

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal R.C. No.1219 of 2011

Suresh

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Walajabad Police Station,
(Crime No.110 of 2008)

... Respondent

PRAYER: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code to set aside the order and Judgment dated 12.8.2011 in C.A.No.111 of 2010, on the file of the learned District Sessions Judge, No.II, Kancheepuram, and sentence imposed by the learned Judicial Magistrate No.II, Kancheepuram, dated 22.07.2010 made in C.C.No.166 of 2008 and acquit the petitioner.

For Appellant : Ms.N.Premalatha
Legal Aid Counsel

For Respondent : Mr.K.Madhan
Government Advocate (Criminal side)

JUDGMENT

The petitioner is the sole accused in C.C.No.166 of 2008 on the

file of the Judicial Magistrate No.II, Kancheepuram. He stood charge for the offence under section 279 and 304 A IPC. The Trial Court convicted the petitioner under Section 279 IPC and imposed a fine of Rs.500/- in default to undergo one month rigorous imprisonment and convicted him under section 304(A) IPC and sentenced him to undergo six months rigorous imprisonment and also imposed a fine of Rs.5,000/- in default to undergo three months rigorous imprisonment. Challenging the above said conviction and sentence, the petitioner filed an appeal in C.A.No.111 of 2010, on the file of the District and Sessions Judge-II, Kancheepuram and the appellate court dismissed the same. Challenging the above said conviction and sentence, the petitioner is before this Court with this Revision.

2. The brief facts of the case are as follows:

The deceased in this case is One Savitha, a child aged about 1½ years. On 20.03.2008, at about 3 p.m., PW5, her grandmother was sitting in front of their house alongwith the deceased child. At that time, a school van driven by the accused came from West to East in the narrow road and after dropping a child there, the petitioner driven the vehicle rashly and in negligent manner dashed against the child and caused her death. PW3, father of the deceased also present near the scene of occurrence immediately filed a compliant to the respondent police, PW9-Inspector of Police after receiving the

complaint registered a case in Crime No.110 of 2008 under Section 279, 337 and 304(A) IPC and prepared Ex.P6. Thereafter, he proceeded to the scene of occurrence and prepared observation mahazar-Ex.P7 and rough sketch-Ex.P8 and recorded the statements of eye witnesses. Thereafter, he arrested the accused and sent the van for inspection by the Motor Vehicles Inspector. Thereafter, he conducted inquest on the dead body of the child and gave inquest report-P9. P.W.8, is a Doctor in the Government General Hospital, Chennai, conducted postmortem autopsy on the dead body and submitted postmortem report. PW9, Inspector of Police recorded the statement of the Doctor and also other eye witnesses, collected the postmortem report after conclusion of investigation, filed a charge sheet.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same.

4. In order to prove the case, the prosecution examined as many as 9 witnesses and marked 10 documents. No material objects were exhibited.

5. Out of the 9 witnesses examined, PW1 is the mother of the deceased. She is also the eye witness to the occurrence. PW2 is the

grandfather of the deceased. PW3 is the father of the deceased child. All of them are eye witnesses to the occurrence. PW4 is the Motor Vehicle Inspector, who inspected the vehicle and reported that there is no mechanical failure in the vehicle. PW5 is the grandmother of the deceased child. She is also the eye witness to the scene of occurrence. According to her, she was sitting alongwith the deceased child in front of the house. At that time, the van driver driven the van in a rash and negligent manner dashed against the child and caused to death. PW6 and PW7 are the witnesses to the observation mahazar. PW8 is the doctor who conducted the postmortem. PW9 is the Inspector of Police, who filed the charge sheet.

6. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any of the witnesses or marked any documents on his side.

7. Considering all the above, the trial Court found the accused guilty of offence under section 279 and 304 A IPC and accordingly sentenced him as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the petitioner/accused filed an appeal in C.A. No.111 of 2010 before the learned District Sessions Judge-II, Kancheepuram and the appellate Court also dismissed the appeal. Aggrieved over the same, the

accused/appellant is before this Court with this revision.

8. Heard the Ms.N.Premalatha, Legal Aid Counsel appearing on behalf of the petitioner and Mr.K.Madhan, Government Advocate (Criminal Side) appearing on behalf of the respondent.

9. There are four eye witnesses to the occurrence. P.W.1 is the mother of the deceased child. P.W.2 is the grandfather. P.W.3 is the father of the deceased child and P.W.5 is the grandmother of the deceased child. It is the consistent evidence of P.Ws.1 to 3 and P.W.5, that the deceased child was playing with P.W.5-grandmother of the deceased in front of their house. At that time, a school van driven by the accused/petitioner came from West to East and after dropping the sister of the deceased child, suddenly driven the vehicle rashly and in negligent manner dashed against the child causing to death. Even though, all the eye witnesses are closely related to the deceased, their evidence is consistent and the accident took place in front of their house and their presence to the scene of occurrence is natural and all of them consistently deposed that the accused/petitioner driven the van in a rash and negligent manner and dashed the child. Hence, there is no reason to disbelieve the evidence of the eye witnesses. Apart from that, the Motor Vehicle Inspector also gave a report that there is no mechanical failure in the van. The petitioner is a driver of a school van, carrying school children,

supposed to drive the vehicle very carefully considering the fact that school children are sitting inside the vehicle. Moreover, the accident took place in a narrow 15 feet road and the petitioner ought to have drive the vehicle more carefully and slowly.

10. Considering all the above facts and circumstances, both the Courts below have come to a conclusion that the petitioner has driven the vehicle in a rash and negligent manner, dashed the child and caused death of the child. Hence, I find no illegality or irregularity in the order by the Courts below. I find no reason to interfere with the well considered judgment of the Courts below.

11. So far as the sentence is concerned, the Courts below had convicted the accused/petitioner to undergo six months rigorous imprisonment and also to pay a fine of Rs.5,000/- in default to undergo three months rigorous imprisonment. The accident took place in the year 2008 and the accused/petitioner is a poor driver, has no bad antecedents and has a family to maintain. Considering the aggravating and mitigating circumstances, the petitioner is sentenced undergo three months rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month rigorous imprisonment and conviction.

12. In the result, the appeal is partly allowed and conviction of the petitioner under Section 279 and 304 A IPC is confirmed. The sentence for offence under Section 304(A) is modified to three months rigorous imprisonment and Rs.5,000/- in default to undergo one month rigorous imprisonment. The period of sentence already undergone by the accused/petitioner is set off under Section 428 Cr.P.C.

13. While parting with the case, I appreciate the services rendered by Ms.N.Premalatha, Legal Aid Counsel, who appeared on behalf of the accused/petitioner. The Legal Aid Services Authority is directed to pay her remuneration.

03.02.2017

Index : Yes/No
Internet : Yes/No
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V.BHARATHIDASAN.J.,

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To

1. The District and Sessions Judge-II,
Kancheepuram.
2. The Judicial Magistrate-II
Kancheepuram.
3. The Public Prosecutor,
High Court of Madras.



Criminal Appeal No.1219 of 2011

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