

Reserved on :19.06.2017
Delivered on: 29.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Crl.R.C.No.887 of 2010

Senthilkumar ... Revision Petitioner/Appellant/Accused

Vs

The Station House Officer,
Valavanur Police Station,
Villupuram District
(Cr.No.321 of 2009) ... Respondent/Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C to set aside the judgment passed in Crl.A.No.30 of 2010 dated 16.8.2010 on the file of the Principal Sessions Judge, Villupuram, confirming the judgment passed in C.C.No.213 of 2009 dated 15.6.2010 on the file of the Judicial Magistrate No.2, Villupuram convicting the revision petitioner/accused.

For Petitioner : Mr. J. Suresh

For Respondent : Mr.E.Raja
Addl. Public Prosecutor

O R D E R

Aggrieved over the Judgment of the learned Principal District Judge, Villupuram in Crl.A.No.30 of 2010 dated 16.8.2010 confirming the conviction of the revision petitioner imposed by the learned Judicial Magistrate No.2, Villupuram in C.C.No.213 of 2009 dated 15.06.2010 convicting the revision petitioner/accused under Section 337 I.P.C. sentenced to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month and also convicted under section 304(A) I.P.C., sentenced to undergo rigorous imprisonment for one year and also

to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for one month, the Revision Petitioner has preferred this Revision.

2. The brief facts of the prosecution case is as follows:

2.(a) Deceased Raman, 10 years old boy, son of P.W.5 Muthukrishnan, while standing in the left side of the road, near the iron shop in Villupram-Pondicherry main road, the accused rode a motor bike from east to west in a high speed and knocked down the deceased Raman. P.Ws.1 to 4 were present in the scene of occurrence at the relevant time. P.W.1 is the uncle of the deceased. P.W.1 and others immediately arranged ambulance to take the deceased to hospital, however, the deceased succumbed injuries on the way to hospital. Thereafter P.W.1 went to the police station and gave complaint Ex.P.1. Apart from P.W.1, P.Ws.2 to 4 were also seen the accused while he drove the motor cycle in a rash and negligent manner and hit the deceased in a high speed. P.W.5 father of the minor boy rushed to the spot and took the deceased to the hospital.

2(b) P.W.8 is the mother of the accused. According to her on 26.4.2009 at about 8.30 a.m., while she was a pillion rider in the bike driven by her son, at that time a boy was fallen in the bike and succumbed injuries. P.W.11 Sub-Inspector of police, Valavanur Police Station, received the complaint from P.W.1 and registered a case in Cr.No.321 of 2009 under section 279, 337, 304(A) I.P.C. and forwarded the F.I.R., Ex.P.6 along with case file to P.W.12 Inspector of Police. P.W.12 took up the investigation and went to the place of occurrence and prepared Observation Mahazar Ex.P.2 in the presence of P.Ws.6 and 7 and also drawn Rough Sketch Ex.P.7. Thereafter, he went to the hospital, conducted the Inquest over the dead body of the deceased in the presence of panchayatdars, recorded statement of witnesses, prepared Inquest Report Ex.P.8 and arrested the accused on the same day. P.W.12 sent the seized bike bearing Registration No.PY-01-AT-9678 for examination by Motor Vehicle Inspector P.W.9 he sent the dead body to the Government Hospital along with a requisition to the doctor to conduct post mortem.

2.(c) P.W.10 Medical Officer conducted the autopsy over the dead body of the minor and found head injury and given Post Mortem Certificate Ex.P.4. He also examined P.W.8 Govindammal on the same day and issued Accident Register Ex.P.5. He opined that the deceased would appear to have died of shock and haemorrhage due to head injury. P.W.9 Motor Vehicle Inspector, who inspected the motor cycle and found that the right side of the number plater and indicator light were broken in the motor

cycle. He also given his opined that the accident might not be due to any mechanical defect in the vehicle. After the completion of investigation, P.W.12 the Inspector of Police, filed the charge sheet as against the accused under Section 279, 337, 304(A) I.P.C. The learned Judicial Magistrate after examined the witnesses and perused the other material piece of evidence, found guilty of the accused under Section 337 and 304 (A) I.P.C. and imposed conviction and sentence as stated above. Aggrieved over the conviction and sentence, the revision petitioner is before this Court by way of this Revision. Though the prosecution filed charge sheet under section 279, 337, 304 (A) I.P.C., case was taken on file and the accused was questioned for the charges under Sections 279, 337, 304(A), the learned Judicial Magistrate as well as Principal District Judge have not made any discussion about the rash or negligent act of the accused under section 279 I.P.C. in their findings.

