

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.56 of 2011

M.Jayabalan

... Petitioner

vs

State

Rep. by the Station House Officer,
Sirupakkam,
Vridhachalam.
(Crime No.58 of 2008)

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment dated 08.09.2010 passed in C.A.No.11 of 2010 on the file of the learned Additional District and Sessions Judge,(Fast Track Court No.3), Vridhachalam, confirming the order dated 12.01.2010 passed in C.C.No.28 of 2009 on the file of the learned Judicial Magistrate No.I, Vridhachalam.

For Petitioner : Mr.S.Saravanakumar

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

ORDER

This revision has been filed against the conviction. The sole accused in C.C.No.28 of 2009 on the file of the learned Judicial Magistrate No.I, Vridhachalam, is petitioner herein. The petitioner stood charged for an offence under Section 304(A) IPC. After trial, the trial Court convicted the petitioner under Section 304(A) IPC, and sentencing him to undergo three months rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for two months. Challenging the above said conviction and sentence, the petitioner has filed a Criminal Appeal in C.A.No.11 of 2010 on the file of the learned Additional District and Sessions Court,(Fast Track Court No.3), Vridhachalam. The lower appellate Court, by its judgment dated 08.09.2010, dismissed the appeal, by confirming the judgment passed by the Trial Court. Challenging the above said conviction and sentence, the petitioner preferred the present criminal revision case.

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

On 18.09.2008 at about 7.45 a.m., the deceased along with P.Ws.1 and 2, who are all the grandfather and grandmother of the deceased, walking on the left an side of the road, at that time, a private bus, driven by the accused came in a rash and negligent manner without sounding horn dashed against the

deceased. The front wheel of the bus ran over the deceased and caused his death. Then, P.W.1 has given complaint[Ex.P1] to the respondent police. P.W.12, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.58 of 2008 for offence under Section 304(A) IPC and prepared first information report[Ex.P6]. Then, he commenced the investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P7], rough sketch[Ex.P8]. Thereafter, he conducted inquest over the dead body of the deceased in the presence of panchayators in the Government Hospital, Vridhachalam and prepared inquest report[Ex.P9]. Then, he sent the vehicle for inspection to the Motor Vehicle Inspector. P.W.12 sent a request to the Government Hospital, Vridhachalam for conducting postmortem autopsy. Thereafter, he examined the Doctor, who conducted the postmortem autopsy and obtained postmortem certificate and also the Motor Vehicle Inspector who examined the vehicle and obtained motor vehicle inspection report, he examined other witnesses and recorded their statements and after completing the investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 13 witnesses were examined and 9 documents were marked.

4. Out of the said witnesses examined, P.Ws.1 and 2 are the eye witness to the occurrence. P.W.1 is the grandfather of the deceased. According to him, at the time occurrence, both the deceased and P.Ws.1 and 2 were walking on the left an side of the road, at that time the offending bus come behind in a rash and negligent manner without sounding horn, dashed against the deceased, and the front wheel of the bus ran over the deceased. Then, he has given complaint before the respondent police station. P.W.2 is the grandmother of the deceased. She is also an eye witness to the occurrence. She also spoke about the rash and negligent driving of the petitioner. P.W.3 is a resident of Sirupakkam. He came to the scene of occurrence after the accident and he spoke about the complaint given by P.W.1. P.W.4 came to the scene of occurrence only after the accident. P.W.5, the villager, he came to the scene of occurrence after the accident. P.W.6 is the mother of the deceased. P.W.7, the Doctor, working in the Government Hospital, Vridhachalam, who conducted postmortem autopsy and given postmortem certificate. P.W.8 is the witness to the observation mahazar. P.W.9 turned hostile. P.W.10 is a Motor Vehicle Inspector, who inspected the bus and he found no damage in the bus. He is of the opinion that the accident was not taken place due to any mechanical default. P.W.11 is the Head Constable, working in the respondent police station. He identified the dead body for postmortem. P.W.12, the Sub Inspector of Police, working in the

respondent police station, on receipt of the complainant, registered a case, commenced the investigation, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

6. After elaborate trial, the trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above said conviction and sentence, the petitioner has filed a Criminal Appeal in C.A.No.11 of 2010 on the file of the Additional District and Sessions Court,(Fast Track Court No.3), Vridhachalam. The lower appellate Court, by its judgment dated 12.01.2010, dismissed the appeal, by confirming the judgment passed by the Trial Court. Challenging the above conviction and sentence, the petitioner preferred this present criminal revision case.

7. I have heard Mr.S.Saravakumar, the learned counsel appearing for the petitioner and Mrs.M.F.Shababa, the learned Government Advocate(Crl. Side) appearing for the respondents and perused the materials available on record.

