

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.494 of 2013

Dr. V. Pugazhendhi

...Appellant

Vs.

1. Ruban Mariadoss

2. State by:

The Inspector of Policy  
R-4, Pondy Bazaar Police Station  
Traffic Investigation, Chennai.

...Respondents

Prayer: This Criminal Appeal filed under Section 372 r/w 378 of Code of Criminal Procedure against the judgment of acquittal made in C.A.No.35 of 2010 dated 14.09.2010 passed by the learned Additional District and Sessions Judge (FTC-II), Chennai by setting aside the judgment of conviction dated 26.02.2010 passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.5908 of 2006.

For Appellant : M/s. S. Sathia Chandran

For Respondent 1 : Mr.J. Antony Jesus

For Respondent 2 : Mr.R. Ravichandran

Govt. Advocate (Crl.Side)

JUDGEMENT

This appeal has been filed by P.W.4 son of the Veerasamy/deceased, against the order of acquittal made in C.A.No.35 of 2010 dated 14.09.2010 passed by the learned Additional District and Sessions Judge (FTC-II), Chennai by setting aside the judgment of conviction dated 26.02.2010 passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.5908 of 2006.

2. The petitioner's father, Veerasamy was riding his LML Scooter bearing Regn.No.TN 09 M 6949 near Alwarpet, Chennai, he was hit by a Hero Honda Splendor Motor Bike bearing Reg.No.TN 72

M 7417 driven rashly and negligently by the 1<sup>st</sup> respondent herein at the meeting point of G.N.Chetty Road and Nungambakkam High Road at Anna Rotary on Cathedral Road. The Petitioner's father sustained head injuries and he was taken to the Government General Hospital, Royapettah and died without responding for treatment.

3. Hence, the police registered a complaint in Crime No.326/TN2/06 for the offences under Sections 337 IPC and 184 of the Motor Vehicles Act 1988 and after detailed enquiry, filed a charge sheet against the 1<sup>st</sup> respondent for the offences under Section 304A IPC and 184 of the Motor Vehicles Act 1988, before the learned IV Metropolitan Magistrate, Saidapet, Chennai, and the same was taken on file in C.C.No.5908 of 2006.

4. Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.8 were examined and Ex.P1 to P12 were marked. On the side of the accused no one was examined and no documents was marked. The trial court found the accused guilty for the offences under Section 304A IPC and Section 184 of the Motor vehicles Act and convicted and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.5000/- in default to undergo 3 months Rigorous Imprisonment for the offence under Section 304A and to pay a fine of Rs.1000/- in default to undergo 1 month Rigorous Imprisonment for the offence under Section 184 of the Motor Vehicles Act 1988 by a judgment dated 26.02.2010.

5. As against the above conviction and sentence, the 1<sup>st</sup> respondent herein preferred an appeal before the learned Sessions Judge, Chennai in C.A.No.35 of 2010. The learned Additional District and Sessions Judge (FTC-II), Chennai, on consideration of facts and law, by a judgment dated 14.09.2010 set aside the judgment of the trial court and acquitted the 1<sup>st</sup> respondent herein against which, this present appeal has been preferred by the appellant.

6. After hearing both sides, the Additional District and Sessions Judge set aside the judgment of conviction passed by the IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.5908 of 2006 dated 26.02.2010 and acquitted the accused by judgement dated 14.09.2010 in C.A. No.35 of 2010. Hence, the victim P.W.4 V.Pugazhendhi, who is son of the deceased Veerasamy has filed the present appeal before this Court.

7. The learned Counsel for the appellant would submit that P.W.1 eye witness to the occurrence/Head Constable, had seen the accident and made the complaint before the second respondent Police. He had clearly spoken about the rash and negligent

