

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.726 of 2016

and

Crl.M.P.No.5411 of 2016

Didies Delphin
S/o Vector Delphin ... Petitioner/Accused

Vs.

State represented by
The Station House Officer
Chidambaram Taluk Police Station
Chidambaram
Cuddalore District ... Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned II Additional District and Sessions Judge, Chidambaram, passed in Crl.A.No.15 of 2015 on 28.01.2016 confirming the judgment of learned Judicial Magistrate II, Chidambaram, passed in C.C.No.253 of 2009 on 12.02.2015.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.M.Mohammed Riyaz
Govt.Advocate (Crl.side)

सत्यमेव जयते
O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioner/accused for offences u/s. 304-A IPC sentencing him to undergo 6 months R.I. and fine of Rs.1,500/- i/d 1 month S.I and u/s. 3 r/w 181 Motor vehicle Act to pay a fine of Rs.500/- i/d week R.I.

2. The prosecution case was that on 26.04.2009 at about 08.30 p.m., on the Chidambaram to Bhuvanagiri road near Vayalur K.R.R. Enterprises cement works the accused drove the two wheeler bearing registration No. PY-01-S-7702 in a rash and negligent manner and dashed a bicycle from behind, owing to which the deceased met his instantaneous death. A case was

registered in Crime No.851 of 2009 on the file of respondent. Upon completion of investigation and filing of charge sheet informing commission of offences 304-a IPC and Section 3 r/w 181 of the Motor Vehicles Act, the case was tried in C.C.No.253 of 2009 on the file of learned Judicial Magistrate II, Chidambaram.

3. Before the Trial Court, the prosecution examined thirteen witnesses and marked ten exhibits. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, the trial Court, under judgment dated 12.02.2015, convicted the petitioner and sentenced him to 6 months R.I and fine Rs.1,500/- i/d 1 month S.I for offence u/s. 304-A IPC and fine of Rs.500/- i/d. 1 week R.I for offence u/s. 3 r/w 181 of Motor Vehicles Act. There against, petitioner preferred Crl.A.No.15 of 2015 on the file of II Additional District Sessions Judge, Chidambaram, which came to be dismissed under judgment dated 28.01.2016. Hence, this revision.

4. Learned counsel for petitioner submits that while P.Ws.2 and 3 deposed to having witnessed the occurrence, they also admitted to police being at the scene immediately thereafter. However, though occurrence took place on 26.04.2009 at 8.30 p.m the complaint was registered only on 06.05.2009. Learned counsel submitted that the delay in preference of complaint was fatal to the prosecution case and made doubtful the very presence of P.Ws.2 and 3 at the scene.

5. Heard learned Government Advocate [Crl.side] on the above submissions.

6. Courts below in considering delay of 11 days in preferring the complaint have taken the view that the same was acceptable since immediately after the accident the deceased had to be taken to hospital. Such reasoning totally is erroneous. When the delay in preference of the complaint on an accident is of 11 days, Courts ought to be more cautious in evaluating the cause therefor and careful against accepting just any reason put forth by the prosecution. Doing so, would visit an accused with disastrous consequences. When P.Ws.2 and 3 depose to the presence of Police immediately after the occurrence, a reasonable expectation would be registration of the case on the same day. Alternatively, the absence of registration of the case of the same day would point to P.Ws.2 and 3 not being at the scene at the time of occurrence and of their deposing falsely to the presence of Police. Looked at from either angle the case of the prosecution would stand disproved. Prosecution case is made only worse by the fact that none of the doctors who attended the deceased on his being admitted at hospital have

been examined nor any records regards his treatment been marked. For the aforesaid reasons, this Court is inclined to interfere with the finding of Courts below.

This Criminal Revision shall stand allowed. The judgment of learned II Additional District and Sessions Judge, Chidambaram, passed in C.A.No.15 of 2015 on 28.01.2016 confirming the judgment of learned Judicial Magistrate II, Chidambaram, passed in C.C.No.253 of 2009 on 12.02.2015, shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid by petitioner shall be refunded. Bail bonds, if any, executed by him shall stand cancelled.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate II,
Chidambaram.

2.-Do- Thro The Chief Judicial Magistrate,
Cuddalore.

3.The II Additional District and
Sessions Judge, Chidambaram.

4.The Station House Officer,
Chidambaram Taluk Police Station,
Chidambaram,
Cuddalore District.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate Sr.12911

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mg[co]
srg 21/04/2017