

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.25636 of 2010

and

M.P.No.1 of 2010

Parthasarathy

.. Petitioner

Vs

State: represented by
Inspector of Police,
B-5 Harbour Police Station,
Chennai.
(Cr.No.72/2006)

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, against the order passed by the Additional District and Sessions Judge, FTC-III, Chennai, in Crl.R.C.No.50 of 2010 dismissing the revision on 27.10.2010 preferred against the order of the learned XVI M.M., G.T. Chennai, in CC.No. 15388/06 dated 04.11.2009 convicting the petitioner under Section 304(A) IPC and sentenced him to undergo 3 months Simple Imprisonment.

For Petitioner : Mr.S.Swamidoss Manokaran
Senior Counsel
for Mr.T.Jayaraman

For Respondent : Mr.B.Ramesh Babu
Government Advocate
(Criminal Side)

ORDER

This Criminal Original Petition is preferred challenging the Judgment of Conviction passed by the learned XVI Metropolitan Magistrate, George Town, Chennai in C.C.No.15388 of 2006 dated 04.11.2009 sentencing the petitioner herein shall undergo 3 months Simple Imprisonment without fine.

2.The petitioner herein is the sole accused in the above C.C.No.15388 of 2006 on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai. The said criminal case was

registered by B5-Harbor Police Station against the petitioner for allegedly causing a motor accident on 21.09.2006 which resulted in a death of one Alagarsamy.

3. According to the prosecution on 21.09.2006 when one Alagarsamy was cleaning the wind screen of the trailer lorry in which he was employed as cleaner, at that time another lorry allegedly driven by the petitioner which remained previously parked in front of the trailer lorry, while taking reverse by the petitioner dashed against the said Alagarsamy and caused injury and immediately he was taken to Government Hospital and after giving treatment he was discharged on same day i.e. 21.09.2006.

4. While so on 22.09.2006 Alagarsamy had some breathing problem and was taken to Stanley Hospital and from Stanley Hospital he was referred to Government General Hospital and accordingly was taken there, however he died.

5. Therefore immediately the complaint in Ex-P1 was lodged by PW1, the father of the deceased Alagarsamy to PW12, the Inspector of Police Mr. Arumugam of the respondent police. He registered the above case in Crime No. 72 of 2006 and conducted investigation and registered the case for the offence under sections 279 and 304(a) of IPC. PW12, proceeded with investigation and inspected the scene of occurrence and in the presence of Mahazar witnesses PW4 and PW5 Mr. Muthupandi and Mr. Sankar respectively, Sketch was made ready. The post-mortem was conducted by PW6 Dr. Kathir and Ex-P3 Postmortem report was made ready by him.

6. Totally 12 witnesses including PW9 Mr. Sundaravel, the Motor Vehicle Inspector and PW12 the Investigation Officer were examined on the side of the prosecution and Exhibits-P1 to P11 has been marked.

7. PW1, PW3 and PW4 claims to be the eyewitness of the accident.

8. The Learned Trial Judge on appraisal of prosecution evidence held the charges framed against the accused under Section 279 and 304(a) of IPC was proved and thereby convicted the petitioner to undergo 3 months of simple imprisonment without fine.

9. Aggrieved over the same the petitioner filed revision in CrI.R.C.No.50 of 2010 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.3), Chennai and the Learned District Judge vide his judgment dated 27.10.2010 dismissed the petitioner's revision by confirming the conviction and sentence made by the trial court and the said order is under challenge in this CrI.O.P.

10.I heard Mr.S.Swamidoss Manokaran, learned counsel for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

11.The learned counsel for the petitioner would submit that conviction on the petitioner is unsustainable as the trial court has found that PW1, PW3 and PW4 were only hearsay witnesses.

12.It is his case that there is unexplained delay in the case on hand in preferring the complaint. It is also his contention that though accident is claimed to be taken place inside harbor, no documents were produced regarding trip sheets or entry pass of vehicle.

13.Per contra, the learned Government Advocate (Criminal Side) would submit that only on due appraisal of prosecution evidence, both the Courts below have rightly held the petitioner guilty of offences charged under sections 279 and 304(A) of IPC. Accordingly he seeks dismissal of this Criminal Original Petition by confirming the judgments of the Courts below.

14.Over careful perusal of the impugned judgment of the Appellate Court below and as well as the Trial Court it is seen that the conviction on appellant is made relying upon the evidence of PW1, PW2 and PW4. However at the outset it is equally important to state that the Courts below have held PW1, PW2 and PW4 as hearsay evidence. Therefore this Court deems fit to scrutinize their evidence with greater care and caution while dealing with their evidence.

15.In as much as PW1 is concerned according to prosecution he is the direct witness to the accident. However, it is seen that he had not made any complaint in this regard to Police or Harbour officials.

