

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Criminal Revision No.624 of 2013

Radhakrishnan .. Petitioner/Accused

Vs

State rep. by
The Inspector of Police,
Yethapur Police Station,
Salem District.
Crime No.45 of 2004.

.. Respondent/Complainant

Prayer:- Criminal Revision filed under Sections 397 r/w 401 Cr.P.C., to call for the records and set aside the judgment dated 23.07.2008 in C.C.No.314 of 2004 passed by the learned Judicial Magistrate No.I, Attur confirmed by the learned I Additional District & Sessions Judge, Salem in C.A.No.120 of 2008 dated 27.03.2013.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.R.Ravichandran,
Govt. Advocate (Criminal side)

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ORDER

The present criminal revision has been filed to call for the

records and set aside the judgment dated 23.07.2008 in C.C.No.314 of 2004 passed by the learned Judicial Magistrate No.I, Attur confirmed by the learned I Additional District & Sessions Judge, Salem in C.A.No.120 of 2008 dated 27.03.2013.

The accused stood charged for the offence under Sections 279, 337 and 304(A) IPC (2 counts) in C.C.No.415 of 2009. The trial Court, by judgment dated 23.07.2018, convicted the petitioner for the offence under Section 279 IPC and directed him to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for five weeks, for the offence under Section 337 IPC and directed him to pay a fine Rs.500/- in default to undergo rigorous imprisonment for five weeks, and for the offence under Section 304(A) IPC (2 counts) sentenced him to undergo rigorous imprisonment for one year for each count and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months. Challenging the above, the present criminal revision has been filed by the petitioner.

2.The facts leading to prefer this revision are as follows :-

(i)On 06.02.2004 at 8.45 a.m when the deceased Palanisamy was riding his bi-cycle along with his brother Ramesh, who was sitting in the carrier of the bicycle on Attur - Salem Main Road, near Veeragoundanoor bus stop, Bethanaickenpalayam Government

Higher Secondary School, a mini lorry bearing Registration TN 30 B 4570, carrying the name as "V.R.S.Express" came in the high speed without blowing horn, hit against the cycle ridden by the Palanisamy, and after hitting the cycle, further hit against Kutti @ Raji, P.W.8, due to which, Ramesh, who was a pillion rider, died on the spot and Palanisamy and Kutti @ Raji have sustained injuries. P.Ws.1 to P.W.3, who were present at the time of accident, took Palanisamy to the Hospital. P.W.4 and P.W.5 are the parents of the deceased Ramesh and Palanisamy. P.W.1, Gunasekaran lodged a complaint, Ex.P.1. P.W.13, attached with the Yethapur Police Station, the Inspector of Police, filed a final report against the petitioner/accused under Sections 279, 337 and 304(A) IPC before the learned Judicial Magistrate No.I, Attur.

(ii)Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the order. In order to prove the case of prosecution, as many as 13 witnesses were examined and 10 documents were marked as Exs.P.1 to Ex.P.10, besides one material object was marked as M.O.1.

(iii)The learned Judicial Magistrate No.I, Attur has taken the charge sheet on file in C.C.No.314 of 2004 and after perusing the

materials available on record and after hearing the arguments advanced by the learned counsel for both sides, convicted and sentenced the accused by the judgment dated 23.07.2008 as stated supra. Aggrieved by the same, the accused filed an appeal in Criminal Appeal No.120 of 2008 on the file of the learned I Additional District and Sessions Judge, Salem. The appellate Court after hearing both sides, dismissed the appeal by judgment dated 27.03.2013. Aggrieved by the judgment dated 27.03.2013, the petitioner has filed the present Criminal revision petition before this Court.

3.The learned counsel for the petitioner submitted that the petitioner has no intention to cause the accident and there is no previous case against the petitioner. The learned counsel for the petitioner further submitted that the petitioner is a poor man and his family has no means except his earnings. Hence, he requested this Court to set aside the judgments passed by both the Courts below and to take lenient view in respect of the petitioner.

4.The learned Government Advocate (Crl.Side) appearing for the respondent/police submitted that the petitioner drove the mini lorry in a rash and negligent manner and hit against the cyclist, pillion rider and also one Kutti @ Raji, in which, Ramesh, died on the spot.

