

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

(Orders Reserved on : 14.07.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1056 of 2011

R.Narasimhan Petitioner/Accused

.. Vs ..

State rep. by Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.
(Crime No.774/2003) Respondent/Complainant

Prayer:- Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., against the order passed in C.A.No.35 of 2007, dated 06.04.2011, on the file of the Principal District and Sessions Judge, Nagapattinam, confirming the order passed in C.C.No.52 of 2006, dated 26.02.2007, on the file of the learned Chief Judicial Magistrate, Nagapattinam.

For Petitioner : Mr.R.Anbukarasu
For Respondent : Mr.B.Ramesh Babu,
Government Advocate (Crl.Side)

ORDER

The sole convict in C.C.No.52 of 2006 on the file of the learned Judicial Magistrate, Nagapattinam, is the revision petitioner herein.

2. The summary of facts leading to the filing of the revision are as follows:-

The respondent Inspector of Police, Kilvelur police station, Nagapattinam, has filed a final report in Crime No.774 of 2003 for the offences punishable under Sections 279, 387 and 304(A) IPC alleging that the revision petitioner was working as a driver in Government Transport Corporation bus and on 21.10.2003, while the deceased Murugesan and his minor daughter Sangeetha (deceased No.1) were proceeding in a bicycle from east to west keeping the extreme left side of the road, the revision petitioner/accused drove the bus bearing Registration No.TN-49-N-1154 in a rash and negligent manner and dashed against the deceased Murugesan and his minor

daughter Sangeetha, as a result of which, the minor girl Sangeetha died on the spot and Murugesan died in the hospital.

(ii) The case was taken on file as C.C.No.52 of 2006 and the prosecution has examined the complainant as P.W.1 and examined the occurrence witness as P.W.2 and the relatives of the deceased were examined as P.Ws.3 to 5 and Doctors, who have conducted Post-mortem, were examined as P.W.7, P.W.8 and P.W.10. The conductor of the bus was examined as P.W.9 and Motor Vehicle Inspector was examined as P.W.11 and police witnesses were examined as P.W.12 and P.W.13 and documents Exs.P.1 to P.11 were marked. The accused has not chosen to examine any defence witness and mark documents.

(iii) Based upon both oral and documentary evidence, the trial Court came to a conclusion that the accused has driven the bus in a rash and negligent manner and caused the accident resulting in death of two persons and accordingly, convicted the accused under Section 304-A (2 counts) IPC and sentenced him to undergo two years rigorous imprisonment for each count and ordered the sentences to run concurrently and also given set off under Section 428 of Cr.P.C.

(iv) Aggrieved against the said conviction and sentence, the accused has preferred an appeal in Crl.A.No.35 of 2007 before the learned Sessions Judge, Nagapattinam, who had confirmed the conviction, however, modified the sentence by reducing to one year rigorous imprisonment for each count from two years rigorous imprisonment for each count. As against the same, the present criminal revision case is preferred by the accused.

3. The learned counsel appearing for the revision petitioner/accused contended that no independent witnesses have been examined. Further, the presence of P.W.1 and P.W.2 at the scene of occurrence is doubtful and hence, seeks for acquittal.

4. The learned Government Advocate (Crl.Side) made submissions in support of the judgments of the Courts below.

5. The short point that arises for consideration is,

(i) whether the prosecution has proved the guilt of the accused under Section 304(A) (2 counts) IPC beyond reasonable doubt?

(ii) Whether the orders of the Courts below are sustainable in law?

(iii) Whether the sentence as modified by the Lower Appellate Court is excessive?

(iv) Any other relief, if any.?