3. The learned counsel for the petitioner submitted that absolutely there is no evidence to show that the accused rode the vehicle in rash and negligent manner. P.Ws.1 to 4 could not have been eye witnesses to the occurrence and P.W.8, mother of the accused has also sustained injuries while she was sitting in the motorcycle as a pillion rider at the time of accident. The rough sketch clearly shows that the minor boy while crossing the road suddenly came in to the contact with the bike, therefore the accident. The learned counsel for the petitioner further submitted that the accident was occurred due to the fault of minor boy and not the accused and the accused rode the vehicle in a lower speed and it is not possible to ride a motorcycle when the mother of the accused was sitting in the pillion of the vehicle. The learned counsel for the petitioner would contend that both the courts below have not considered the above point and simply convicted the accused without any proper reason. The learned counsel would further contend that the charges against the accused u/s 337 and 304(A) of I.P.C. were not proved by the prosecution beyond all reasonable doubt and prayed for acquittal.

4. The learned Additional Public Prosecutor submitted that P.Ws.1 to 4, are the eye-witnesses, they clearly said in their evidence that the accused rode the motor cycle in a rash and negligent manner and dashed against the minor boy who was standing on the left side of the road and caused the accident. The other material evidence and the evidence of prosecution witnesses are clearly established the charges against the accused and the prosecution has proved the case beyond all reasonable doubt and both the learned lower court judges have properly imposed and confirmed the conviction on the accused. He further submitted that there is no proof to dislodge the

evidence of prosecution witnesses, and hence the revision is liable to be dismissed.

5. Now, the point for consideration is whether the charges as against the accused under Sections 337 and 304(A) have proved beyond all reasonable doubt?.

6. The prosecution has examined as many as 12 witnesses and exhibited 8 documents. Based on the materials and evidence, the courts below have found the accused guilty u/s 337 and 304(A) I.P.C. It is undisputed fact that the accidents are unavoidable and it is, in fact, common in day to day life. Every busy road meets the rash and negligent act on the part of the drivers of the vehicles as well as the riders of the two wheelers. Some arrangements should be made in the roads, in the nature of deterrence. But, at the same time, merely because of the fatal accident and loss of life, we cannot presume that are all caused only on the negligence of driver or the rider of vehicle alone and find them guilty. It is for the prosecution to bring home the guilt of the accused beyond all reasonable doubt. In every accident case, for the negligence and rashness, the principles of res ipsa loquitur cannot be applied. Every case has to be decided on the basis of its own facts to assess whether the rider or driver of the vehicle was rash or negligent in driving the vehicle, which resulted vital injuries to the pedestrians. Therefore, burden of the prosecution to prove the guilt of the accused under Section 337 or 304(A) I.P.C. will not be relieved by mere showing the death of pedestrian. The standard of proof should be beyond all reasonable doubt. If these requirements are fulfilled, then the accused person will have no escape route.

7. It is the case of the prosecution that while minor son of P.W.5 one Raman was standing along the left side of the road in Pondicherry-Villupuram road, the accused drove the motorcycle PY-01-AT-9678 in a rash and negligent manner and hit the deceased. The prosecution relied upon the evidences P.Ws.1 to 4 eye witnesses in this regard. P.W.1 stated that while he was standing near the iron shop and chatting with the owner of the iron shop by name Rajaram, a motor cycle which was proceeding to Villupuram from east to west side, dashed against the minor boy who was standing in the left side of the road and caused injuries in the back side of the head and back side of waist. P.W.1 immediately arranged an ambulance and sent the injured minor boy to the hospital. P.W.2 in his evidence also stated that while he was proceeding from Pondicherry towards Villupuram a motor cycle came in a high speed and hit the deceased. Similarly P.W.3 in his evidence stated that the bike hit the deceased who was standing in the left side of the road and P.W.4

has also stated that the accused came in a bike with high speed and hit the deceased.

