

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.1013 of 2011

Ravi

... Petitioner/Appellant/Accused

Vs.

The State rep. By its
Inspector of Police,
Sathyamangalam Police Station,
Erode District.
(Crime No.851 of 2006)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C. against the judgment dated 24.05.2011 made in C.A.No.32 of 2011 on the file of the Additional District Sessions Court/ Fast Track Court No.2, Gobichettipalayam confirming the conviction imposed in the judgment dated 01.02.2010 made in C.C.No.273 of 2006 on the file of the Judicial Magistrate, Sathyamangalam.

For Appellant : Mr.S.Kamadevan

For Respondent : Mrs.M.F.Shabana

Government Advocate (Criminal side)

JUDGMENT

The Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code praying to set aside the order of conviction and sentence in the judgment dated 24.05.2011 made in C.A.No.32 of 2011 on the file of the Additional District Sessions Court/ Fast Track Court No.II, Gobichettipalayam confirming the conviction and sentence imposed in the judgment dated 01.02.2010 made in C.C.No.273 of 2006 on the file of the Judicial Magistrate, Sathyamangalam.

2. The sole accused in C.C.No.273 of 2006 on the file of the Judicial Magistrate Court, Sathyamangalam is the revision petitioner herein. He stood charged for the offences under Sections 279 and 304-A IPC and Section 134 r/w 187 of the Motor Vehicles Act. The Trial Court convicted the accused for all the charges, and for offence under section 279 IPC, imposed a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month; for offence under section 304-A IPC, sentenced

him to undergo four months rigorous imprisonment and convicted the petitioner under section 134 under Motor Vehicles Act and imposed a fine of Rs.500/- in default to undergo rigorous imprisonment for one month. Challenging the above said conviction and sentence, the petitioner filed an appeal in C.A.No.32 of 2011 on the file of the Additional District Sessions Court/Fast Track Court No.II, Gobichettipalayam. The lower Appellate Court dismissed the appeal and thereby confirmed the conviction and sentence passed by the Trial Court. Challenging the above said conviction and sentence, the petitioner is before this Court with this Revision.

3. The brief facts of the case is as follows:

The deceased in this case is one Kandasamy was riding in a Hero Honda bike bearing registration No.37K 8734 in Sathyamangalam Mettupalayam Road from East to West. At that time, a pickup van bearing registration No.KA10 1706, driven by the petitioner came in the opposite direction in a rash and negligent manner dashed against the deceased and caused serious injuries. PW1, who has come in a another motorcycle behind the accused, after seeing the occurrence immediately called the Ambulance and informed the police, and he took him to the General Hospital, Sathyamangalam, on the way he succumbed injuries. Thereafter PW1 gave a complaint before the respondent-police, and PW13-Inspector of Police received the complaint and registered a case in Crime No.851 of 2006 for an offences under Section 279 and 304 IPC. Thereafter, PW13 proceeded to the scene of occurrence and prepared observation mahazar and rough sketch and also recorded statement of witnesses. He seized the offending vehicle and the motorcycle of the deceased. PW13 conducted inquest on the dead body at Government Hospital, Coimbatore and sent the body for postmortem. PW12-Doctor in the Government Hospital, Coimbatore, conducted the postmortem autopsy on the dead body and given the postmortem report. The seized vehicles were sent for inspection by Motor Vehicles Inspector. PW13 recorded the statements of the eye witness and after completion of investigation, he filed a charge sheet.

4. Based on the above materials, the Trial Court framed charges for an offence under Section 279 and 304-A IPC and Section 134 r/w 187 of the Motor Vehicles Act, and the accused denied the same.

5. In order to prove the case, prosecution examined 13 witnesses and marked 8 exhibits and 3 material objects.

6. Out of the witnesses examined, PW1, is the eye witness to the occurrence. According to him, at about 7.30 a.m., on the date of occurrence, he was riding in his motorcycle in Sathyamangalam Mettupalayam main road from east to west and