6. Point No.1

The case of the prosecution is that on 21.10.2003 at about 6.30 p.m., the deceased Murugesan and his minor daughter Sangeetha (deceased No.1) were proceeding in a

bicycle from East to West on the left hand side of the road and at that time, the accused was driving the bus bearing Registration No.TN-49/N-1154 in a rash and negligent manner from Tiruvarur towards Nagapattinam and dashed against the bicycle and in the result, the deceased No.1, Sangeetha succumbed to injuries and died on the spot by bus tyre ran over her body while the deceased No.2, Murugesan sustained injuries all over the body. P.W.1 took the deceased No.2 to the hospital, from there, he was referred to Thanjavur Medical Hospital. However, the deceased No.2 succumbed to injuries and died in the hospital. Based upon Ex.P.1, the police has registered a case and after investigation, filed charge sheet for the alleged offences as stated above.

7. To buttress the charges, the prosecution has examined the first informant as P.W.1 and the occurrence witness as P.W.2 while P.Ws.3, 4 and 5 are the relatives of the deceased whose evidence are hearsay. It remains to be stated that the Doctors, who gave the treatment and conducted Post-mortem, were examined as P.Ws.7, 8 and 10 while P.Ws.12 and 13 are police witnesses.

8. On perusal of the evidence of P.W.1, it is seen that he has clearly narrated the manner of the accident and also deposed that the bus tyre ran over the deceased Sangeetha. The presence of P.W.1 was also spoken to by the independent witness P.W.2 and another occurrence witness P.W.9, the Conductor. It is not in dispute that the accused was the driver of the Government Transport Corporation bus at the relevant point of time and P.W.9 was Conductor, who deposed regarding the place and time of occurrence. P.W.2 is a resident of Pannaimeedu. He has spoken about the manner of the accident and the high speed in which the bus was driven by the accused and dashed against the bicycle on the right hand side. P.W.7, the medical officer attached to Nagapattinam Government Hospital has clearly stated that P.W.1 has brought the bodies to the hospital and his evidence was clearly proved the factum of presence of P.W.1 in the accident spot and P.W.2 also spoken about the presence of P.W.1 and hence, both the Courts below have correctly come to a conclusion that the presence of P.W.1 and P.W.2 was duly corroborated by P.W.7 and the manner of the accident was clearly spoken to by P.W.2 and independent witness, both are residents of Pannaimeedu and they have no personal enmity against the bus driver. After going through the police witnesses P.W.12 and P.W.13 and Ex.P.1, both the Courts below have concurrently held that there is no delay in filing the FIR and investigation has been completed on time and charge sheet has been laid. Both the Courts below have given a categorical finding that the evidence of P.W.1 and P.W.2 are reliable, true and independent and they have been duly corroborated by the evidence of the Doctor and the scene of the crime has been proved in the manner known to law and rash and negligent driving of the accused was held to be against the accused. Accordingly, convicted the accused for

an offence under Section 304 (A) (2 counts) IPC.

9. On re-appreciation of the evidence, this Court finds that there is no illegality or irregularity in the finding arrived at by both the Courts below and accordingly, this Court holds that the conviction passed by both the Courts below against the revision petitioner is sustainable in law.

10. On the question of quantum, after hearing the learned counsel for the petitioner and the learned Government Advocate (Crl.Side), it is seen that at the time of occurrence, the accused is 45 years old and the occurrence is said to have taken place in the year 2003 and it was in a congested road and hence, this Court is of the considered view that the sentence of one year rigorous imprisonment for each count awarded by the Lower Appellate Court has to be modified and reduced into six months rigorous imprisonment for each count and also ordered the sentences to run concurrently. The set off period is given under Section 428 of Cr.P.C. and all the points are answered accordingly.

11. In the result, this Criminal Revision Case is partly allowed and the conviction passed by both the Courts below are hereby confirmed. The sentence awarded by the Trial Court as modified by the Lower Appellate Court shall stand modified to the extent that the accused is to undergo rigorous imprisonment for a period of six months for each count and ordered the sentences to run concurrently and set off period is given under Section 428 of Cr.P.C.

-s/d-
Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Nagapattinam.
2. The Chief Judicial Magistrate,
Nagapattinam.
3. The Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.
4. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.1056 of 2011

NM(CO)

sp(03/08/2017)

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