

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 31.10.2017

Order Pronounced on : 21.12.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision Case No.48 of 2012

L.Bakiaraj

... Petitioner**-Versus-**State Rep. by
Inspector of Police,
Town East Police Station,
Pollachi,
Coimbatore District.**... Respondent**

Criminal Revision under Sections 397 r/w 401 of the Criminal Procedure Code, 1973, praying to set aside the judgment of conviction and sentence of the appellant under Section 304(A) of IPC recorded on 01.03.2011 by the learned Judicial Magistrate No.I, Pollachi, in C.C.No.38 of 2010 and as confirmed by the learned I Additional Sessions Judge, Coimbatore, by judgment in C.A.NO.663 of 2011 dated 26.08.2011 and to acquit the revision petitioner from the charges.

For Petitioner : Mr.C.Veeraraghavan

For Respondent : Mr.R.Sekar,
Government Advocate
[Criminal Side]

ORDER

The sole accused in C.C.No.38 of 2010 on the file of the learned Judicial Magistrate-I, Pollachi, Coimbatore District, is the revision petitioner. He stood charged for offences under Section 279 and 304(A) of IPC. After full-trial, the learned Magistrate, by judgment dated 01.03.2011 found the accused guilty of offences under Section 279 and 304(A) of IPC. The learned Magistrate, accordingly, convicted the accused and sentenced him to undergo simple imprisonment for one year with a fine of Rs.3,000/- in default to suffer simple imprisonment for a further period of 3 months for offence under Section 304(A) of IPC and, however, the learned Magistrate did not choose to impose any separate sentence for offence under Section 279 of IPC. Being aggrieved by the same, the accused preferred an appeal in Criminal Appeal No. 63 of 2011 before the learned I Additional Sessions Judge, Coimbatore and the learned appellate Judge, by judgment dated 15.11.2011, dismissed the appeal, however, while maintaining the conviction, reduced the period of substantive sentence to simple imprisonment for nine months, but, maintained the the imposition of fine and the default sentence. Further aggrieved by the confirmation of the conviction and modification of the sentence, the accused has come up with the present criminal revision case.

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

accused was a driver of autorickshaw bearing Regn. No.TN 41 Q 7960. He used to commute school children from their respective abode to the school and back. On 04.08.2009, as usual, he was carrying 14 school students in his auto and that when the auto was proceeding along Suleshwaranpatti Road from South to North at about 08.45 a.m. in front of 'Om Prakash Petrol Station" the accused suddenly in a rash and negligent manner turned the auto towards east as a result the auto got overturned on its left at the spot; and in the said process, the deceased-Nagoor Meeran, an young school going boy, was thrown out of auto and got trapped in between the auto and the road and he sustained injuries; and on his way to the hospital he succumbed to injuries. P.W.2 is the father of the deceased. P.W.1, who was travelling in the offending autorickshaw lodged a complaint under Ex.P.1 to the police.

3. On receiving such information, P.W.7, the Inspector of Police attached to Pollachi Town East Police Station, registered a case in Crime No.811 of 2009 for offence under Sections 279 and 304-A of IPC. He prepared Ex.P.5 Printed FIR. Taking up the case for investigation, he inspected the spot. Necessary investigation was carried out and documentation was done at the spot. He examined P.W.1, the eye witness and P.W.2, the father of the deceased and few other witnesses and recorded their statements. The offending vehicle was seized and

mechanically inspected. Postmortem was carried out and on completion of investigation, P.W.7 laid charge sheet against the accused before the jurisdictional Magistrate.

4. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this order. The accused denied the charges and he opted for trial. In order to prove the case, on the side of the prosecution, as many as 7 witnesses were examined and 7 documents were marked.

