

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.156 of 2011

Nainan
Petitioner/Appellant/Accused

...

Vs.

State rep. by
Inspector of Police,
Namakkal Police Station,
(Crime No.239 of 2006) ...
Respondent/Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure Code against the order of dismissal passed by the learned Additional District and Sessions Judge, Namakkal in C.A.No.21 of 2009 dated 02.12.2010, confirming the conviction and sentence passed by the learned Judicial Magistrate No.I, Namakkal in C.C.No.113 of 2007 dated 17.02.2009.

For Petitioner : Mr. C.D.Johnson
For respondent : Mrs. M.F.Shabana,
Gov. Advocate (Crl. Side)

O R D E R

The sole accused in C.C.No.113 of 2007 on the file of the learned Judicial Magistrate, No.I, Namakkal, is the revision petitioner herein. He stood charged for the offences under Sections 279 and 304(A) IPC. The trial court, by judgment dated 17.02.2009, convicted the petitioner/'accused under Section 304(A) IPC and sentenced him to undergo simple imprisonment for one year and also to pay a fine of Rs.2000/- in default to undergo simple imprisonment for two months. Challenging the above said conviction and sentence the petitioner/accused filed an appeal in C.A.No.21 of 2009 before the Additional District and Sessions Judge, Namakkal. The lower appellate court dismissed the appeal, thereby confirming the conviction and sentence. Aggrieved over the same, the present revision has been filed.

2. The case of the prosecution, in brief, is as follows:-

On 10.03.2006, at about 5.00 p.m., when the
<https://hcservices.ecourts.gov.in/hcservices/>

deceased, by name, Arumugam, was riding in his motorcycle in Namakkal-Paramathy road, from East to West, a lorry, driven by the petitioner/accused, came in the opposite direction, and while overtaking another vehicle, the offending lorry came to the right side of the road and dashed against the deceased and caused serious injuries. P.W.1, 6 and 7, who were present in the scene of occurrence, immediately, took the deceased to the private hospital in Namakkal and the deceased was referred to Government Hospital, Namakkal, where he was declared dead. Thereafter, P.W.1 lodged a complaint before the respondent police.

3. On receipt of the complaint, P.W.10, Head Constable, attached to the respondent police, registered a case in Crime No.239 of 2006 for the offences under Sections 279 and 304(A) IPC. P.W.11, Inspector of Police, in the respondent police station, after receipt of the First Information Report, commenced investigation. He proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2., and drew a Rough Sketch, Ex.P.7., in the presence of the witnesses. Then, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared Inquest Report, Ex.P.8. Thereafter, he sent the dead body for autopsy. P.W.8, Doctor, working in the Government Hospital, Namakkal, conducted autopsy on the dead body of the deceased and has given a postmortem certificate, Ex.P.3. She has given an opinion that the deceased died of shock and hemorrhage. Then, P.W.11 arrested the accused. Subsequently, he sent the offending lorry and two wheeler, for inspection to the Motor Vehicle Inspector, P.W.9.

4. P.W.9., Motor Vehicle Inspector conducted inspection and has given a report stating that there is a scratch in the right side of the lorry and he has also given a report that there is no mechanical fault in the offending vehicle and found that the entire front portion of the two wheeler was damaged. P.W.11, recorded the statement of witnesses and after completion of investigation, he laid charge sheet against the accused.

5. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 8 documents were exhibited.

6. Out of the witnesses examined P.Ws.1, 6 and 7 are eye-witnesses to the occurrence. According to P.W.1, at the time of occurrence, while he was walking in the road, he saw the deceased, who was riding a motorcycle from East to West. At that time, the offending lorry, came in the opposite direction and when overtaking another vehicle, came to the right side of the road and dashed against the deceased and

caused injuries to the deceased. Immediately, he hired an auto and took the deceased to the private hospital, where the deceased was referred to Government Hospital, Namakkal, and there he was declared dead. Thereafter, he has given a complaint before the respondent police. P.W.6 was also another morning walker, who was walking along the road, at that time, he saw the deceased in a motorcycle from East to West, and in the opposite direction a lorry came from West to East and while overtaking another lorry, the offending lorry dashed against the deceased. P.W.6 along with P.W.1 took the deceased to the Hospital and he was also a witness to the Observation Mahazar. P.W.7 was also an eye-witness to the occurrence. According to him, when he was walking along the road, he saw the deceased came in his Honda Motor cycle from East to West and at that time, the offending lorry came in the opposite direction and while overtaking another lorry, the offending lorry came to the right side of the road and dashed against the deceased and caused injuries to him. Then, P.W.7 along with other witnesses took him to the hospital and P.W.7 was in the hospital for more than one hour and thereafter, he left the place.

7. P.W.9 is the Motor Vehicle Inspector. He examined the offending lorry and the motorcycle of the deceased and given a report that there is no mechanical fault in the offending lorry and he also found a scratch in the right side of the lorry.