8. P.W.s.1 and 2 are the eye witness to the occurrence. They are grandfather and grandmother of the deceased. It is their consistent evidence that at the time of occurrence, both the deceased and P.W.1 came from their agriculture field and they are walking the extreme left side of the road, at that time, the offending bus driven by the petitioner came in a rash and negligent manner, and dashed against the deceased, the front side of the wheel of the bus ran over the deceased. P.W.2 is the another eye witness to the occurrence and grandmother of the deceased, she has also corroborate the evidence of P.W.1, both P.Ws.1 and 2 accompany the deceased and their presence in the scene of occurrence is natural and consistent, there is no reason to disbelieve their evidence.

9. P.W.10, the Motor Vehicle Inspector had inspected the offending bus and given a report stating that there is no mechanical failure in the bus. The evidence of P.Ws.1 and 2 and the report of the Motor Vehicle Inspector and also from the rough sketch, it could be seen that the accident taken place in the extreme left an side of the road and the front wheel of the bus ran over the deceased, before a bus stop which is only 100 feet distance away from the scene of occurrence. From the above evidence, it could be seen that the accident was taken place only due to the rash and negligent driving of the driver of the bus. Considering all the above materials, the Courts below

concurrently held that the accident has taken place only due to the rash and negligent driving of the driver of the bus. In the above circumstances, I find no illegality or perversity in the order passed by the Courts below. Hence, there is no reason to interfere with the concurrent findings of the Courts below.

10. So far as the quantum of sentence is concerned, the accused is a poor man and he has no bad antecedents and he has a big family and he was already confined jail for more than one month. Considering all the mitigating as well as aggravating circumstances, the sentence is modified to that of the period already undergone by the petitioner.

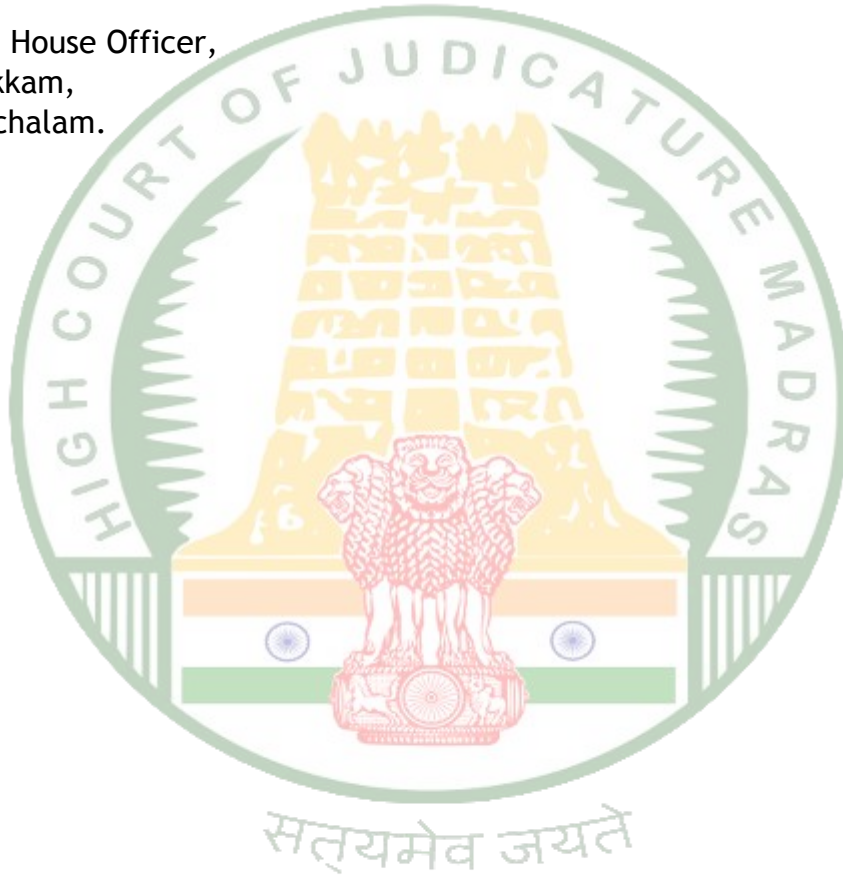
11. In the result, the criminal revision case is partly allowed. The conviction imposed on the petitioner by the Courts below under Section 304(A) IPC is confirmed and however the sentence imposed on the petitioner by the Courts below is modified to the period already undergone by the petitioner and to pay a fine of Rs.2000/- in default to undergo four years Rigorous Imprisonment.

12.01.2017

Index:yes/no
Internet:yes/no
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To

- 1.The Additional District and Sessions Judge,
(Fast Track Court No.III),
Vridhachalam.
- 2.The Judicial Magistrate No.I,
Vridhachalam.
3. Station House Officer,
Sirupakkam,
Vridhachalam.



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