

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2017

(Orders reserved on 13.07.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1030 of 2011

A.Venkatesan

... Petitioner

.. Vs ..

The state of Tamil Nadu,
Rep.by the Inspector of Police,
Ambur Taluk Police Station,
Ambur,Vellore District,
(Crime No.36 of 2009)

...Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., against the judgment and sentence dated 19.07.2011 in C.A.No.40 of 2011 on the file of Additional District Sessions Court/Fast Track Court, Tirupattur, Vellore District, confirming the judgment and sentence dated 1.2.2011 in C.C.No.109 of 2009 on the file of the Additional District Munsif Court cum Judicial Magistrate, Ambur, Vellore District.

For Petitioner	:	Mr.K.Selvaraj
For Respondent	:	Mr.B.Ramesh Babu, Govt.Advocate (crl.side)

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ORDER

The accused has preferred this Criminal Revision Case under Sections 397 r/w. 401 of Cr.P.C., against the judgment and sentence dated 19.07.2011 in C.A.No.40 of 2011 on the file of Additional District Sessions Court/Fast Track Court, Tirupattur, Vellore District, confirming the judgment and sentence dated 1.2.2011 in C.C.No.109 of 2009 on the file of the Additional District Munsif Court cum Judicial Magistrate, Ambur, Vellore District.

2. The accused is the criminal revision petitioner.

3. The respondent police filed the charge sheet based upon the statement of the witness Jeyabharathi that while he was driving his own share auto having registration No.TN23AW2622 on 2.2.2009 at about 5.45 p.m on the Vaniyambadi Ambur road near Minoor EB station, the accused drove the offending school van having registration No.TN 23 AD 4956 near the Vaniyambadi Ambur National Highway Junction in a rash and negligent manner on the wrong side and there was head on collision, wherein, witness Suganthi, Jeyanthi, child Minor Vinithkumar and witness Poovizhi, Navaneetham have sustained simple injuries. While, another passenger Santha fell down from the share auto and sustained multiple injuries and

succumbed to the injury on the spot and hence, the respondent police after investigation, filed charge sheet for the offence under Section 279,337,338 and 304 (A) I.P.C.

4. After observing the formalities, the case in Crime No.36 of 2009 was taken on file and during the course of trial, prosecution have examined P.W.1 to P.W.6 and marked as Exhibit P1 to P15 and the trial Court convicted the accused against all the charges and in respect of charge under Section 304(A) I.P.C., convicted and sentenced to undergo six months Rigorous Imprisonment and also imposed Rs.1000/- fine with usual default clause.

5. Aggrieved against the conviction and sentence, the accused preferred Crl.A.No.47 of 2011 before the Principal Sessions Judge, Vellore and thereafter transferred to Additional District and Sessions Judge, (Fast Track Court), Tirupattur, it was re-numbered as Crl.A.No.40 of 2011 and on re-appreciation of evidence, the Lower Appellate Court have come to the conclusion that the accused alone drove the vehicle on that day in a rash and negligent manner and in the resultant accident, one of the passengers in the share auto, succumbed to injury, while, others have sustained simple injury and thereby, confirmed the conviction and sentence passed by the trial Court and hence, the present Criminal Revision by the accused.

6. The points for determination in the criminal revision are:

- i) Whether the order of conviction passed by the Courts below is sustainable in law?
- ii) Whether the sentence awarded is exorbitant?
- iii) To what other relief? if any.

7. The learned counsel for the Revision Petitioner made submissions on the lines of the grounds raised in the Grounds of Revision and further contended that the accident has taken place due to rash and negligent driving of the share auto driver viz., P.W.1 and the courts below have failed to see the suggestive case projected by the accused and further contended that there is a 'u' turn near the scene of crime and it is only the share auto came in the negative direction (wrong direction) and caused accident and prayed for acquittal.

8. The learned Additional Public Prosecutor made submission in support of the judgment given by both courts below.

Points No.I&II:-

The case of the prosecution, in short is that on 2.2.2009 at about 5.45 p.m while P.W.1, Jeyabharathi driving his share auto along with passengers, the school van, driven by the accused came in a wrong-way from the opposite

direction and there was a head-on collision, whereby, the share auto toppled and passengers have sustained injuries and one of the person died, due to the injury sustained in the accident.

9. The suggestive case of the Revision Petitioner is that due to the negligent driving of the driver of the share auto who was going on the wrong direction at the 'U' turn near the scene of occurrence, resulted the accident.