16.It is equally important to state that there are two accidents register produced before the Trial Court, one indicating that the deceased met with accident on collusion between a lorry and car. Whereas second accident register indicate that the deceased was hit by collusion between two lorry, therefore it is patent that the Genesis of accident itself is doubtful and in question.

17.It is further seen that no medical records were produced by the prosecution to show that the deceased was treated on the alleged date of accident. Further there is also no evidence to show external injury.

18.More so, it is seen from the Motor Vehicle Inspector report that the alleged vehicles said to have involved in the accident do not suffer any breakage or defacing. It also creates serious doubt over the prosecution story.

19.It is equally important to state that the Trial court has held that though PW3 and PW4 may be treated as hostile witness in holding the petitioner guilty of Offence has relied over PW2's evidence on the premise as the direct eye witness.

20.It is significant to state that PW2 is the driver of the lorry in which deceased Alagarsamy was working and he was acting and employed under him. Therefore naturally Alagarsamy worked under PW2.

21.Though according to prosecution PW2 claimed to be seated in his lorry and had witnessed the accident, but when a specific question was posed in cross examination as to step taken by him to prevent the accident if any, he has deposed that he had not taken any step at least by blowing a horn such that to alarm the deceased Alagarsamy. Therefore in the considered opinion of this Court the presence of PW2 in the alleged accident scene of occurrence is doubtful.

22.For the foregoing reasons the Conviction and Sentence of both the courts below are unsustainable and accordingly the Criminal Original Petition stands allowed by setting aside the order of Conviction and Sentence passed by the learned Additional District and Sessions Judge, F.T.C.No.III, Chennai dated 27.10.2010 in Crl.R.C.No.50 of 2010 dismissing the revision and confirming the Conviction and Sentence passed by the learned XVI Metropolitan Magistrate, George Town Chennai in C.C.No.15388 of 2006 dated 04.11.2009. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Additional District and Sessions Judge,
Fast Track Court No.III, Chennai.

2.The XVI Metropolitan Magistrate,
George Town, Chennai.

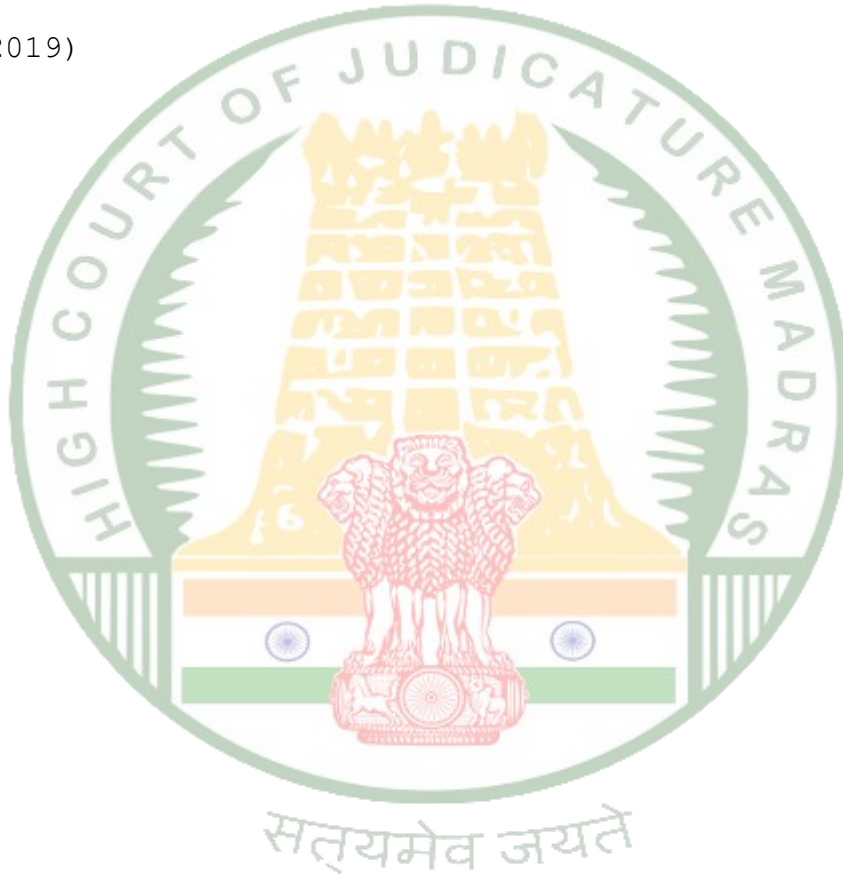
3. The Inspector of Police,
B-5 Harbour Police Station,
High Court, Madras.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Swamidoss Manokaran, Advocate, S.R.No. 75623

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and
M.P.No.1 of 2010

PP (CO)
GN(04/01/2019)



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