



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.09.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C(MD).No.397 of 2013

WEB COPY

Somasekaran

.. Petitioner/Accused

-Vs-

The State rep.

The Sub-Inspector of Police,
Siruganur Police Station,
Trichy.

(In Cr.No.537 of 2006)

.. Respondent/Complainant

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the judgment and sentence passed in C.A.No.43 of 2012 dated 21.03.2013 on the file of the 1st Additional District Judge (PCR), Trichirappalli, confirming the judgment and sentence passed in C.C.No.97 of 2008, dated 04.06.2012, on the file of the Principal District Munsif Cum Judicial Magistrate, Lalgudi.

For Petitioners

: Mr.C.Deepak, for Mr.A.Saravanan

For Respondent

: Mr.K.S.Durai Pandian,

Additional Public Prosecutor

O R D E R

The revision petitioner herein is the sole accused in C.C.No.97 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate, Lalgudi, Trichy District. He stood charged for offences under Section 304(A) of IPC. After full-trial, the learned Magistrate, by judgment dated 04.06.2012 found the accused guilty of offence under Section 304(A) of IPC. The learned Magistrate, accordingly, convicted the accused for offence under Section 304(A) of IPC and sentenced him to undergo imprisonment for one year. Being aggrieved by the same, the accused preferred an appeal in Criminal Appeal No.43 of 2012 before the learned I Additional Sessions Judge, (PCR), Trichirappalli, and the learned appellate Judge, by judgment dated 21.03.2013, dismissed the appeal thereby confirming the conviction and sentence of the accused as recorded by the learned Magistrate. Further aggrieved by the confirmation of the conviction and modification of the sentence, the accused has come up with the present criminal revision case.

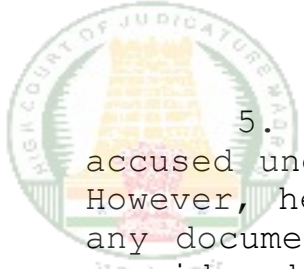
2. The case of the prosecution reads as follows:- The
<https://hcservices.in/hcservices/> working as a driver in the Tamil Nadu State Transport Corporation. On 24.11.2006, the bus bearing Regn.No.TN-27 N 1626 belonging to the corporation, which was driven by the



accused, was proceeding along Konali to Siruganur Main Road from South to North. The bus was being driven by the accused in a rash and negligent manner. While so, at about 10.30 p.m. when the accused was nearing a poultry farm from south to North direction, dashed against the autorickshaw which was coming in the opposite direction resulting in fatal injuries to driver of the autorickshaw. P.W.1 who was an eye witness of the occurrence, had taken immediate steps to forward the deceased to the hospital. In the hospital, the doctors on examining the deceased, declared him dead. Thereafter, P.W.1 lodged a complaint under Ex.P.1 before Siruganur police station upon which a case in Crime No.537 of 2006 was registered against the accused for offence under Section 304-A of IPC. On completion of investigation, a charge sheet was laid against the accused.

3. Based on the available 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 8 witnesses were examined and the complaint-letter was marked as Ex.P.1 and the signature of P.W.8, in the observation mahazar was marked as Ex.P.2.

4. Out of the witnesses examined, as projected by the prosecution, the informant namely, P.W.1 is an eye witness of the occurrence. According to him, on the date of occurrence, he was got to Tirupathur via Siruganur for the purchase of paddy seeds. While so, at about 10.30 p.m., when the deceased was riding his autorickshaw in the opposite direction from south to north, the bus which was being driven by the accused from the opposite direction from north to south, dashed against the auto resulting in fatal injuries to the deceased. Thereafter, he along with another made arrangements to forward the deceased to hospital. According to P.W.1, subsequently he rushed to the hospital where he was informed that the auto driver was dead. He thereafter rushed to the police station and lodged Ex.P.1 complaint. P.W.2 to P.W.6 claimed to have rushed to the place of occurrence shortly on hearing the noise. They have stated that they helped the public to shift the deceased to hospital. P.W.7 was the conductor of the offending bus. He has stated that the accused was driving the bus with all care and caution and at the spot, on seeing the auto, which was being driven by the deceased in a rash and negligent manner, was coming in the opposite direction at a high speed, the bus driver stopped the bus and the bus came to a halt, yet he could not avert the accident as the auto came into contact with the bus dashed against the same. In that impact, the deceased suffered injuries and he was rushed to the hospital. He was treated as hostile witness. P.W.8 is a witness to the observation made by P.W.1. He turned hostile and he did not support the case of the prosecution in any manner.



5. 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, the appellate court confirmed the conviction and sentence as recorded by the court below. Challenging the affirmation of conviction and sentences, accused is before this Court with the present criminal revision case.

