 08.04.2013 on the file of the Judicial Magistrate No.IV, Salem.

For Petitioners :Mr.C.K.M.Appaji

For Respondents :Mr.R.Ravichandran
Government Advocate (Crl.side)

ORDER

The petitioner is the sole accused in C.C.No.15 of 2011 on the file of the Judicial Magistrate No.IV, Salem. He stood charged for the offences under Section 279 and 304(A) of I.P.C. The Trial Court convicted the petitioner for both charges and sentenced him to undergo one year rigorous imprisonment for each charge and also to pay a fine of Rs.5,000/- in default to undergo one month rigorous imprisonment.

Challenging the same, he filed an appeal in C.A.No.37 of 2013 on the file of the III Additional District and Sessions Judge, Salem. The lower Appellate Court confirmed the conviction and modified the sentence for the offence under Section 304(A) of I.P.C. to nine months rigorous imprisonment and no separate sentence was imposed for the offence under Section 279 I.P.C. Challenging the same, the present revision has been filed.

2.The case of the prosecution in brief is as follows:

The deceased in this case is one Ellappan @ Rangasamy is engaged in mobile ironing and doing his business in front of a Government Maternity Hospital at Cherry Road, Kumarasampatti in Salem. On 22.01.2003, at about 8.30 a.m., while the deceased was doing ironing work, a Mahendra Van bearing Registration No. T.N.49-9696, driven by the petitioner/accused came in a rash and negligent manner and dashed against the deceased and caused grievous injuries. P.W.1, a nephew of the deceased immediately took him to the Government Hospital, Salem, where he was declared dead. P.W.7, Sub-Inspector of Police, (Traffic), Salem, on receipt of intimation from the hospital, immediately went to the hospital recorded the statement from P.W.1 and based on the same, he registered a case in Crime No.37 of 2003 for the offence under section 304(A) IPC and prepared FIR-P.5. P.W.8, the inspector of police, on receipt of the FIR commenced investigation, proceeded to the scene of occurrence and prepared observation mahazar and a rough sketch-P.6 and P.7. Then he recorded the statement of witnesses and conducted inquest on the dead body in the presence of panchayatars and prepared inquest report-P.8. He seized the offending vehicle and sent it for inspection by a motor vehicle inspector. P.W.4, Doctor working in the Government Hospital, Salem conducted the postmortem on the dead

body and filed postmortem report(Ex.P.2) and he was of the opinion that the death was due to shock and hemorrhage due to multiple injuries caused to him. P.W.8 recorded the statement of motor vehicles inspector, conducted investigation and filed charge sheet.

3.Considering all the above materials, the Trial Court framed charges under Section 304(A) and 279 IPC and when it was put to the accused, he denied the same. In order to prove the case, prosecution examined marked 8 witnesses and marked 8 exhibits.

4.Out of the witnesses examined, P.W.1 is the nephew of the deceased he is an eye witness to the occurrence. According to him, at the time of occurrence, while the deceased was doing ironing work in a mobile cart, the offending vehicle driven by the accused, came in a rash and negligent manner dashed against the mobile cart caused grievous injuries to the deceased. Then he took him to the hospital, where he was declared dead. Then he gave complaint to the police. P.W.2 is a relative of the deceased, but he was not an eye witness to the occurrence. P.W.3 is an independent eye witness. According to him, on the date of occurrence, at about 8.30 a.m., while the deceased was ironing clothes in his mobile cart in the roadside, a van driven by the accused came in a rash and negligent manner and dashed against the mobile cart caused severe injuries to the deceased, then he informed the same to the relatives. P.W.4 is the Doctor, who conducted postmortem autopsy on the dead body and gave report. P.W.5, a Motor Vehicle Inspector, who inspected the vehicle and filed a report that there is no mechanical defect in the offending vehicle. P.W.6 is the witness to the observation mahazar, who had turned hostile. P.W.7, Sub-

Inspector of Police, who registered a complaint. P.W.8, Inspector of Police, conducted investigation, prepared observation Mahazar and rough sketch, recorded the statement of witnesses and sent the offending vehicle to the Motor Vehicles Inspector and after completing the investigation, filed final report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same. Considering the above materials, the Trial Court convicted the accused for the offence under Section 279 and 304(A) of I.P.C., as mentioned in paragraph-1 of this order. Challenging the same, the accused/petitioner filed an appeal in C.A.No.37 of 2013 and the lower appellate Court confirmed the conviction and modified the sentence as stated in Paragraph-1 of this judgment. Challenging the above said conviction and sentence, the petitioner has filed this revision.

6. I have heard C.K.M.Appaji, learned counsel appearing on behalf of the petitioner and Mr.R.Ravichandran, learned Government Advocate, appearing on behalf of the respondent.

7. There were two eye witnesses to the occurrence. The occurrence took place in a main road near a Maternity Hospital in Salem. The deceased was doing ironing work in a mobile cart at the extreme left hand side of the road. According to P.W.1 and P.W.3, the offending vehicle came in a rash and negligent manner and dashed against the deceased and caused him serious injuries. Thereafter, P.W.1, who was present in the scene of occurrence took him to the hospital, where he was declared brought dead. Thereafter based on the memo sent by the hospital, P.W.7, Sub-

Inspector of Police came to the scene of occurrence, recorded the statement of P.W.1 and registered a complaint. Eventhough P.W.1 is the relative of the deceased, P.W.3 is the independent witness was standing near the scene of occurrence. Both P.W.1 and 2 had consistently stated that the offending vehicle came in a rash and negligent manner and dashed against the deceased and caused his death. The presence of both P.W.1 and 3 was not disputed by the accused. In the above circumstances, there is no reason to disbelieve the evidence of eye witnesses. Apart from that, the Doctor, who conducted postmortem also found grievous injuries on the deceased and gave a opinion that the death was due to shock and hemorrhage due to multiple injuries. The Motor Vehicles inspector gave a report that there is no mechanical fault on the offending vehicle. Considering all the above materials, both the Courts below had rightly convicted the petitioner and I find no irregularity or perversity in the judgment. Hence, I am of the considered view that the prosecution has clearly proved that it is only this accused driven the vehicle in a rash and negligent manner and dashed against the deceased and caused his death.

8. So far as quantum of sentence is concerned, the petitioner is a poor van driver and he has no bad antecedents and he has a big family to maintain. Taking into consideration of all the mitigating circumstances, the sentence is modified to undergo three months rigorous imprisonment for the offence under Section 304 IPC.

9. In the result, the Revision is partly allowed. The conviction under Section 279 and 304 A IPC of the petitioner is confirmed. The sentence under Section 304 A IPC is modified to undergo three months rigorous imprisonment and to pay a fine of

V.BHARATHIDASAN, J.

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Rs.5,000/-in default to undergo four weeks rigorous imprisonment and no separate sentence is imposed for the offence under Section 279 IPC.

10.04.2017

Internet: Yes/No

Index: Yes/No

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To

1. The Judicial Magistrate No.IV,
Salem.
2. The III Additional District and Sessions Judge,
Salem.
- 3.The Public Prosecutor,
High Court, Madras.

Criminal Revision No.29 of 2014

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