

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :20.07.2017

PRONOUNCED ON : 13.11.2017

CRL.R.C.No.796 of 2011

G.Chidambaram ... Petitioner

Vs.

State rep.by
Inspector of Police,
Traffic Investigation Wing,
(East) Police Station,
Coimbatore
Cr.No.283 of 2007

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, against the judgment passed in C.A.No.242 of 2010 dated 29.03.2011 on the file of the learned Additional District Judge Fast Track Court No.III, Coimbatore, confirming the judgment and order of conviction of the trial Court passed in C.C.No.190 of 2007 dated 26.10.2010 on the file of the learned Judicial Magistrate No.VIII and setting aside the same.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Mr.B.Ramesh Babu,
Govt.Advocate (Crl.side)

ORDER

This Criminal revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure, against the judgment passed in C.A.No.242 of 2010 dated 29.03.2011 on the file of the learned Additional District Judge Fast Track Court No.III, Coimbatore, confirming the judgment and order of conviction of the trial Court passed in C.C.No.190 of 2007 dated 26.10.2010 on the file of the learned Judicial Magistrate No.VIII and setting aside the same.

2. The accused has preferred this appeal against the conviction and sentence passed in C.A.242 of 2016 on the file of the learned Additional District Judge, Fast Track Court, Coimbatore, confirming the conviction and sentence passed by the learned Judicial Magistrate No.VIII, Coimbatore in C.C.NO.190 of 2007.

3. The case of the prosecution is that the appellant drove the vehicle belongs to Tamil Nadu Corporation on 13.08.2007 in a rash and negligent manner and caused the death of Gokul at about 8.20 a.m in the Avinashi Main Road near Balaji Studio. After completing the formalities, during the trial on the side of the prosecution 13 witnesses were examined and 13 documents were marked. On the side of the accused no witness no documents were marked. P.W.1 Venkatapathy would state that after dropping his daughter in a school was

proceeding from East to West in the Avinshi Main Road. When he reached PSG estate he stopped the vehicle and was talking with his friends. At that time corporation vehicle driven by the accused came in rash and negligent manner and hit behind the deceased who was riding the bike and after impact, the bus was stopped after 50 feet from the place of occurrence, the deceased was dragged on to that 50 feet thereon. The injured died in the hospital. P.W.2,3,6 are the eye witnesses. The P.W.10 is the Motor Vehicle Inspector who inspected the two wheeler driven by the deceased. P.W.9 is the Motor Vehicle Inspector who inspected the offending vehicle driven by the accused. After the trial, the trial Court convicted the petitioner for the offence U/s 279 r/w 304(A) IPC and sentenced to undergo S.I for one year and imposed fine of Rs.3,000/- i/d S.I for 3 months.

4.Challenging the conviction and sentence the petitioner has filed appeal before the Principal District Judge, Cuddalore, it was later transferred to Arbitrator Court for disposal. On appreciation of the entire evidence, the First Appellate Court below has held that the petitioner/accused driven the vehicle in a rash and negligent manner and thereby caused accident and accordingly, convicted the petitioner and imposed the sentence. As stated supra the accused has preferred this revision.

5. The case of the prosecution is that the fact that on the particular date and time the petitioner was on the wheels of the vehicle bearing TN 33 N 2001, on the Avinashi Main Road from East to West direction is not disputed. The fact that in the accident that took place on that spot Gokul sustained grievous injuries and died in the hospital on the next day is also not disputed. So the identify of the petitioner and the occurrence is not disputed.

6. Both the P.W.1 and P.W.2 have categorically stated in their evidence that the Government transport bus driven by the petitioner herein came from the behind and hit against the rear portion of the vehicle in which the deceased was driving.

7. It remains to be stated that both P.W.1 and P.W.2 are not persons of the locality they are only chance witnesses and they are happened to come across the area and there is no material contradiction on particulars relating to the manner of the accident as projected by the prosecution. P.W.5 who is the father of the deceased, has deposed regarding the various treatment that has been given by him. While, P.W.7 and P.W.8 are the Doctors / medical witnesses who had given initial treatment and subsequently further treatment on the injured who died on the next day of the accident.