6. I have heard the learned counsel for the revision petitioner/accused and the learned Additional Public Prosecutor for the respondent/State and also perused the records carefully.

7. The learned counsel for the petitioner would submit that P.W.1, who claimed to be the chance witness, could not have seen the occurrence as projected by the prosecution and his presence at the time and on the date of occurrence itself is doubtful. According to him, it is highly improbable that at about 10.00 p.m. P.W.1 went to Tirupathur to purchase paddy seeds especially, when the accident was taken place in the month of November, which was not a sowing season. That apart, according to him, there is considerable delay in lodging the first information. There is no explanation offered either by P.W.1 or by the prosecution.

8. The learned counsel would further submit that the prosecution did not choose to examine the other person who allegedly helped P.W.1 to shift the deceased to hospital. Therefore, according to him, the very presence of P.W.1 at the spot as projected by the prosecution would be highly doubtful and P.W.1 cannot be believed. If the evidence of P.W.1 is not believable, there is no other evidence to establish the rash and negligent act of the petitioner and the prosecution has not established the cause of death.

9. The learned counsel would lastly submit that the prosecution has not examined the doctor who conducted autopsy on the body of the deceased and the post-mortem certificate was also not marked to establish the cause of death; the reports of the Motor Vehicle Inspector who mechanically inspected the vehicles involved in the accident have also not been proved; and that part, the investigating officer who conducted investigation has not been examined by the prosecution.

10. Per contra, the learned Additional Government Pleader would make his submission justifying the conviction and sentence of the revision petitioner as recorded by the court below and

<https://hccs.cemil.gov.in/hccs/hccs/>

11. I have considered the rival submissions carefully.



12. It is an unfortunate case, wherein the prosecution did not chose to examine the then Inspector of Police who had conducted investigation in this case for the reason best known to them. The prosecution has not even come forward to examine the doctor and mark the post-mortem certificate to establish the cause of death in this case.

13. The learned counsel for the petitioner assailed the conviction and sentence of the petitioner mainly on the ground that the evidence of P.W.1 cannot be believed. Except P.W.1, there is absolutely no evidence to establish the rash and negligent act of the accused. The prosecution has not chosen to prove the respective report of the motor vehicle inspector who mechanically inspected the offending and the auto involved in the accident to establish that the accident was not occurred due to any mechanical failure in the respective vehicle. P.W.1 has stated that on the date and at about 10.30 p.m. he was going for the purchase of paddy seeds. This evidence of P.W.1, as rightly pointed out by the learned counsel for the petitioner, is highly doubtful. P.W.7, the conductor of the offending bus in his chief examination has clearly stated that at the time of accident, on seeking the auto coming in a rash and negligent manner in the opposite direction, the petitioner slowed down his bus and after having the bus come to half, the auto came into contact with the bus and the accident occurred. The learned counsel for the petitioner contended that even though P.W.7 was treated as hostile, his evidence cannot be rejected in whole. I find considerable force in the same. The prosecution has failed to establish that the accident was not occurred due to any mechanical failure of either the offending vehicle or the auto which was involved in the accident. Furthermore, even though P.W.1 has stated that after the occurrence, he along with one person, who was working in a nearby Poultry farm, immediately made arrangements to forward the deceased to the hospital, the other person was not at all examined by the prosecution for the reason best known to them. If the evidence of P.W.1 is found to be unbelievable, absolutely, there is no evidence to establish the guilt of the accused. That apart the prosecution has not established the death in this case as required under law. The prosecution has not even chosen to mark the post-mortem certificate in court.

14. For the foregoing reasons, this court is of the view that absolutely, there is absolutely no evidence available to hold that the accused was guilty of rashness and negligence, and the petitioner is entitled for acquittal. Both the courts below have erroneously come to the conclusion that the prosecution has proved the charges and convicted the petitioner. In the above
<https://hcservicesmst.com/index.php> this court is of the considered view that judgments of the courts below are liable to be interfered with for the reasons stated above.



15. In the result, this criminal revision case is allowed and the conviction and sentence imposed against the revision petitioner by the courts below are set aside and the petitioner is acquitted from the charges. The bail bonds executed by the revision petitioner shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. First Additional District Judge (PCR),
Trichirappalli.
2. The Principal District Munsif Cum Judicial Magistrate,
Lalgudi.
3. The Sub-Inspector of Police,
Siruganur Police Station,
Trichy.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.SARAVANAN, Advocate, SR. 80723

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22.09.2017

VS/KMK

KK/SKN RSK/SAR 3/02.01.2018/ 5P- 6C/