

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.860 of 2011

Mr.Sathish Babu Petitioner
Vs

State rep. by
The Inspector of Police,
Traffic Investigation Wing (East),
Coimbatore,
(Crime No.59/2006) ... Respondent

Prayer:- This Criminal revision is filed under Section 397 & 401 of Cr.P.C., to set aside the judgment dated 31.03.2011 passed in C.A.No.14 of 2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore confirming the judgment dated 23.12.2010 in C.C.No.87 of 2006 on the file of the learned Judicial Magistrate No.VIII, Coimbatore.

For petitioner : Mr.L.Mouli

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

O R D E R

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The sole accused in C.C.No.87 of 2006 on the file of Judicial Magistrate No.VIII, Coimbatore is the petitioner herein. He stood charged for offences under section 279 r/w 304(A) IPC. The Trial Court convicted the accused under Section 279 r/w 304(A) IPC and sentenced him to undergo Simple Imprisonment for one year and also imposed a fine of Rs.1000/-, in default to undergo Simple Imprisonment for three months. Challenging the above said conviction and sentence, the petitioner filed an appeal in C.A.No.14 of 2011

on the file of the learned Additional District and Sessions

Judge, Fast Track Court No.II, Coimbatore, and the lower Appellate Court confirmed the conviction and sentence and dismissed the appeal. Challenging the same, the petitioner has filed the present Criminal Revision.

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

On 16.02.2006, at about 10.15 A.M., the deceased, in this case, one Mr.K.Ramasamy came in his TVS 50 Motor Cycle bearing Registration No.T.N.38 H 6109, in Coimbatore-Avinashi Road, near Gowtham Lodge. At that time, a Ambassador Car bearing Registration No.TN.38 A T-0245, driven by the petitioner/accused came from West to East and dashed the TVS 50 Motor Cycle. In that effect, the deceased fell down and sustained head injuries. Immediately, he was taken to K.M.C.H. Hospital, and P.W.9, the Doctor working there, admitted him and found head injuries and some fracture in the left shoulder bones. He admitted him in the hospital and issued an accident report, which is Ex.B6. Based on the complaint given by one Mr.Balasundaram, the Sub-Inspector of Police-P.W.11, registered a case in Crime No.87 of 2006, for the offence under section 279 r/w 337 IPC, immediately went to the place of occurrence and prepared an observation mahazar and a rough sketch, and recorded the statements of witnesses. Thereafter, he seized the offending vehicle i.e., the car as well as the TVS 50 and sent it for inspection by Motor Vehicle Inspector. Thereafter, the deceased succumbed injuries on 16.02.2005, at 8.25 p.m. P.W.1 received the death intimation, and altered the FIR for the offences under section 279, 304(A) IPC, and sent it to P.W.12-Inspector of Police, for further investigation. P.W.12 received the FIR and proceed to the Government Medical College and Hospital, Coimbatore, where he conducted inquest and prepared inquest report, then he sent the body for postmortem. P.W.10, the Doctor working in the Government Medical College and Hospital, Coimbatore, conducted the post-mortem autopsy and issued the postmortem report. The Doctor is of the opinion that the deceased died due to head injuries. P.W.12 recorded the statements of the Doctor and the Inspector of the Motor Vehicles, and completed the investigation and laid Charge Sheet.

3. When the above incriminating materials were put to the accused, he denied the charges made against him.

4. In order to prove the case, the prosecution examined 12 witnesses and marked 11 documents.

5. Out of the twelve witnesses, P.W.1 is said to be the eye witness to the occurrence. According to him, at the time of accident, he alongwith P.W.4 were standing opposite to Gowtham Lodge and he was talking to him. At that time, he saw