5. Out of the above said witnesses, P.W.1 is an eye witness to the occurrence. According to him, the accused was the driver of the offending vehicle on the date and at the time of occurrence and he was one of a students travelled in the offending autorickshaw on the date and at the time of accident. P.W.1 has further stated that on 04.08.2009, as usual, he commuted to school on auto from his house and the accused was the driver of the auto. There were 13 other students travelled in the auto. The deceased was sitting by the side of the accused on the left side. The auto was proceeding along Suleshwaranpatti from south to north and when the auto was nearing Om Prakash Petrol Station, the accused turned the auto suddenly to his right in a rash and negligent manner due to which he had lost the control and and the auto got overturned. The deceased, who was

sitting by the side of the accused, was thrown out of the auto rickshaw and got trapped between the overturned autorickshaw and the road resulting in serious injuries. The deceased succumbed to injuries on his way to hospital. P.W.1 has stated that he also sustained injuries in the accident. He lodged Ex.P.1 complaint to the police.

6. P.W.2, the father of the deceased, has stated that on getting information about the occurrence, he rushed to the hospital where he found his son dead. He was told that the accident was due to rash and negligent driver of the offending vehicle. P.W.3 is an independent eye witness of the occurrence. He has stated that on the date and time of occurrence, the auto, which was overloaded with school students was being driven by the accused in a rash and negligent manner and when he took right turn, the driver had lost its control due to which the autorickshaw got overturned at the spot and the deceased who was trapped in between the auto and the road, seriously injured.

7. P.W.4, the doctor, conducted autopsy on the body of the deceased. He has stated that at the time of postmortem he noticed that blood was oozing out through nose and mouth of the deceased; there were abrasions over right knee joint; left foot; and left forehead ; temporal, parietal and back of skull were found broken. He opined that death was due to shock

and hemorrhage by injuries to vital organs.

8. P.W.5 has spoken about the preparation of observation mahazar by the police at the spot. P.W.6, the Motor Vehicle Inspector, has stated that he mechanically inspected the offending vehicle and submitted report Ex.P.4. According to him, the accident was not occurred due to any mechanical failure in the offending vehicle. P.W.7 has spoken about the registration of the FIR by the Special Sub Inspector of Police. He has further spoken about his investigation and filing charge sheet against the accused.

9. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness, nor did he mark any document on his side. His defence was a total denial. Having considered all the above, the trial court convict him as detailed in the first paragraph of this order. On appeal, while up-holding the conviction, the learned Sessions Judge reduced the substantive sentence awarded under Section 304(A) of IPC r/w 279 of IPC from one year to nine months, however, maintained the imposition of fine. Challenging the above said conviction and sentences, accused is before this Court with the present criminal revision case.

10. I have heard the learned counsel for the revision petitioner/accused and the learned Government Advocate (Criminal Side) for the respondent/State and also perused the records carefully.

11. The learned counsel for the appellant would submit that the evidence of PW-2 cannot be believed, as PW-2 is a child witness and a child, who is prone to tutoring, should not be believed in the absence of any corroboration. He would further submit that the evidence of PW-3 also cannot be believed, because her presence is doubtful at the time of occurrence. He would further submit that except the evidence of PW-1 and PW-3, there is no other evidence to prove the rash and negligent driving of the accused. He would further submit that the courts below have failed to appreciate the fact that it was this accused who all along commuted the students to school in his auto and the accident was not attributable to any rash and negligent act of the accused and it was because of rough road and there were pot holes on the road at the spot.

12. Per contra, the learned Government Advocate would contend that the power of the revisional court is very limited and when both the courts have properly appreciated the facts and have found the accused guilty of rashness and negligent, the same cannot be interfered with unless and otherwise there is any perversity or illegality in the findings of the courts

below. According to him, there is no perversity or illegality found in the judgments of the court below or it has been shown by the aggrieved that the courts below have failed to apply the correct law. Therefore, the learned Government Advocate prays for dismissal of the revision.

13. A perusal of the evidence of P.W.6 and P.W.7 would go to show that accused was the owner cum driver of the offending vehicle. It has been established by the prosecution that the accused used to commute not less than 14 students to school in his autorickshaw. On the fateful day, as usual, the accused had commuted 14 students to school in his autorickshaw. Admittedly, P.W.1 and the deceased were among those students who were travelling in the autorickshaw on the fateful day. The deceased was sitting by the left side of the accused on the driver seat, while P.W.1 was sitting at center on the backside of the autorickshaw on a wooden plank seat fixed just opposite to the back seat in the autorickshaw and behind the driver.