the deceased was riding a motorcycle in front of him. At that time, the offending vehicle, a pickup van driven by the petitioner came in a high speed and in a rash and negligent manner dashed against the deceased and caused serious head injuries. After dashing the vehicle, the vehicle turned left and went into the ditch in an agricultural field. Thereafter, he called the ambulance and took the deceased to the Government Hospital and informed the relatives of the deceased, then he gave a complaint before the respondent-Police. PW2 is said to be another eye witness seen the occurrence but on the cross examination, he told that he went to the scene only after the occurrence took place. Hence, he cannot be considered as eye witness. PW3 is also claimed to be an eye witness, but in cross examination, he told that he came to the scene only after hearing about the accident. PW4 is the brother of the deceased. PW5 is the person known to the deceased. PW6 is the cousin of the deceased. PW7 is the brother-in-law of the deceased. PW8 is also another cousin of the deceased. Pws 4 to 8, are hearsay witnesses and all of them came to know about the accident subsequently. PW9 is the inspector of Motor Vehicles, who examined the offending vehicle and the motorcycle and gave the report. According to him, the windscreen of the offending vehicle was broken and there is also damage in the rear view mirror. Motorcycle's head light and indicator was broken, the front mudguard was also damaged. Pws.10 and 11 were coolies, who were also traveling in the offending vehicle and they did not see the occurrence as they were sleeping inside the vehicle. PW12 is the Doctor, who had done the postmortem autopsy and gave the report. PW13 is the Sub-Inspector of Police, who registered the complaint, conducted investigation and filed a charge sheet.

7. When the above incriminating materials were put to the accused, he denied the same and he did not examine any witnesses or marked any documents.

8. Considering all the above incriminating materials, the Trial Court convicted and sentenced the accused under sections 279 and 304-A IPC and Section 134 r/w 187 of the Motor Vehicles Act as stated above. Challenging the above said conviction and sentence, the petitioner filed an appeal in C.A.No.32 of 2011 on the file of the Additional District Sessions Court/Fast Track Court No.II, Gobichettipalayam. The lower Appellate Court dismissed the appeal and thereby confirmed the conviction and sentence passed by the Trial Court. Challenging the order of dismissal by the Appellate Court, the present revision has been filed.

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9. Heard the Mr.S.Kamadevan, learned counsel appearing on behalf of the petitioner and Mrs.M.F.Shabana, Government Advocate (Criminal side) appearing on behalf of the respondent.

10. The learned counsel appearing for the petitioner would submit that PW1 cannot be an eye witness, he is only a change witness. Except PW1, there is no eye witness to support the prosecution case. As per, the evidence of PW1, after the accident immediately police came into the scene and collected the materials and FIR was given only at 11.30 a.m, three hours after the accident. Apart from that, even the Motor Vehicles Inspector submitted that the rear side of the offending vehicle was also damaged, but there was no explanation by the prosecution for the same. Hence, according to the learned counsel for the petitioner, the prosecution did not prove the case beyond any reasonable doubt.

11. On the other hand, the learned Government Advocate appearing for the respondent would submit that PW1 is the eye witness. He was riding the motorcycle and going behind the deceased and saw the occurrence and called ambulance and sent the deceased to the hospital and thereafter gave a complaint. PW1 has categorically submitted that the driver of the offending vehicle came in a high speed in a rash and negligent manner and dashed against the deceased. There is no reason to disbelieve PW1 and his evidence is corroborated by the evidence of Motor Vehicles Inspector and sought for dismissal of this revision.

12. I have carefully considered the rival submissions made by the learned counsel for the petitioner as well as the respondents and perused the materials placed before the court.

13. PW1 is an eye witness to the occurrence. According to him, the occurrence took place in the morning at about 8.15 a.m. PW1 was driving a motorcycle and going behind the deceased. At that time, the offending vehicle came in an opposite direction and dashed against the deceased, thereafter, it turned went to the left side and fell into a ditch. Immediately, PW1 called the ambulance and sent the deceased to the Government Hospital and thereafter gave a complaint. It is seen from the rough sketch and the evidence of PW9-Inspector of Motor Vehilce, it is corroborating the evidence of PW1. From the rough sketch-Ex.B7, it is seen that the accident was taken place in the right hand side of the road, thereafter the van turned left and went out of the road on the extreme left. From the evidence of PW9-Inspector of Motor Vehicles report, it is seen that windscreen of the van was completely broken and the front portion of the motor vehicle is also damaged. Considering all the above materials, I am of the opinion that the prosecution has clearly proved the case beyond any reasonable time that the accident has took place only due to the rash and negligent driving of the petitioner.