driving of the first respondent/accused and stated that the accused dashed against the deceased. P.W.2/Police Constable also spoken about the manner of the accident. The report Ex.P.11 and Ex.12 submitted by the Motor Vehicle Inspector also reveals that due to the negligence of the accused only the accident had occurred. Even though, the learned Magistrate had rightly appreciated the evidence of the prosecution side witnesses and held that the accused guilty under Sections 304A IPC and Section 184 of the Motor vehicles Act and convicted the first respondent/accused. The lower appellate Court had failed to consider the evidences of the prosecution side witnesses and only by relying on the submissions made by the first respondent and without any documentary proof set aside the judgment of conviction recorded by the trial Court. The learned counsel further submitted that the prosecution had proved its case with substantial evidences and materials, which shows that the Veerasamy died only due to rash and negligent driving of the accused and hence the accused must be punished. The reasons recorded by the learned Additional District and Sessions Judge for the acquittal i.e. (i) the prosecution had not produced documents to the effect that the deceased had a valid driving licence and (ii) that, the accident had not taken place solely due to the rash and negligent driving of the accused, are not sustainable and erroneously set aside the judgment of conviction passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai, which warrants interference of this Court.

8. The learned counsel for the first respondent would submit that P.W.2 also stated to be eye witness to the occurrence, in his cross examination had stated that he had not seen which portion of the vehicle had dashed against the vehicle of the deceased and P.W.1 and P.W.2 in their cross examination had clearly stated that though they were present at the time of accident, they did not see the accident. Further, the deceased was aged about 70 years and driving license of the deceased had not been produced before the trial Court by the prosecution. Therefore, the accident ought to have taken place due to the negligence of the deceased also, since at the time of the accident, the deceased was aged about 70 years. Hence, the lower appellate had rightly re-appreciated the evidence and extended the benefits of doubt in favour of the accused and had given valid reason for acquittal, which does not warrants any interference.

9. The learned Government Advocate (Crl.Side) appearing for the second respondent/police would submit that though prosecution had proved its case beyond reasonable doubts, the trial Court had also rightly convicted the first respondent/accused, the lower appellate Court had erroneously reversed the judgment of conviction recorded by the trial Court and hence the accused must be punished and prays for setting aside the judgment of the lower appellate court.

10. Heard the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

11. P.W.1 Head Constable, who was on duty on the date of occurrence, had seen the accident and P.W.2 is also another police constable, who was on duty and was present in the place of occurrence and also seen the accident. The prosecution examined P.W.1 and P.W.2 eye witnesses and P.W.1 had clearly stated about the manner of the accident and he has also spoken that the accident had occurred only due to rash and negligent driving of the rider of the vehicle/first respondent. Even though, it was stated that driving licence of the victim was not produced, the Investigation Officer/P.W.8 in his cross examination has also stated that at the time of investigation, he had seen the driving license of the victim and returned back the same. The lower appellate Court failed to consider the evidence of P.W.8 and stated that driving license of the victim had not been produced, which is not sustainable. Further another reason recorded by the lower appellate Court for acquittal is that the prosecution had not proved its case beyond reasonable doubt, which is also not acceptable. The evidence of the witnesses of prosecution i.e. P.W.1 to 8 and also the report of the Motor Vehicle Inspector Ex.P.11 and Ex.P12 along with Ex.P5 Rough Sketch and other documents produced by the prosecution, this Court is of the view that the prosecution had proved its case beyond reasonable doubt. The learned Magistrate had rightly found the accused guilty of offence under Section 304A IPC and Section 184 of the Motor vehicles Act and convicted, whereas, the lower appellate Court has erroneously acquitted the accused without re-appreciating the evidences which warrants serious interference.

12. In the result, the criminal appeal is allowed and the judgment of acquittal made in C.A.No.35 of 2010 dated 14.09.2010 passed by the learned Additional District and Sessions Judge (FTC-II), Chennai is hereby set aside and the judgment of conviction passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.5908 of 2006 dated 26.02.2010 is hereby confirmed. The second respondent police is directed to

secure the custody of the accused and produce him before the Magistrate, to undergo the remaining period of sentence imposed by the trial Court, if any.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ksa-2/cgi

To

1. The Additional District and Sessions Judge (FTC-II), Chennai.
- 2.do Thro Principal Session Judge, Chennai.
3. The IV Metropolitan Magistrate, Court of IV Metropolitan Magistrate, Saidapet, Chennai.
- 4.do Thro Chief Metropolitan magistrate, Chennai.
5. The Inspector of Policy R-4, Pondy Bazaar Police Station Traffic Investigation, Chennai.
6. The Public Prosecutor, High Court of Madras.

+1cc to M/s. S. Sathia Chandran, Advocate sr.no.66361

nr 07/03/2019

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