Both the Courts below, after considering the facts and circumstances

of the case, rightly convicted the petitioner. Therefore, there is no reason to interfere with the order passed by trial Court, which was confirmed by the first appellate Court.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record carefully.

6. On a perusal of records and the witnesses, it is seen that the driver of the mini lorry drove the vehicle with high speed and in a rash and negligent manner and unfortunately, hit cyclist Palanisamy, pillion rider Ramesh and also Kutti @ Raji, in which, Ramesh died on the spot succumbed to injuries and the petitioner unintentionally caused the accident.

7. In such circumstances, the trial Court, after considering the entire evidence, has rightly convicted the accused and sentenced him as stated above and the same was rightly confirmed by the first appellate Court and this Court find no illegality or irregularity or perversity and there is no reason to interfere with the judgments passed by both the Courts below.

8. However considering the submission made by the learned

counsel for the petitioner that the petitioner has no intention to cause the accident, family background and no previous case is pending against the petitioner, this Court is inclined to modify the sentence imposed on the petitioner. Accordingly, to meet the ends of justice, this Court while confirming the conviction for the offence under Sections 279, 337 and 304(A) (2 counts) IPC, reduced the period of sentence only from one year to Rigorous Imprisonment to three months of Rigorous Imprisonment.

In the result, the Criminal revision petition is disposed of. The sentence already undergone, if any, by the accused shall be set off under Section 428 Cr.P.C.

27.09.2018

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Index:Yes/ No

Internet: Yes/No

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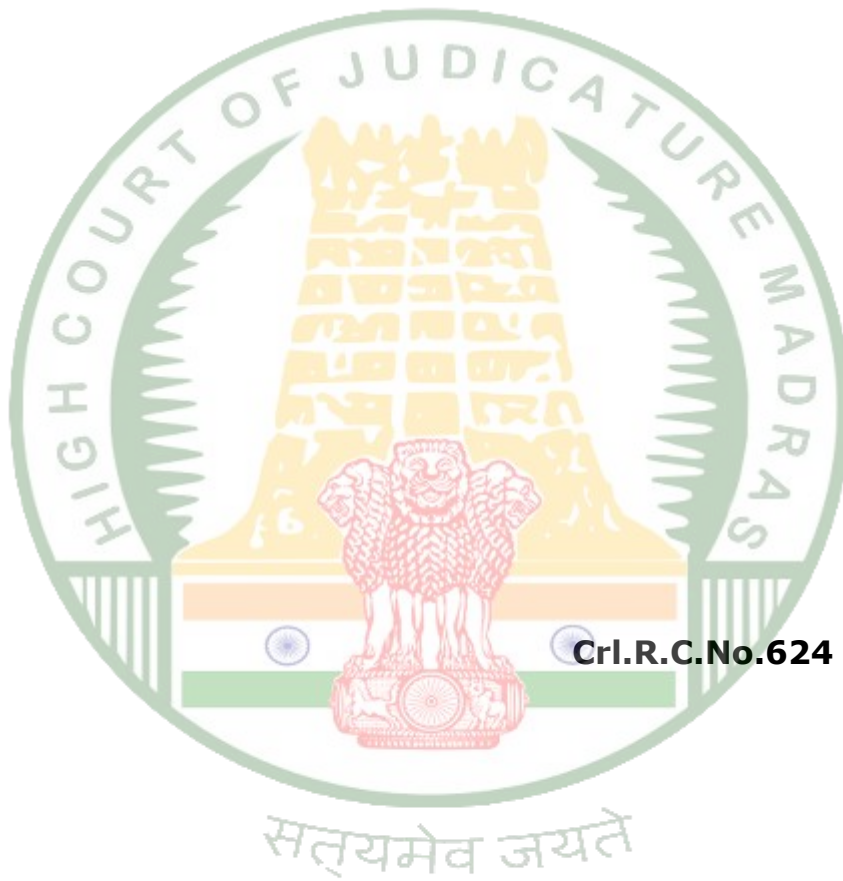
1. The I Additional District and Sessions Judge,
Salem.
2. The Judicial Magistrate No.I,
Attur.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN,J

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