8. Analyzing the available evidence and materials on records, the trial Court convicted the accused as mentioned in paragraph one of the judgment. Challenging the above said conviction and sentence, the petitioner/accused has filed an appeal in C.A.No.21 of 2009 on the file of the Additional District and Sessions Judge, Namakkal. The lower appellate Court, dismissed the appeal, thereby confirming the conviction and sentence of the trial Court. Challenging the same, the petitioner/accused is before this Court with this appeal.

9. I have heard Mr.C.D.Johnson, learned counsel appearing for the petitioner and Mrs.M.F.Shabana, Government Advocate, appearing for the respondent.

10. There are 3 eye-witnesses to the occurrence. All of them are independent witnesses and they were all morning walkers. It is the consistent evidence of all the witnesses that at the time of occurrence, the deceased was riding a motorcycle and came from East to West and the offending lorry came in the opposite side and while overtaking another lorry, the offending lorry came to the right side of the road and dashed against the deceased motorcycle and caused the death of the deceased. All the 3 witnesses are independent witnesses, they are no way connected with the deceased. They consistently stated that it is only the lorry driver, who driven the lorry in a rash and negligent manner

and dashed against the motorcycle. The Motor Vehicle Inspector, P.W.9, has also stated that there is no mechanical fault in the lorry.

11. On perusal of the records and also the rough sketch, it could be seen that the offending lorry came in the right side of the road and dashed against the innocent deceased's motorcycle. In the above circumstances, it could be seen that it is only the petitioner/accused, who has driven the lorry in a rash and negligent manner, dashed against the deceased and caused his death.

12. The courts below, after considering the evidence came to a conclusion that it is only due to the rash and negligent drive of the petitioner/accused, the accident has been taken place. In such circumstances, I find no perversity in the orders passed by the Courts below and there is no reason to interfere with the concurrent finding of the courts below.

13. So far as the sentence is concerned, the petitioner is a poor person and he has to maintain a big family and he has also no bad antecedent. Taking into consideration of the mitigating as well as the aggregating circumstances, the sentence imposed on the petitioner is modified into rigorous imprisonment for 6 months.

14. In the result, the Criminal Revision Case is partly allowed, the conviction imposed on the appellant for the offence under Section 304(A) IPC is confirmed, and the sentence is modified to rigorous imprisonment for 6 months and to pay a fine of Rs.2,000/- in default to undergo 8 weeks rigorous imprisonment.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate No.I,
Namakkal

2.do thro'The Chief Judicial Magistrate, Namakkal.

3.The Additional District and Sessions Judge,
Fast Track Court,
Namakkal.

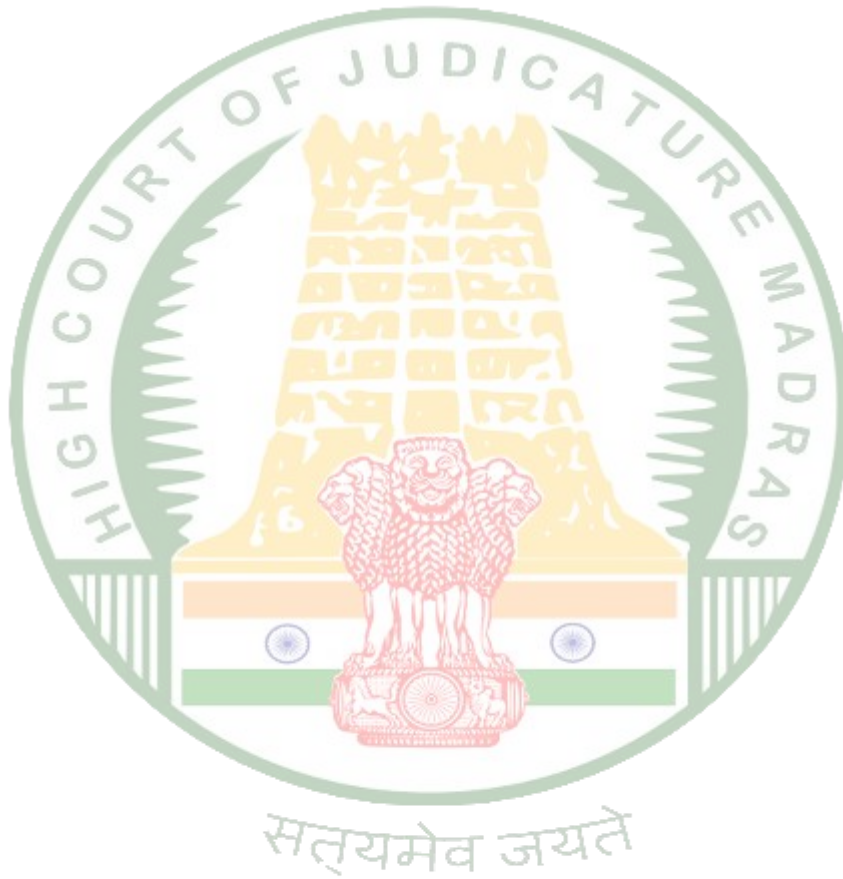
4.do thro'The Principal Sessions Judge,
Namakkal.

5. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.C.D.JOhnson, advocate,sr.605.

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