14. So far as the contention of the learned counsel for the petitioner that the police came to the scene of the

occurrence immediately and the complaint was given only subsequently. From the evidence, it is seen that PW1 immediately called the Ambulance, then Ambulance came and police also came and he sent the body to the Government Hospital, thereafter he gave a complaint at 11.30 a.m. Considering all the above evidence, merely because the Police was present there before lodging complaint cannot disprove the prosecution case. Even as per the rough sketch and the report of the Motor Vehicle Inspector, it is evident that the accident took place in the right side of the road and the van dashed the deceased and thereafter the vehicle turned to the left and went into the left side of the road. The evidence of Motor Vehicle Inspector is also supporting the case of the prosecution and hence the contention of the learned counsel for the petitioner has no merit.

15. Considering the above materials, both the Courts below had rightly come to a conclusion that this petitioner had driven the offending vehicle in a rash and negligent manner and caused the accident. I find no illegality or irregularity in the judgments of the both Courts below. Hence, no interference is required in this Revision.

16. In the result, the Criminal Revision is dismissed and the judgment passed by both the Courts below are confirmed.

s/d-
Assistant Registrar(CCC)

//True Copy//

Sub-Assistant Registrar

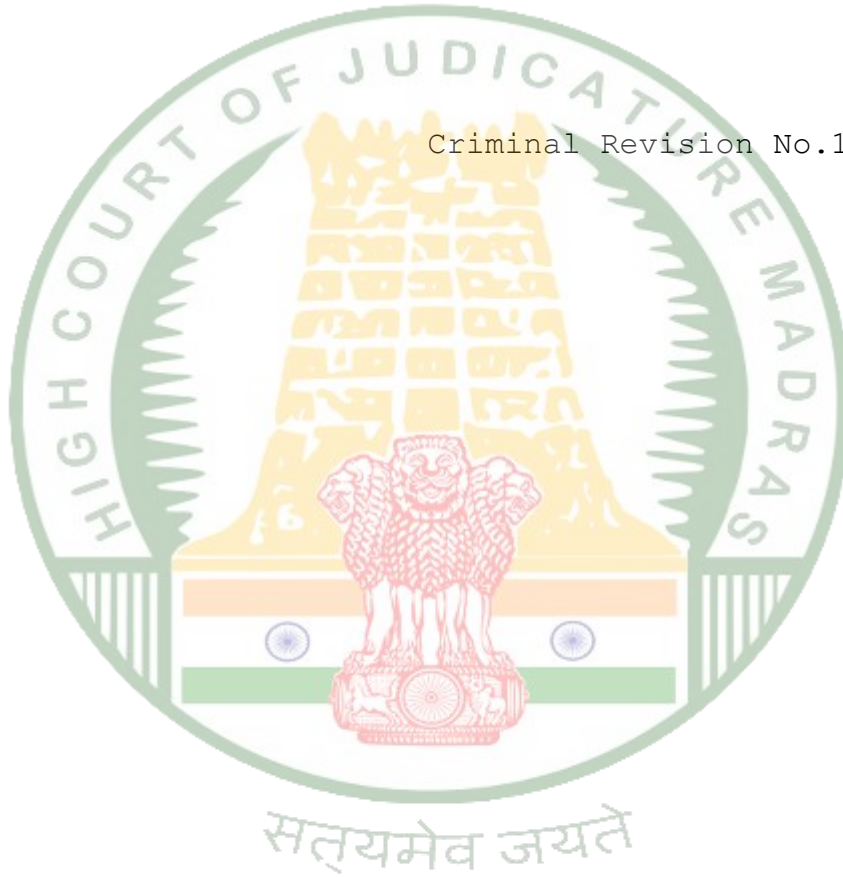
To

1. The Additional Sessions Judge,
Fast Track Court No.2,
Gobichettipalayam.
2. The Princiapal District Judge, Erode
3. The Judicial Magistrate,
Sathyamangalam.
4. The Chief Judicial Magistrate, Erode
5. The Inspector Of Police, Sathyamangalam Police Station,
Erode District.

6. The District Collector, Erode
 7. The Director General of Police, Mylapore, Chennai.
 8. The Public Prosecutor,
High Court of Madras.
 9. The Section Officer,
Criminal Section, High Court, Madras.
- +1 CC to M/s. S. Kamadevan, Advocate sr 2700

Criminal Revision No.1013 of 2011

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