8. Though P.Ws.1 to 4 are the eye witnesses of the occurrence, on careful perusal of their evidence would create serious doubts. The evidence of P.W.1 when scanned, it clearly indicates that he is none other than the brother of P.W.5, who is father of the deceased. P.W.4 is uncle of the deceased. If really P.W.1 was present and witnessed the occurrence, his conduct would be, to take the deceased to the hospital by any means. But his evidence would show that he has seen the bike, hitting some third party who is minor boy, who is not related to P.W.1. His evidence further goes to show that only after seeing the person in Ambulance, he followed the ambulance by motorcycle and he was informed that the deceased was died and thereafter only P.W.1 came to know about the name of the deceased. His evidence is highly unreliable. If P.W.1 seen the occurrence, there was no need to enquire the name of the deceased, since the deceased is none other than his brother's son. Therefore, the evidence of P.W.1 with regard to the occurrence is highly doubtful.

9. The occurrence said to have taken place in the morning at 8.30 a.m. As per the evidence of P.W.1 he was present in the occurrence place and he followed the Ambulance. He came to know that the deceased was died on the way to the hospital. P.W.1 came to know the death of the deceased within half-an-hour, but he went to the police station in the after noon and gave complaint, as per his evidence. . . Contrary to this evidence, he deposed in his cross examination that he has given complaint to the police in the Government Hospital at 2.30 p.m.on the same day. Whereas F.I.R. shows that the complaint was given at 9.30 a.m. itself. Further, the F.I.R. reached the court with an inordinate delay of 2 days which was not explained by the prosecution. When the P.W.1 deposed in his chief examination that he has given complaint to the police station in the afternoon, the prosecution version that they received complaint at 9.30 a.m. and proceeded investigation immediately is highly doubtful in this case.

10. At any event, even the evidence of P.W.1 is believed, except accused rode the bike from east to west and accident occurred, his evidence does not even prove rashness or negligence on the part of the accused. Similarly, P.W.2 has stated in his evidence that while he was standing at the place of occurrence, the accused came in a bike in a speedy manner and dashed the deceased. Whereas P.W.3 never spoken about neither rashness nor negligent driving of the vehicle by the accused. P.W.4 has stated that the accused came in a speedy manner in a

bike and dashed against the accused. It is already stated that except P.Ws.2 and 4, others have not spoken about the rash or negligent act on the part of the accused. Further, their evidence is also creates serious doubt about the occurrence for the simple reason that the accused, who came in bike along with his mother. P.W.8, as per the prosecution version she has also sustained injuries when the bike met with the accident and she was also admitted in the hospital and in fact Ex.P.5 proves the fact that P.W.8 mother of the accused also sustained simple injuries due to fall from the motorcycle. When the evidence of P.Ws.1 to 4 were scanned, sme show as if the accused only came om a bike and hit the deceased, which is against the prosecution version itself. Therefore, the evidence of prosecution witnesses are highly doubtful, particularly in the light of the delay in despatching the F.I.R. to the court.

11. It is further to be noted that even assuming that their evidence are believable, except P.W.2 and P.W.4, the other witnesses have not deposed anything about the rashness and negligence act of the accused. Sudden crossing the road cannot be ruled out in this case. Ex.P.7 Rough Sketch prepared by the Investigating Officer is carefully seen, the occurrence in fact has occurred in the main road as the scene of the occurrence shown in the sketch. The occurrence place is in the left side of the road which is National Highway. On the other side of the road, the minor boy and his family were living in a group house. Therefore, possibility of minor boy crossing the road also cannot be ruled out.

