

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED; 05.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.99 of 2014

Mariappan

... Petitioner/Accused

//vs//

State by:

The Inspector of Police,
Vadalur Police Station,
Cuddalore District.
(Cr.No.108 of 2010)

... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the conviction passed by the Principal Sessions Court, Cuddalore in Crl.A.No.2 of 2013 dated 12.09.2013 confirming the conviction and sentenced passed by the learned Judicial Magistrate-III, Cuddalore in C.C.No.200 of 2010 dated 26.12.2012 .

For Appellant : Mr.A.Arasu Ganesan

For Respondent : Mr.R.Ravichandran,
Gov. Adv. (Crl. Side)

O R D E R

The petitioner is the sole accused in C.C.No.200 of 2010 on the file of the Judicial Magistrate No.III, Cuddalore. He stood charged for an offence under Section 304-A IPC. The trial Court, by judgment dated 26.12.2012, convicted the petitioner for the offence under Section 304-A IPC and sentenced him to undergo rigorous imprisonment for 9 months. Challenging the same, the petitioner had preferred an appeal in C.A.No.2 of 2013 on the file of the Principal Sessions court, Cuddalore Division, Cuddalore. The lower appellate court, confirmed the conviction and sentence and dismissed the appeal. Now, 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, one Sivaranjini @ Ilakia was studying 10th standard in Government Girls Higher Secondary

School at Vadalur. On 09.03.2010, at about 8.15 A.m., while the deceased was going to her school in a bicycle, on the left side of the road, a Tipper lorry bearing registration No.TN 31 J 3315, driven by the petitioner, came in a rash and negligent manner and dashed against the deceased and the lorry ran over her. Immediately, P.Ws.3, 4 and 5, who were all came to the school to drop their children, took the deceased to the Government Hospital, Vadalore, where she was declared 'brought dead'. Immediately, they informed the same to P.W.1, the father of the deceased. Then, DW.1 came to the hospital and thereafter, he lodged a complaint Ex.P.1.

3. P.W.11, Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.108 of 2010 for an offence under Section 304-A IPC and prepared the First Information Report, Ex.P.6. Then he proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.4 and drew a rough sketch, Ex.P.7 in the presence of the witnesses and also recorded the statements of the witnesses. In the meantime, the accused himself surrendered before the respondent police admitting his guilt and P.W.11 arrested the accused and also seized the vehicle and sent the same for examination. Thereafter, P.W.11 conducted inquest on the dead body of the deceased in the presence of the panchayathars and prepared inquest report. P.W.7, Doctor, working in the Government Hospital, Vadalur, on 09.03.2010 at about 3.00 pm., conducted postmortem on the dead body of the deceased and given a postmortem certificate, Ex.P.3. After recording the statement of the Motor Vehicle Inspector and the Doctor, who conducted postmortem/autopsy on the dead body of the deceased and on completion of investigation, P.W.13 laid charge sheet against the accused.

4. Based on the above materials, the trial Court framed a lone charge for an offence under Section 304-A IPC and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined and 7 documents were exhibited.

5. Out of the witnesses examined, P.W.1 is the father of the deceased. According to him, after he came to know about the accident, he went to the hospital, where he was informed that her daughter died and he lodged a complaint. P.W.2, who is an eye-witness to the occurrence, she came to the school to drop his daughter, and at the time the accident took place. According to him, the lorry came in a rash and negligent manner and dashed against the deceased. P.W.3 is yet another eye-witness to the occurrence. He also went to the school to drop his daughter and at that time he saw the lorry came in a rash and negligent manner and dashed against the deceased and caused her death. P.Ws.4 and 5 are also eye-witnesses to the occurrence. They

also came to the school to drop their children and both of them have consistently stated that while the deceased was coming in the bicycle on the left side and while she came near to the school, the tipper lorry driven by the petitioner/accused, came in a rash and negligent manner and dashed against the deceased and caused her death.

6. P.W.6 is a witness to the Observation Mahazar. P.W.7 is a Doctor, who conducted postmortem on the dead body of the deceased and given a postmortem report, Ex.P.3. P.W.8, is the owner of the lorry, turned hostile. P.W.9 is a witness to the Observation Mahazar. P.W.10, Motor Vehicle Inspector, who examined the lorry and given a report stating that there is no mechanical fault in the offending vehicle. P.W.11, Inspector of Police, registered the complaint and conducted inquest and recorded the statements of the witnesses and handed over the investigation to P.W.13. P.W.12, Head Constable, who identified the dead body of the deceased for postmortem to the Doctor. P.W.13, Inspector of Police, attached to the respondent police, continued the investigation and after completion of investigation, he laid charge sheet against the accused.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness or marked any documents on his side.

8. Having considered all the above materials, the trial Court convicted the petitioner as detailed in the first paragraph of this judgment. Aggrieved against the same, petitioner filed an appeal in C.A.No.2 of 2013 on the file of the Principal Sessions Court, Cuddalore and the lower appellate court confirmed the conviction and sentence. Challenging the same, the present revision has been filed.

9. Mr.A.Arasu Ganesan, learned counsel appearing for the revision petitioner and Mr.R.Ravichandran, learned Government Advocate (Crl. side) appearing for the respondent and perused the materials available on record carefully.