14. P.W.1 has vividly spoken about the manner in which the accident had taken place. According to him, the accused, on the fateful day, had driven the vehicle at a high speed rashly and negligently and while he was taking right turn at the spot, the auto overturned and the deceased seriously injured and he was immediately taken to hospital and on the way

to hospital, he was declared dead. He withstood in his cross examination. He denied all the suggestions. His evidence is cogent and convincing. Simply because PW-1 happened to be the child witness, his evidence cannot be rejected at all, as absolutely, there is no material to show that P.W.1 has been tutored. Indisputably, P.W.1 was travelling in the autorickshaw. P.W.3 is also an eye witnesses to the occurrence. He has stated that on the date and at the time of occurrence, he was present at a tea stall which was situated near the spot and when he was taking tea, he witnessed the accident. He has stated that he saw the offending autorickshaw, which was overloaded with school students overturning to its left, when the driver had taken turn to his right towards East and the auto was coming from South to North. According to him, while taking right turn, the auto driver had lost his control due to overload and the auto overturned. He helped the public to rescue the deceased who was trapped in between the auto and the road and other injured students and forwarded them to hospital. The courts below found the evidence of P.W.3 was credible and corroborating P.W.1. I do not find any reason to disbelieve the evidence of P.W.3 also. Both P.W.1 and P.W.3 have vividly spoken to about the rashness and the negligence on the part of the accused in riding the overloaded autorickshaw and how, he had lost his control while taking turn to his right and how the auto overturned at the spot. Though they have been fully cross examined nothing has been

elicited to doubt their veracity.

15. P.W.2, the father of the deceased, identified dead body of the deceased. P.W.5 the doctor who conducted autopsy on the body of the deceased has stated that the death was due to injuries to vital organs. Thus, the prosecution has established the cause of death in this case through medical evidence.

16. Next coming to the evidence of P.W.6, the Motor Vehicle Inspector, who mechanically inspected the offending vehicle, has clearly stated that the accident was not due to any mechanical failure.

17. It is relevant to note that when the accused was proceeding in his autorickshaw on a road, in the absence of any other vehicle from the opposite direction or any collusion between the vehicles, if the vehicle of the accused overturned or capsized as to why it so happened and why the vehicle capsized on the road is exclusively within the knowledge of the petitioner as he was the person who was driving the vehicle. A perusal of the Motor Vehicle Inspector's report Ex.P.4 proved by the prosecution through P.W.6 would reveal that there was no mechanical failure in the offence vehicle. Therefore, as to how the accident occurred is exclusively within the knowledge of the accused who did not explain it before the trial

court. The defence set up by the accused that no rash and negligence could be attributed to him because the accident was due to rough road and there were pot holes at the spot was negated by the courts below. Nothing has been elicited either from P.W.1 or P.W.3 nor from the investigating officer, P.W.7 to accept the defence version. They have clearly denied the suggestion in this regard. This court is very much conscious that powers of revisional court are very much restrictive to the extent of illegality or perversity of the findings. The learned counsel for the revision petitioner has not argued any other ground to interfere with the findings of the courts below on the ground of perversity or illegality.

18. Furthermore, the fact that the autorickshaw overloaded with 14 school students, in contravention of permit conditions and in violation of The Motor Vehicles Act, got overturned on the road resulting in serious injuries to the deceased would by itself reveal that the auto was driven in a high speed from south to north and while taking right turn towards east, the accused was not in a position to control the vehicle and ultimately it overturned on the road at the spot and in the said accident, the deceased sustained grievous injuries and on later on, on his way to hospital, he succumbed to injuries. The petitioner was carrying 14 school children in his autorickshaw in violation of permit conditions and the provisions of the Motor Vehicles Act. The accident was due to the rash and negligent

driving of the accused as he had lost control over the vehicle. The principle res-ipsa-loquitar would apply to the facts and the presumption could be raised about the rash and negligent act of the petitioner.

19. In the light of the above discussions, this court holds that the courts below were right in holding the accused guilty of charges under Sections 279 and 304(A) of IPC and the judgments of the court below to that extend do not require any interference at the hands of this court.