12. The evidence of the Investigating Officer would also clearly show that the occurrence place is main road and there will be heavy traffic in the road and his evidence also clearly shows that the nearby shop persons were not examined by the investigating officer. It is to be noted that the accused was riding the bike and his mother was sitting as pillion rider at the relevant point of time. Therefore, the accused riding the bike with his mother aged about 66 years as per Ex.P.5 Accident Register, in a rash or negligent manner is improbable. Particularly when the mother was sitting as pillion rider, the chance of rash and negligent driving is highly remote. Therefore, rash or negligent act on the part of the accused cannot be inferred, merely because the deceased met with an unfortunate accident. when the pedestrian suddenly crosses the road, even though the vehicle was driven in a slow speed, it is difficult to control the vehicle in such a situation. These aspects are common for everyone.

13. Therefore, considering the above aspects, this court comes to the conclusion that there is no sufficient evidence to

prove the guilt of the accused beyond all reasonable doubt. The conviction and sentence recorded by the trial court and the appellate court are not based on the proper appreciation of evidence. Hence, the judgement of conviction and the order of sentence passed by the Court below are liable to be set aside and they are accordingly set aside. The point is answered accordingly.

14. In fine, the Criminal Revision is allowed acquitting the appellant of the charges framed against him. The disposal of the material objects shall be in accordance with the directions of the trial Court. The bail bond executed by the revision petitioner/accused shall stand cancelled forthwith. The fine amount, if any, paid by the revision petitioner/accused shall be refunded to him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ggs

To

1.The Principal District Judge, Villupuram

1.a) The Judicial Magistrate No.II,
Villupuram.

1.b) do thro the Chief Judicial Magistrate
Villupuram District.

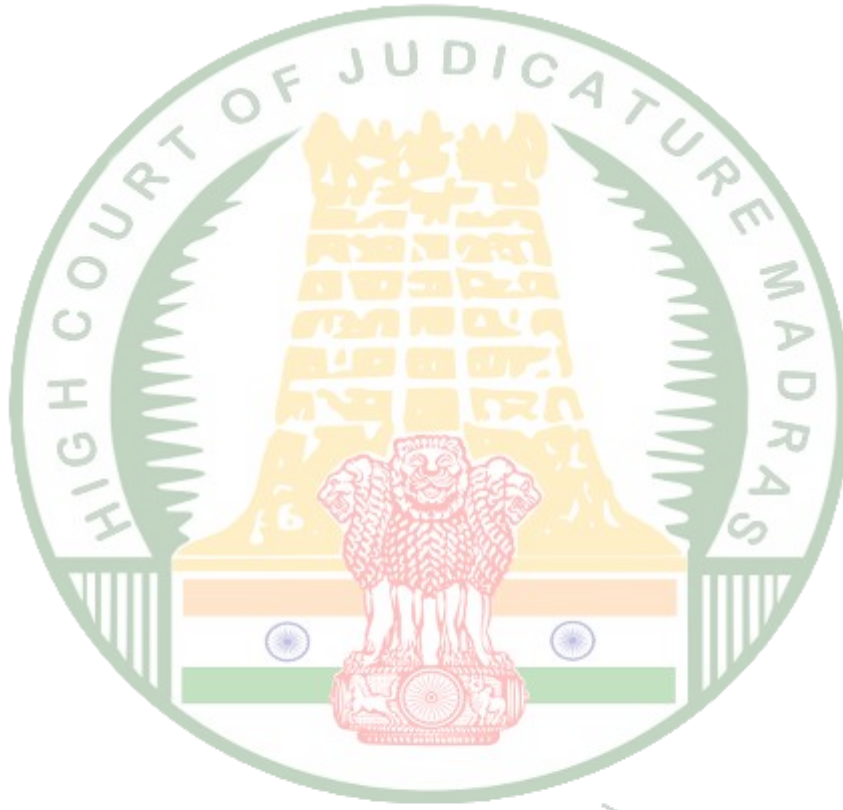
2.The Public Prosecutor, High Court, Madras.

3.The Station House Officer, Valavanur Police Station,
Villupuram District.

+1cc to Mr.J.Suresh,Advocate SR.NO.44992/2017

pre-delivery order in:
Cr1.R.C. No.887of 2010

GP(CO)
CU(06/07/2017)



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