10. The victim in this case was a school going girl studying 10th standard in Government Girls Higher Secondary School, Vadalur and at the time of occurrence, the deceased came in a bicycle to the school and the accident took place in front of her school. P.Ws.2 to 5 are the eye-witnesses to the occurrence. They are all parents, whose children are studying in the school. They came to the school to drop their children and saw the occurrence. All the eye-witnesses have consistently stated that the deceased was riding the bicycle on the left side of the road and near to the school gate, the tipper lorry driven by the accused came in a rash and negligent manner and dashed

against her from her behind, thereafter, the lorry ran over her. All the eye-witnesses are independent witnesses and they all came to the school to drop their children, and their presence in the scene of occurrence is natural and their evidence is consistent, hence there is no reason to disbelieve the same. Thereafter, P.W.1, father of the complainant was informed about the accident, immediately he went to the hospital, thereafter, he has given a complaint, within two hours, and the petitioner also surrendered before the respondent police. The tipper lorry has been sent for Motor Vehicle Inspection and P.W.10, Motor Vehicle Inspector has examined offending lorry and given a report that there is no mechanical fault in the lorry. Considering all these facts, both the courts below concurrently held that this petitioner/accused had driven the lorry in a rash and negligent manner and dashed against the deceased and caused her death.

11. In the above circumstances, I find no irregularity or illegality in the finding of the court below and I am of the considered view that only this petitioner/accused had driven the offending lorry in a rash and negligent manner and dashed against the deceased and caused her death.

12. So far as the quantum of punishment is concerned, the petitioner is a poor man and he has no bad antecedent and he has a big family to maintain. Considering all the above mitigating circumstances, the sentence imposed on the petitioner is modified and the petitioner is sentenced to undergo rigorous imprisonment for 6 months.

13. In the result, the Criminal Revision is partly allowed and the conviction of the petitioner under Section 304-A IPC is confirmed and the sentence is modified to rigorous imprisonment for 6 months. The period of sentence already undergone by the petitioner is directed to be set off under Section 428 Cr.P.C.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Principal Sessions Judge,
Cuddalore Division,
Cuddalore.

2. The Judicial Magistrate No.III,
Cuddalore.
3. Do Thro The Chief Judl.Magistrate,
Cuddalore.
4. The Inspector of police,
Vadalur police station,
Cuddalore District.
5. The Public Prosecutor,
High Court, Madras.

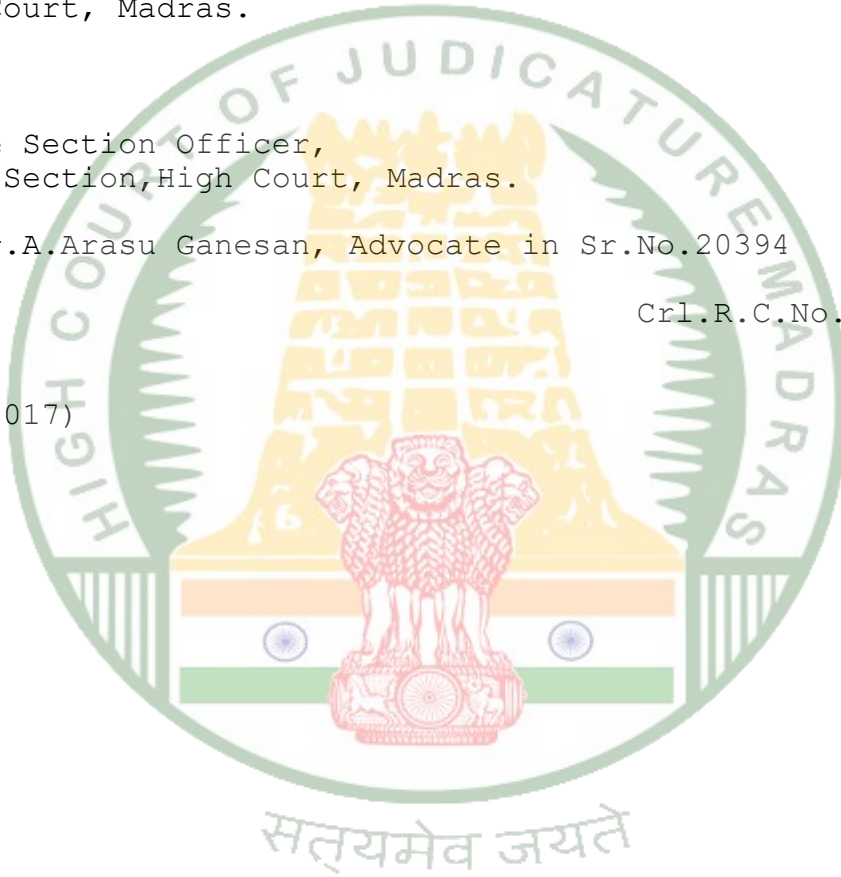
Copy to:

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.A.Arasu Ganesan, Advocate in Sr.No.20394

CrI.R.C.No.99 of 2014

BR(CO)
NR(14/06/2017)



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