a TVS 50 moped coming from Avinashi Road, from West to East, and at the same time an Ambassador car came behind him in a rash and negligent manner and dashed the TVS 50 from behind, and the driver of the TVS 50 was thrown away and was seriously injured. Then, he had come to know that the injured person was residing opposite to his residence, and he called the ambulance and took him to the hospital, thereafter he lodged a complaint before the Sub-Inspector of Police. P.W.2 is the daughter of the deceased, who went to the hospital after hearing the news that his father has met with an accident. P.W.3 is the son-in-law of the deceased. According to him, after hearing the news of the accident, he also rushed to the hospital. P.W.4 is working as a professor in P.S.G.Arts College, Coimbatore. According to him, at the time of occurrence, he alongwith P.W.1 were standing in front of Jayaseelan Provision Store, and saw the petitioner/accused was driving his Ambassador car in rash and negligent manner and dashed the moped from behind and the person driving the moped was thrown away, thereafter, they called the ambulance and sent him to the hospital. P.W.5 is an another person who was present near the scene of occurrence. He was sitting in a car shed, near the place of occurrence. At that time, the deceased had come in a TVS 50 and the accused driving the Ambassador car came behind and dashed the moped and he had fallen down, causing injuries to his head. P.W.6 is also working in the car shed and he had also seen the occurrence. According to him, a TVS 50 came from west to east, and an Ambassador car came behind the TVS 50 and dashed against the moped and the person driving the moped was thrown away caused injuries. P.W.7 is the Motor Vehicle Inspector, who examined the TVS 50 and found that the right side view mirror, head light and right side pedal, were damaged. P.W.8 is another Motor Vehicle Inspector, who inspected the Ambassador car and found a small scratch in the left side mudguard where the side indicators were damaged, and the left side and back were slightly dented. He was given an opinion that the accident did not happened due to mechanical failure. P.W.9 is the Doctor, received the body in the hospital and sent the body for post-mortem, and subsequently sent a death memo to the Police. P.W.10 is a Doctor working in the Government Medical College and Hospital, who conducted the post-mortem and gave the post-mortem report. P.W.11 is the Sub-Inspector of Police in the respondent Police Station, who registered the complaint, conducted investigations and after death of the deceased, altered the F.I.R and handed over investigation to the Inspector of Police for further investigation. P.W.12 is the Inspector of Police, who continued the investigation, conducted inquest and recorded the statements of the Doctor, who conducted the post-mortem and other witnesses and filed the charge sheet.

6. When above incriminating materials were put to the accused under section 313 Cr.P.C., he denied the charges as false.

7. The accused examined one K.Nataraj, who was working as an Administrative Officer in the P.S.G.Art College, Coimbatore, where P.W.4 was working, and he had also marked two documents namely, Attendance Register of P.W.4, in the College, and also an authorization letter from the College issued to P.W.1, to give evidence, were marked as Ex.D1 and Ex.D2. Considering the above materials, the Trial Court convicted all the accused as stated above. Challenging the same, they filed an appeal in C.A.No.14 of 2011 before the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore and the Appellate Court dismissed the appeal and confirmed the conviction and sentence, challenging the same, the present Revision is filed.

8. Heard Mr.L.Mouli, learned counsel appearing for the petitioner and Mrs.M.F.Shabana, learned Government Advocate (Crl. Side), appearing for the respondent and perused the impugned order and the materials on record.

9. P.Ws.1, 4, 5, and 6 are eye witnesses to the occurrence. P.W.1 is the person residing in the opposite house of the deceased. According to P.W.1, at the time of accident, P.W.1 and P.W.4 were standing near a provision store opposite to the scene of occurrence. At that time P.W.1 saw the deceased riding his TVS 50 moped from Avinashi road from west to east. At that time, an Ambassador Car driven by the petitioner/accused came from the same direction in a rash and negligent manner dashed the moped. The driver of the moped was thrown away and sustained serious injuries. P.W.4 is a professor, who is working in P.S.G. Arts College, Coimbatore. At that time, P.W.4 and P.W.1 were talking together, opposite to the scene of occurrence near a provision store and he saw the petitioner/accused driving his Ambassador car in a rash and negligent manner and dashed against the TVS moped and the deceased was thrown away and sustained injuries, where P.W.1 and P.W.4 called an Ambulance and sent the deceased to the Government Medical College and Hospital, Coimbatore. But, in order to show that P.W.4 was not present at the scene of occurrence, the defendants side examined D.W.1-Administrative officer working in P.S.G.Arts College, Coimbatore and he had also marked the Attendance Register of P.W.4. From the evidence of D.W.1, it can be seen that, at the time of accident, P.W.4 had gone to College at about 8.30 a.m. and College normally gets over only by 3.15 p.m., and lunch break is between 12.15 p.m. to 1.00 p.m. They had also marked the attendance register of P.W.4 as D1. From the perusal of the attendance register of D2, it could be seen that P.W.4 was at the

College at about 10.15 a.m., when the accident took place. Hence, P.W.4 ought not to have present at the scene of occurrence and he cannot be a witness to the occurrence. Hence, the evidence of P.W.4 cannot be believed. It is a case of P.W.1, that P.W.1 and P.W.4 were talking together at the time of accident, opposite to the scene of occurrence, since it was held that P.W.4 ought not to have present, thus the evidence of P.W.4 also cannot be believed. Apart from that, P.W.1 was residing opposite to the house of the deceased and he is known to the deceased and he is an interested witness. In the above circumstances, the presence of P.W.1 and P.W.4 at the scene of occurrence is doubtful and their evidences cannot be believed.

