

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.10 of 2011

G.Ramesh
S/o.Govindasamy

... Petitioner

VS

State represented by
The Inspector of Police,
J-3 Guindy Traffic Investigation,
Chennai - 600 032.

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against judgment of learned VII Additional Sessions Judge, Chennai, passed in C.A.No.23 of 2010 on 19.11.2010 confirming the judgment of learned IV Metropolitan Magistrate, Saidapet, Chennai, passed in C.C.No.2717 of 2007 on 15.12.2009.

For Petitioner : Mr.Ramasubramaniam

For Respondent : Mr.V.Arul
Additional Public Prosecutor

ORDER

This revision arises against two concurrent judgments of Courts below convicting petitioner for offences u/s.304-A IPC and 184 of the Motor Vehicles Act and sentencing him to 1 year R.I. and fine of Rs.3,000/- i/d 3 months R.I. for offence u/s.304-A IPC and fine of Rs.1,000/- i/d 1 month R.I. for offence u/s.184 of the Motor Vehicles Act.

2. Prosecution case is that on 20.01.2007 at about 3.45 p.m., petitioner/accused drove a Jeep bearing registration No.TN 07/K-6378 in a rash and negligent manner and dashed against a boy, aged 11, owing to which the boy sustained grievous injuries and despite treatment, died. A case in Crime No.28/S3/07 on the file of respondent has been registered for offences u/s.304-A IPC and 184 of the Motor Vehicles Act. Upon completion of investigation and filing of charge sheet, the case was tried in C.C.No.2717 of 2007 on the file of learned IV Metropolitan Magistrate, Saidapet, Chennai.

3. Before trial Court, prosecution examined 11 witnesses and marked 9 witnesses. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 15.12.2009, convicted petitioner for offences u/s.304-A and 184 of the Motor Vehicles Act and sentenced him to 1 year R.I. and fine of Rs.3,000/- i/d 3 months R.I. for offence u/s.304-A IPC and fine of Rs.1,000/- i/d 1 month R.I.

for offence u/s.184 of the Motor Vehicles Act. There against, petitioner preferred C.A.No.23 of 2010 on the file of learned VII Additional Sessions Judge, Chennai, which came to be dismissed under judgment dated 19.11.2010. Hence, this revision.

4. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

5. Courts below have arrived at finding of conviction on the evidence of PWs.1 and 2 of the Jeep having been driven at high speed. The Apex Court in ***State of Karnataka v. Satish [1998 (8) SCC 493]*** has held thus:

‘4. Merely because the truck was being driven at a “high speed” does not bespeak of either “negligence” or “rashness” by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by “high speed”. “High speed” is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by “high speed” in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception

pleaded in the present case. In the absence of any material on the record, no presumption of “rashness” or “negligence” could be drawn by invoking the maxim “res ipsa loquitur”. There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.

5. There being no evidence on the record to establish “negligence” or “rashness” in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view. To us it appears that the view of the High Court, in the facts and circumstances of this case, is a reasonably possible view. We, therefore, do not find any reason to interfere with the order of acquittal. The appeal fails and is dismissed. The respondent is on bail. His bail bonds shall stand discharged.’

Following the rationale of the above judgment, the Criminal Revision Case shall stand allowed. The judgment of learned VII Additional Sessions Judge, Chennai, passed in C.A.No.23 of 2010 on 19.11.2010 confirming the judgment of learned IV Metropolitan Magistrate, Saidapet, Chennai, passed in C.C.No.2717 of 2007 on 15.12.2009, 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.

28.08.2017

Index:yes/no
Internet:yes/no
gm

To

- 1.The VII Additional Sessions Judge,
Chennai.
- 2.The IV Metropolitan Magistrate,
Saidapet, Chennai.
- 3.The Inspector of Police,
J-3 Guindy Traffic Investigation,
Chennai - 600 032.
- 4.The Public Prosecutor,
High Court, Madras.



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C.T.SELVAM, J

gm



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