10. Heard both sides and perused the records.

11. It is seen from the records that the criminal law was set in motion by the driver of the share auto Jeyaprakash who was examined as P.W.1, has clearly deposed regarding the manner of the accident and the scene of occurrence and lodging of the complaint with the police. The injured witnesses who are the passengers travelled in the share auto were also examined as P.W.2, P.W.3, P.W.4, P.W.5 & P.W.6 have clearly deposed regarding the manner of the accident and injuries sustained in the accident and the treatment taken thereof and P.W.16 is the Doctor, Medical witness who has given the treatment for the injury and issued Ex.P11 to Ex.P15 wound certificates for the injured person. P.W.12 Dr. Lakshmanan deposed regarding conduct of Postmortem of the deceased Santha and also issuance of Ex.P4 Postmortem Certificate to the effect that the said Santha died, due to

the injuries sustained in the accident. Based upon the evidence of the injured persons P.W.3 to P.W.7 and the irrespective wound certificates Exs.P10 to P16, the Lower Appellate Court has held that, in the accident, the witnesses sustained injuries and one Shantha died due to the accident.

12. Now, the point that need to be addressed is that Whether the accused drove the vehicle in a rash and negligent manner and caused the accident or not?

13. The specific case of the prosecution is that the school van driven by the accused came in a rash and negligent manner and took a 'U' turn, without noticing the vehicle on the road and thereby gone in a wrong direction and dashed against the share auto driven by P.W.1.

14. Per contra, the suggestive case of the Revision Petitioner is that the accident had taken place due to the rash and negligent driving of P.W.1 Share Auto Driver. In this regard, it remains to be stated that P.W.1 spoken about the manner of the accident and the scene of crime as narrated above. P.W.2, one of the injured witnesses, has categorically deposed that the offending vehicle driven by the accused came in a wrong direction and hit against the share auto.

15. It is relevant to refer Exhibits P5 and P6, Motor Vehicles Inspector Report and his evidence as P.W.13, which goes to show that due to the impact of the accident certain damages have been noted in both the vehicles. On a perusal of Ex.P9, Rough Sketch and the damages noted in the Motor Vehicle Inspector's Report, Ex.P4 and Ex.P5, this Court finds that the oral evidence of P.W.1 is corroborated by the evidence of independent witnesses P.W.2 to P.W.6, who are also informed witnesses, coupled with the factum of corresponding damages to both the vehicles as noted in the Motor Vehicle Inspector's Report Ex.P4 and Ex.P5. Hence, this Court is of the considered view that the finding given by both the Courts below does not suffer from any illegality or irregularity and the Prosecution has proved the case, beyond any reasonable doubt.

16. On the other hand, in respect of the suggestive case put forth by the accused, no answer has been elicited in the cross examination of the injured witnesses viz., P.W.2 to P.W.6 (who are admittedly passengers in the share auto). Besides, he has not taken any steps to probablise the suggestive case projected by him before the trial Court. Hence, based upon the oral evidence of P.W.1 and P.W.2 and the specific answer in the cross examination of the injured witness viz., P.W.2, regarding the wrong direction in which the

offending vehicle driven by the accused came, coupled with the evidence of other injured witnesses P.Ws.3,4,5,6 and also the documentary evidence, P.W.9, Rough Sketch and the report of the Motor Vehicles Inspector's Report under Ex.P4 and P5, this Court is of the considered view that the prosecution has clearly demonstrated before the trial Court that the accused came in a wrong direction in a rash and negligent manner and without noticing the vehicle, while, taking on the 'U' turn at the junction went on the wrong direction hit against the share auto thereby caused the accident which has resulted in death of the one of the passengers in the share auto and others sustained injuries and thereby all the charges levelled against the accused has been duly proved beyond reasonable doubt and the accused has miserably failed to probablise the suggestive case and hence, the concurrent finding of the conviction of the both the courts below, are just and proper and cannot be interfered with by this Court.

17. Taking into consideration, the factual position of the case and also taking note of the entire factual matrix of the case, the sentence awarded in respect of offence except 304(A) are found to be consummate with the charges. However, on a perusal of the evidence of the prosecution witnesses and also taking into consideration the entirety of the circumstances, this Court is of the considered view that the sentence awarded by the trial Court for offence under Section 304(A) I.P.C be reduced to 3 months .

18. In fine, the judgment of conviction is confirmed and the sentence awarded by the trial Court as confirmed by the lower Appellate Court, shall stand modified to that of 3 months instead of 6 months and Point No.II has been answered accordingly and hence, this Criminal Revision Petition is allowed-in-part. While, the conviction passed by the Courts below in respect of all charges are confirmed, the sentence awarded for the offence under Section 304(A) I.P.C alone is modified, as that of the three months. The bail bond executed by the petitioner/accused is cancelled. The Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District is directed to secure the custody of the petitioner/accused and send him to the prison to suffer the balance of sentence imposed in this case.

