

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :14.07.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C. No.1259 of 2010

Mr. Thangavelu

...Appellant/Accused

Versus

State, represented by
Inspector of Police,
Palladam Police Station,
Coimbatore District.

...Respondent/Complainant

The Criminal Revision Petition is filed under Section 397 Cr.P.C read with 401 Cr.P.C., calling for the records in C.A.No. 128 of 2009 dated 10.06.2010 on the file of learned Additional District and Sessions Judge, Fast Track Court-V, Tiruppur, confirming the conviction and sentence imposed in C.C.No.154 of 2004 dated 24.09.2009 on the file of Judicial Magistrate, Palladam, convicting the petitioner u/s 279 I.P.C., and the sentenced to Rs.1000/- fine and 337 I.P.C., Rs.500/- and 304A I.P.C., Six months R.I. and the said conviction and sentence is illegal.

For Petitioner : Mr. R. Sankarasubbu

For Respondent : Mr. V. Arul,
Additional Public Prosecutor

O R D E R

This Criminal Revision Case is filed to call for the records in C.A.No. 128 of 2009 dated 10.06.2010 on the file of learned Additional District and Sessions Judge, Fast Track Court-V, Tiruppur, confirming the conviction and sentence imposed in C.C.No.154 of 2004 dated 24.09.2009 on the file of Judicial Magistrate, Palladam.

2. The petitioner face prosecution for offences under Sections 279, 337 and 304(A) IPC in a case tried in C.C.No.154 of 2004. He was convicted for such offences and sentenced as follows:-

Sections of Law	Sentence
279 IPC	Fine of Rs.1,000/- i/d 1 month S.I.
337 IPC	Fine of Rs.500/- i/d 1 month S.I.
304(A) IPC	6 months R.I.

The petitioner/accused preferred an appeal against his conviction in C.A.No.128 of 2009 before the learned Additional District and Sessions Judge, Fast Track Court-V, Tiruppur, which was dismissed under judgment dated 10.06.2010.

3. The case of the prosecution is that the deceased was riding a motorcycle bearing registration No.TN 39 X 3343. PW-1 was riding pillion and they were on the way to a Temple on 07.12.2003. At about 9.45.a.m, the petitioner/bus driver, drove a bus from the opposite direction in a rash and negligent manner, resulting in an accident and death of the rider of the motorcycle on the spot. PW-1 suffered injury to his head, shoulder and leg and was moved to the Palladam Government Hospital by use of a fire service vehicle. Therefrom, he was sent to Tiruppur Government Hospital. While at the Palladam Government Hospital, PWs-2, 3 and 4 called there on hearing of the accident. Recording the statement of PW-1, while he was at Palladam Government Hospital, a case in Crime No.760 of 2003 on the file of respondent came to be registered.

4. Before trial Court, prosecution examined 9 witnesses and marked 8 exhibits. None were examined on behalf of the defence, nor any exhibits were marked.

5. On appreciation of materials before it, trial Court, under judgment dated 24.09.2009, convicted accused for offences u/s.279, 337 and 304(A) IPC and sentenced him as aforesaid. There against, accused preferred an appeal in C.A.No. 128 of 2009 dated 10.06.2010 on the file of learned Additional District and Sessions Judge, Fast Track Court-V, Tiruppur. Appellate Court, under judgment dated 10.06.2010, dismissed the appeal and confirmed the findings of conviction as against accused. Hence, this revision.

6. The contention of learned counsel for petitioner, that PW-1 could not have witnessed the accident, inasmuch as he had been unable to inform the exact place thereof, is not acceptable, inasmuch as he has suffered injuries in the accident and had been admitted to the hospital as reflected in Ex.P3 Accident Register. Thus, there is no doubt that the FIR in the case stands duly registered on information had from him. Even so, the findings of conviction arrived at by the Courts below are unsustainable for the reason that the motorcycle driven by

the deceased and the bus driven by the revision Petitioner were approaching each other from opposite ends. Ex.P6 Motorcycle Inspector's Report informs damage to the front bumper of the bus and particularly, to the left front mirror and left front of the bus. The left front of the bus could not have suffered damage, unless motorcycle had been driven far away from the left corner of the road from which, it was approaching the bus on the opposite side.

7. In admitted circumstance of the bus and motorcycle being driven from opposite sides, the damage to the bus being caused to its left front is more reflective of error on the part of the motorcycle rider than on the part of the Revision Petitioner/bus driver. It is an admitted prosecution case that the deceased did not hold a proper driving license. Lower Appellate Court has erred in disbelieving the defence case on the reasoning that the revision petitioner/accused had not caused examination of the passenger of the bus in support of his case, forgetting that it is for the prosecution to establish its case. Defence quite rightly has put it to the Investigation Officer PW-9 that the complaint in the case Ex.P1 did not inform the nature of the damage suffered by the bus, since doing so, would go against the prosecution case.

8. The revision petition stands allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court No.V, Tiruppur, passed in C.A.No.128 of 2009 on 10.06.2010 confirming the judgment of learned Judicial Magistrate, Palladam, passed in C.C.No.154 of 2004 on 24.09.2009, shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Palladam Police Station,
Coimbatore District.
2. Additional District and Sessions Judge,
Fast Track Court-V, Tiruppur.

3. The Judicial Magistrate,
Palladam.

4. The Public Prosecutor,
High Court, Madras-104.

+1 cc to Mr.Sankarasubbu Advocate sr 50063

Cr1. R.C. No. 1259 of 2010

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