20. Now coming to the quantum of sentence, the trial court has sentenced the accused to undergo simple imprisonment for one year for the offence under Section 304(A) of IPC with a fine of Rs.3,000/- and on appeal, the appellate court while reducing it to nine months, maintained the imposition of fine. The petitioner was aged about 27 years at the time of accident. He is a married person and has got children and in case, if he is kept in custody for long period, his family members may have to suffer a great hardship. Therefore, taking into consideration the age of the petitioner and also the circumstances stated above, this court is of the view that sentencing him to four months with a fine, as already imposed by the trial court, would meet the ends of justice.

21. **In the result**, this criminal revision case is partly allowed; the conviction of petitioner for the offence under Sections 279 and 304(A) of IPC is hereby confirmed; the sentence for the offence under Section 304(A) of IPC imposed by the trial court and as modified by the appellate court, is further modified to that of simple imprisonment for four months; and the fine imposed by the trial court and as confirmed by the appellate court stand maintained. It is reported that the revision petitioner had already paid the fine amount and he has been let on bail. The period of detention already undergone by the petitioner, if any, shall be given set off as required under Section 428 of Cr.P.C. The trial court is, therefore, directed to secure the presence of petitioner and to commit him to prison to undergo the sentence.

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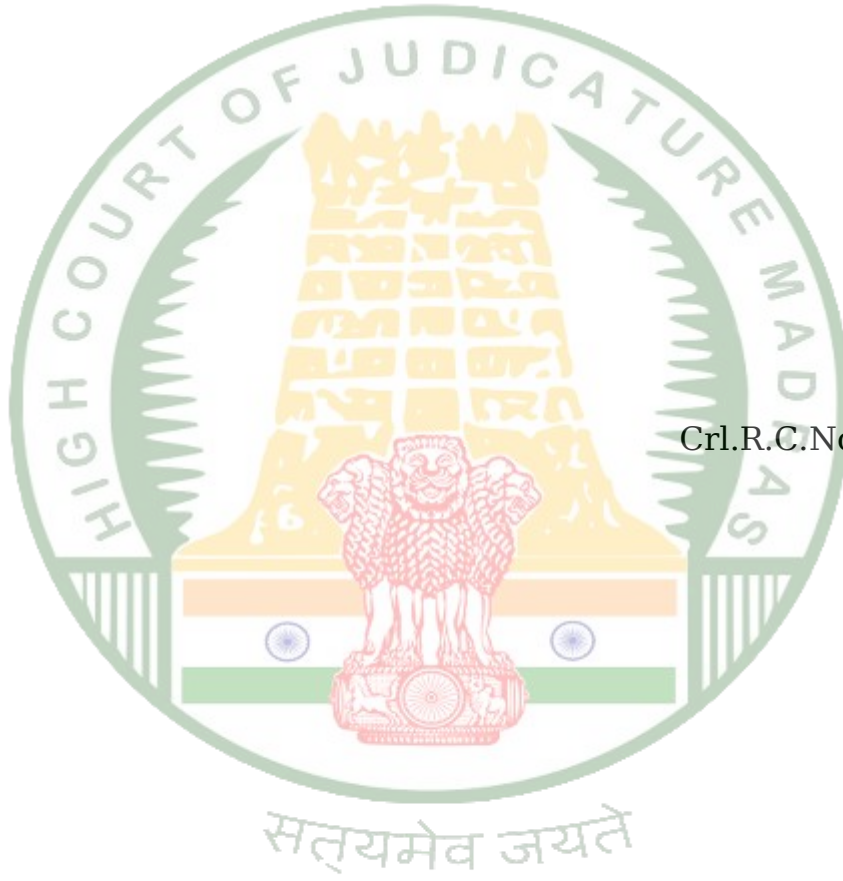
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To

- 1.The I Additional Sessions Judge, Coimbatore, Coimbatore District.
- 2.The Judicial Magistrate No.I, Pollachi, Coimbatore District.
- 3.The Inspector of Police, Town East Police Station, Pollachi, Coimbatore. District.
- 4.The Public Prosecutor, High Court, Chennai 600 104.

V.BHARATHIDASAN.J.,

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