

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.112 of 2007

Ramasamy

.. Appellant

Vs

Viswanathan  
Respondent

..

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., to set aside the order of acquittal dated 10.11.2006 passed by the Learned Judicial Magistrate, Rasipuram in C.C.No.151 of 2004

For Appellant : Mr.V.Sairam

For Respondent : Service awaited

JUDGMENT

The appellant has filed a complaint for the offences under Sections 279, 337 and 338 IPC. After trial, the trial Court acquitted the accused. Now, challenging the order of acquittal, the present appeal has been filed.

सत्यमेव जयते

2. The case of the complainant in brief is as follows :

The appellant along with his wife P.W.2 were travelling in a bullet motor cycle bearing registration No.TNP 8487 in Authoor Rasipuram main road and while they were crossing a Rice mill near Metala, the respondent/accused came in a TVS Moped M80 from the left side and dashed against the appellant's motor cycle, due to which, the appellant and his wife were thrown away and sustained serious fractures and injuries, and they were admitted in the hospital. Eventhough a memo has been sent from the hospital, no complaint has been registered. Thereafter, the appellant sent a complaint in a registered post, even then, no

case has been registered. Whereas based on the complaint given by the respondent, the Inspector of Police, Namagiri Pettai Police Station has registered a criminal case against the petitioner. In the said circumstances, he has filed a private complaint against the accused .

3. In order to prove his case, on his side as many as 6 witnesses were examined and 5 documents and one material object were marked.

4. Out of the witnesses examined, P.W.1 is the injured witness and the complainant in this case is P.W.2, wife of P.W.1. According to them, while P.W.1 riding a motor cycle, P.W.2 was a pillion rider and the accused has dashed against their motor cycle and due to the same, they fell down and sustained injuries. P.Ws 3 and 4 are eye-witnesses to the occurrence. According to them, the accused had come in a motor cycle and dashed against the motorcycle of P.W.1 and they have fell down and they have been admitted in the hospital. P.W.5 a doctor, admitted P.Ws.1 and 2 in the hospital and referred them for further treatment to a private hospital at Salem. P.W.6, another Doctor has spoken about the injuries sustained by P.W.1.

5. When the above incriminating materials were put to the accused under Section 313 cr.P.C, the respondent/accused was examined himself as DW1 . According to him, he was travelling in a TVS M80 Moped , near the rice mill for the purpose of giving invitation to one of his relative, at that time, the complainant came in a motorcycle and dashed against his moped, he was thrown away and sustained fracture on the wrist and also on his left leg. Apart from that they sustained injuries only because of the rash and negligent driving of P.W.1. D.W.2 is also another eye-witness to the occurrence and he has also stated that the complainant /P.W.1 only has dashed against the vehicle. D.W.2 is also an injured witness in this case. According to him, D.Ws.1 and 2 were standing near the road. The complainant came in a motorcycle in the rash and negligent manner and dashed against him and he had also sustained serious injuries and admitted in the hospital. D.W.3 is another eyewitness to the occurrence. According to him only P.W.1 has driven the vehicle in a rash and negligent manner and dashed against the respondent and D.W.2 and caused injuries.

6. Considering all the materials, the trial Court acquitted the accused stating that the complainant failed to prove that only this respondent/accused has driven the vehicle in a rash and negligent manner and caused injuries to the complainant. Now, challenging the above said order of acquittal , the present appeal has been filed.

7. I have considered the rival submissions and perused the materials available on record.

8. Admittedly, the occurrence said to have taken place on 08.09.2002 and in the occurrence both the appellant as well as the respondent sustained injuries. Based on the complaint given by the respondent/accused a crime has been registered against the appellant in Namagiri Pettai Police in Crime No. 398 of 2002 it was taken on file in C.C.422 of 2004. Subsequently, the present private complaint has been filed by the appellant in the year 2004 for the occurrence said to have taken place on 08.09.2002. Admittedly, it is the case of the appellant that while he was travelling in a motorcycle, the respondent/accused came in a moped and dashed against the backside of the motorcycle and the appellant and his wife were thrown away and sustained injuries and only because of the rash and negligent driving of the accused the occurrence has been taken place. But the case of the respondent/accused is that while he was standing near the main road with his moped, the complainant came in a motorcycle in rash and negligent manner and dashed against his moped and the accused and DW2 have sustained injuries. The complainant claims that the accident took place due to rash and negligent driving of the accused, then it is his duty to prove the same. While the appellant claiming that it is only the respondent moped dashed against him, he has not taken any steps to send the moped for inspection by the motor vehicle Inspector. Apart from that even though the occurrence taken place on 08.09.2002, the present private complaint has been filed in the year 2004 and the delay in filing the complaint was not properly explained. DW1 to DW3, the injured witnesses and eye witnesses have clearly stated that it was only the appellant driven the bike in a rash and negligent manner and a complaint to that effect was also filed in time and a criminal case was also registered against the appellant. The trial Court after considering the entire materials available on record has come to the conclusion that the complainant failed to prove the charges beyond any reasonable doubt and acquitted the accused.

9. It is settled principal of law that in an order of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of

the acquittal recorded by the trial Court.

10. In the above circumstances, I find no irregularity or infirmity in the order passed by the Court below. I find no reason to interfere with the impugned order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

11. In the result, the Criminal Appeal is dismissed and the impugned order of acquittal passed by the court below is hereby confirmed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,  
Rasipuram.

2.The Section Officer,  
Criminal Section,  
High Court, Madras-104.

Crl.A.No.112 of 2007

nr 15/10/2018

सत्यमेव जयते

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