10. With regard to two other eye witnesses namely P.W.5 and P.W.6, they are independent and natural witnesses. On considering their evidence, they have not stated that the petitioner/accused had driven the car in a rash and negligent manner. They only say that the deceased was driving the TVS 50 from west to east and a car came behind and dashed against the moped and the person fell down. It is not their evidence that the petitioner was driving the car in a rash and negligent manner. To convict a person for an offence under section 279 r/w 304(A) IPC, prosecution must establish that the person driven the car in a rash and negligent manner and caused injury/death. But, it is not the evidence of P.W.5 and P.W.6 that the petitioner/accused was driving the car in a rash and negligent manner. In the absence of any evidence, that the petitioner was driving the car in a rash and negligent manner, they can be convicted under Section 279 r/w 304(A) IPC. The next evidence in this case, is the Motor Vehicles Inspector. From the evidence of Motor Vehicles Inspector-P.W.8, the car did not dash behind the TVS 50. Considering the damage in the car and the TVS 50, it could be seen that while overtaking the TVS 50, the car might have dashed right hand side mirror of the moped. The deceased at the time of accident is aged about 74 years and the evidence shows that he had undergone two eye surgeries.

11. Taking into consideration, all the above facts, I am of the considered opinion that the prosecution did not prove the case beyond reasonable time. In the above circumstances, the petitioner is entitled for acquittal. In the result, the conviction and sentence of the petitioner-A1 is set aside and the Criminal Revision Case is allowed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court No.II,
Coimbatore.

2. The Judicial Magistrate-VIII
Coimbatore.

3.The Public Prosecutor
High Court, Madras.

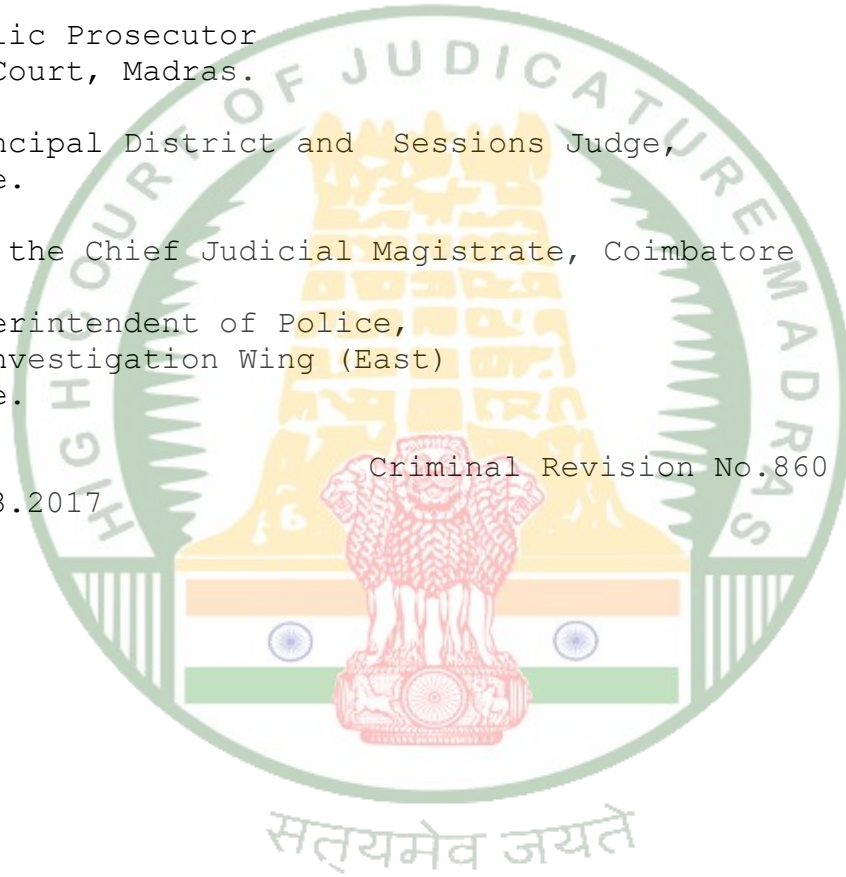
4 The Principal District and Sessions Judge,
Coimbatore.

5 do thro the Chief Judicial Magistrate, Coimbatore

6 The Superintendent of Police,
Traffic Investigation Wing (East)
Coimbatore.

SDR 08.03.2017

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