

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2018

DELIVERED ON : 31.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl. R.C.No.1035 of 2017

K.Akbar

... Petitioner

Vs

State Rep. By,  
The Inspector of Police,  
Kandhikuppam Police Station,  
(Cr.No.25/09).

... Respondent

PRAYER : Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 27.07.2012 in C.A.No.14 of 2010 on the file of Additional Sessions Judge, Krishnagiri partly allowing the appeal by setting aside conviction under Section 279 of I.P.C. and confirming the Judgment Conviction and Sentence under Section 304(A) I.P.C. vide Judgment dated 21.01.2010 in C.C.No.87 of 2009 on the file of the Judicial Magistrate No.I, Krishnagiri, convicting the revision petitioner under Section 279 of I.P.C. and sentencing him to pay fine of Rs.1,000/- in default to undergo one month S.I. and also convicting under Section 304(A) I.P.C. and sentencing him to undergo 6 months S.I.

For Petitioner : Mr.Dr.G.Krishnamurthy

For Respondent : Mr.R.Suriyaprakash  
Government Advocate (Crl. Side)

ORDER

This Criminal Revision case is filed as against the conviction and sentence imposed on the petitioner by the learned Additional District Court, Krishnagiri in Crl.A.No.14 of 2010 dated 27.07.2012 for the offence punishable under Section 304(A) of IPC.

2.The petitioner herein stood charged for the offence under Sections 279, 304(A) of IPC and the Trial court found held the accused guilty on both charges and by Judgment dated 21.01.2010 convicted and sentenced to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence under Section 279 of IPC and convicted and sentenced to undergo 6 months simple imprisonment for the offence under Section 304(A) of IPC.

3.On appeal by the petitioner herein, the Lower Appellate Court by its Judgment dated 27.02.2012 partly allowed the appeal acquitting the petitioner herein from the offence under Section 279 of IPC and confirmed the conviction and sentence imposed on the petitioner for the offence under Section 304(A) of IPC. As against the said conviction the petitioner herein has filed this Criminal Revision Case.

4.The case of the prosecution in nutshell as follows:

On 30.01.2009 at 4.00 PM the petitioner had driven a Eicher Mini Lorry bearing Registration No:AP-30-U-9508 in a rash and negligence manner and dashed against the deceased Srinivasan who was two wheeler rider came from the opposite side direction. Out of same the said Srinivasan sustained grievous injuries and died on the spot.

5.Upon complaint given by PW-1, the PW-11 police personnel registered FIR against the petitioner herein in Crime No.25 of 2009 for the offence punishable under Sections 279, 304(A) of IPC.

6.On questioning by the Trial Court in respect of the charge framed against him, he denied stoutly.

7.On the side of prosecution 12 witnesses PW1 to PW-12 were examined and Exhibits-P1 to P7 stood marked and there is no martial object produced. On the side of the accused, no witness or documents produced. The Trial Court found guilty of the accused and convicted the accused as stated above.

8. On appeal filed by the petitioner herein it was partly allowed. As against the order of conviction and sentence imposed on the petitioner by setting aside the conviction and sentence under Section 279 of IPC and confirming the conviction in respect of offence under Section 304(A). The present criminal revision case is filed challenging the said conviction.

9. I heard Dr.G.Krishnamurthy, learned counsel for the petitioner and Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

10. The records reveal that the prosecution to substantiate their case has examined 12 witnesses and marked 7 exhibits.

11. According to PW1 and PW3 on 30.01.2009 at about 4.00 p.m., PW1, PW3 and the deceased returned to Krishnagiri. Deceased Srinivasan proceeded in his two-wheeler and he was followed by PW1 and PW3 in their two-wheeler and at that time the mini lorry driven by the petitioner without blowing horn driven in a rash and negligent manner dashed against the deceased. Out of the said accident Srinivasan sustained head injury and died on the spot. Thereupon Ex-P1 complaint came to be lodged by PW1 Venkatachalam before PW11 Mr.Prakash and he registered a case in Crime No.25 of 2009 for the offence under sections 279 and 304(A) of IPC. Ex-P5 is the FIR and after registering EX-P5 the case was forwarded by PW11 to PW12 for investigation.

12. PW12 proceeded to the place of occurrence and made ready EX-P6 the observation Mahazar in the presence of PW6 and PW7 Mahazar witnesses. Ex-P7 is the inquest report of the deceased Srinivasan. The PW11 also subjected the offending vehicle and as well the two wheeler to the Motor Vehicle Inspector for examination and Ex-P4 is the motor vehicle report. Ex-P3 is the post-mortem certificate.

13. On further perusal of impugned judgment of Appellate Court below and well as the Trial Court, both the courts have concluded the petitioner guilty of offences charged by relying the evidence of PW1 and PW3 who claims to be the eye-witnesses to the above accident.

14.However it is seen that the impugned Judgments lack discussion or finding as to the manner in which the accident has originally taken place. Both the courts below have merely stated that evidence of PW1 and PW3 the eye witnesses deposing that the accident had occurred due to rash and negligent driving of the petitioner is believable. Accordingly basing upon the oral evidence of PW1 and PW3 the courts below have convicted the revision petitioner.

15.In this regard it is significant to state that the conviction is also made relying upon Ex-P4 and evidence of PW10 Motor Inspector that the accident would not have been occurred due to mechanical defect of both vehicles.

16.It is relevant to note here that there is no discussion as to the manner in which the accident had taken place. Though PW1 and PW3 evidence cannot be rejected simply because they are interested to deceased, however their evidence should be cogent, reliable and trustworthy. In the case on hand the most disturbing factor is that there is no indication as to the name of accused in complaint. Thus in FIR there is no indication as to name of accused and in EX-P4 the motor vehicle report also there is no indication of name of driver.

17.On perusal of evidence of PW1 and PW3 it is further seen that they did not depose as to how and alleged manner in which revision petitioner drove the vehicle in a rash and negligent manner.

18.The accident register is also not marked by the prosecution. Therefore, I am of the considered opinion that the conviction over the revision petitioner in the above circumstance that the prosecution story suffers material infirmities, the judgments is found to be baseless and unsustainable and accordingly this criminal revision petition is liable to be allowed.

19.In the result:

(a) this Criminal Revision is allowed by setting aside the order in C.A.No.14 of 2010 dated 27.07.2012 on the file of the learned Additional Sessions Judge, Krishnagiri, confirming the Judgment in C.C.No.87 of 2009 dated 21.01.2010, on the file of the learned Judicial Magistrate No.I, Krishnagiri;

(b) the revision petitioner shall stand acquitted from the Charges in Crime No.25 of 2009 for the offence and punishable under Sections 279 and 304(A) of IPC.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.I, Krishnagiri.
  - 2.-Do- Thro The Chief Judicial Magistrate, Krishnagiri.
  - 3.The Additional Sessions Judge, Krishnagiri.
  - 4.-Do- Thro the Principal Sessions Judge, Krishnagiri.
  - 5.The Inspector of Police,  
Kandhikuppam Police Station,  
Krishnagiri.
  - 6.The Public Prosecutor,  
High Court, Madras.
- +1cc to Mr.Krishnamurthy, Advocate sr.74568

Cr1.R.C.No.1035 of 2012

mg[col]  
srg 25/01/2019

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