8. It remains to be stated that in the Accident Register Ex.P7 issued by P.W.11 Doctor Dinakar Babu goes to show that P.W.1 has taken the injured immediately after the accident to the nearby hospital for giving the First Aid treatment subsequently referred to P.S.G hospital for First Aid and then, he was further treated, referred to Government Hospital goes to show that the versions of P.W.1 and P.W.2 cannot be doubted. It is categorical evidence of P.W.1 and P.W.2, they took the injured to the hospital which stand duly corroborated by the medical evidence of P.W.11 coupled with Ex.P7 documentary evidence, the Accident Register. Further, P.W.3 has categorically stated that two persons have taken the injured to the hospital also lend support and credence to oral testimonial of P.W.1 and P.W.2 and therefore, both the Courts below have categorically held that P.W.1 and P.W.2 were present in the scene of occurrence. Subsequently, they took the injured Gokul to the nearby PSG hospital in Coimbatore as could be evidenced from Ex.P7 Accident Register issued by the P.W.11 Doctor Dinagar Babu. Medical evidence also stands corroborated by the evidence of P.W.3 and it remains to be stated that all of them are independent witnesses and hence, both the Courts below have concurrently held that the oral evidence of P.W.1 and P.W.2 are reliable and test worthy is found to be in accordance with principles of law laid down under the Evidence Act and the same cannot be interfered with.

9. With regard to the manner of the accident and also the rash and negligent driving of the accused has been properly demonstrated before the trial Court through the prosecution witnesses and trial Court has also made clear observation that even after hitting the two wheeler, the deceased was dragged on upto 50 feet from the point of accident also.

10. Considering the same both the Courts below have come to the conclusion that the accused drove the vehicle in a rash and negligent manner and also taken note of the evidence of P.W.9 and P.W.10 Motor Vehicles Inspector that no brake has been apply as there was no indication of tyre mark on the road, have categorically come to the conclusion that the accident has taken solely due to the rash and negligent driving of the driver of the offending vehicle namely, the petitioner herein and accordingly, laid the conviction under Section 304(A) I.P.C and on for different reasoning the lower Appellate Court has also held that the charges are proved beyond reasonable doubt and the same is well found and well merited does not warrant any interference by this Court.

11. The lower Appellate Court has also discussed in detail about the suggestive case projected by the defence and held that there was no sudden

crossing of road and the deceased was rightly driving the vehicle just in front of the van of the revision petitioner/accused and the accused ought to have taken proper care and caution in avoiding the two wheeler proceeding in front of him on the left side rather dashing from the behind on the rear side of the vehicle and not even applied the brake, the injured was dragged on the road for more than 50 feet, have, come to the correct conclusion that the accused had driven the vehicle in a rash and negligent manner and thereby caused the accident and hence, the conviction laid by the both the Courts below are appropriate and does not call for any interference by this court.

12. The learned counsel for the appellant/accused has submitted that both the Courts below has awarded one year of sentence and fine Rs.3,000/- with default sentence. Considering the nature and gravity on the offence and also taking note of the manner of the accident, this Court is of the considered view that the sentence may be reduced to that of 6 months and hence, the sentence awarded alone shall stand modified to the extent of 6 months Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default simple imprisonment for 3 months.

13. In the result, this Criminal Revision Petition is partly allowed. While, the conviction for the offence under Section 304(A) is held to be valid and confirmed. However, the sentence alone has been modified to that of six months with fine of Rs.3,000/- in default to undergo 3 months Simple Imprisonment. The Bail bond executed by the petitioner/accused is cancelled. The trial Court is directed to secure the custody of the petitioner/accused and commit him to jail to undergo remaining period of sentence.

.....**11.2017**

Index:Yes
Internet:No
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To

- 1.The Additional District Judge Fast Track Court No.III, Coimbatore
- 2.The Judicial Magistrate No.VIII, Coimbatore.

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RMT.TEEKAA RAMAN, J.,

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order in
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