19. In the result, this Criminal Revision Petition is allowed-in part to the limited extent as indicated above.

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Index : Yes
Internet : Yes
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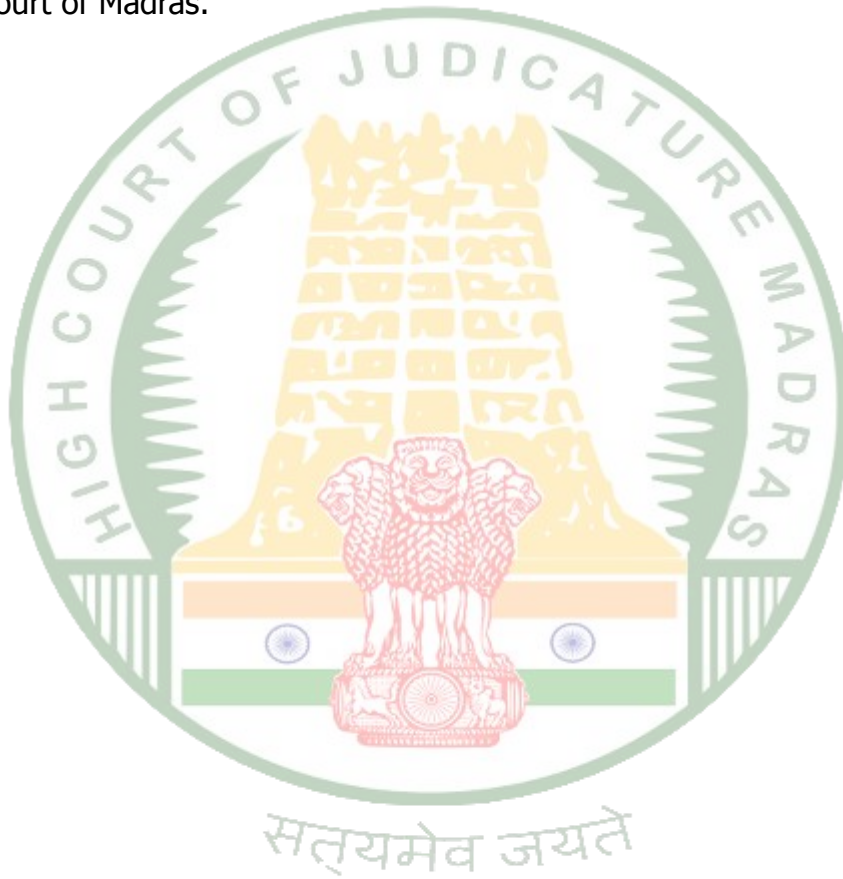
To

- 1.The Additional District Sessions Court/Fast Track Court,
Tirupattur, Vellore District.
2. The Additional District Munsif Court cum Judicial Magistrate,
Ambur, Vellore District.

3. The Superintendent, Central Jail, Vellore.

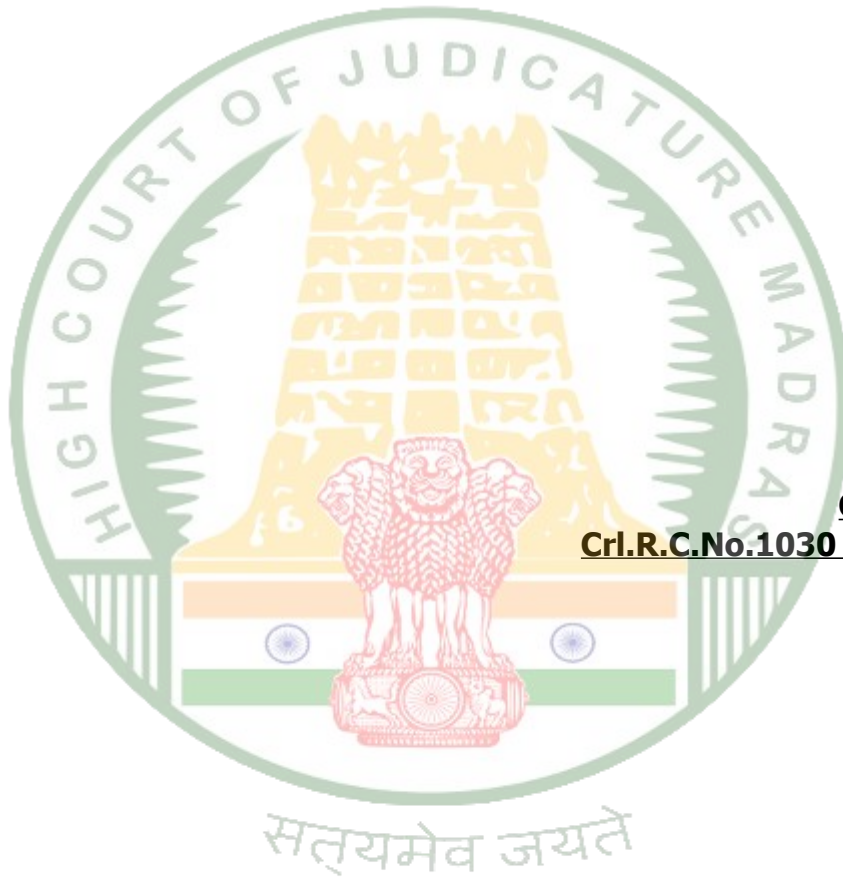
4. The Inspector of Police,
Ambur Taluk Police Station,
Ambur, Vellore District.

5. The Public Prosecutor,
High Court of Madras.



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RMT.TEEKAA RAMAN, J.
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