

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.905 of 2013

Varatharaj

...Petitioner

Vs.

The State represented by
The Inspector of Police,
Kariyakovil Police Station,
Salem District.
Crime No.27 of 2009

...Respondent

This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records and to set aside the order dated 29.04.2013 in C.A.No.112 of 2012 on the file of the II Additional District and Sessions Court, Salem, confirming the judgment dated 17.09.2012 in C.C.No.103/2010 on the file of the Judicial Magistrate No. I, Attur.

For Petitioner : R. Nalliyappan

For Respondent : R. Ravichandran,
Govt Advocate (Crl.Side)

O R D E R

This criminal revision has been filed by the petitioner seeking to set aside the order dated 29.04.2013 made by the learned II Additional District and Sessions Judge, Salem, in C.A.No.112 of 2012.

2 The case of the prosecution is that on 24.08.2009 at about 5.30 p.m., while P.W.2 Manickam was driving a two wheeler bearing Registration No.TN 30 T 5720 near Therkkupatti Village in Kariakovil to Soolankuruchi Village Board with his wife Sivakami, as a pillion rider, from East to West, the lorry bearing Registration No. TN 28 Y 1714 had come in a rash and negligent manner and dashed against the two wheeler. As a result, P.W.2 fell down on the left side of the road and his wife Sivakami fell down and the rear of right wheel of the lorry had run over on the head of Sivakami, which resulted in death of Sivakami. Hence a case has been registered in Crime No.27 of

2009 under sections 279, 337 and 304 (A) IPC. The respondent police, after investigation has filed a charge sheet before the learned Judicial Magistrate I, Attur, which was taken on file in C.C.No.103 of 2010.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.16 were examined and documents Ex.P1 to Ex.P10 were marked. On the side of the defence no one was examined and no document was marked.

4 The learned Magistrate, after trial, found the accused guilty of offences punishable under sections 279, 337 and 304 (A) and by judgment dated 17.09.2012, convicted the petitioner and sentenced him to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one month for the offence under Section 279, to undergo rigorous imprisonment for one month for the offence under Section 337 and to undergo rigorous imprisonment for one year with fine of Rs.3000/-, in default, to undergo simple imprisonment for further period of three months, for the offence under Section 304 (A) of IPC.

5 Aggrieved against the judgment of conviction dated 17.09.2012, the petitioner had preferred an appeal before the learned II Additional District and Sessions Court, Salem, in C.A.No.112 of 2012. The lower appellate Court, after hearing both the counsel, by judgment dated 29.04.2013, dismissed the appeal and confirmed the judgment of conviction made by the trial Court, against which, present criminal revision has been preferred by the petitioner.

6 The learned counsel for the petitioner would submit that the accident was not occurred due to rash and negligent driving of the petitioner/driver of the offending lorry and it was occurred only due to negligence of the rider of the two wheeler/P.W.2. Further there was no eye witness to the accident and they were all set up by the prosecution. P.W.2, driver of the two wheeler, had no valid driving license at the time of accident. All the witnesses are interested witnesses and no independent witness was examined by the prosecution. Both the Courts below had failed to consider the above aspects and erroneously convicted the petitioner, which warrants interference of this Court.

7 The learned Government Advocate (Cr1.Side) appearing for the respondent police would submit that P.W.1,6,7,8, who are the eye witness to the occurrence, had clearly stated about the accident and stated that the petitioner only drove his lorry in a rash and negligent manner and caused accident. Further Ex.P3/Post Mortem Certificate, would clearly shows that the death of the deceased Sivakami had occurred only due to fatal

injuries sustained by her in the accident. Hence prosecution had proved its case beyond reasonable doubt. Both the Courts below had rightly appreciated the evidence of prosecution and convicted the petitioner, which does not warrant any interference and the revision is liable to be dismissed.

8 Heard the learned counsel appearing on either side and perused the materials available on record.

9 On a perusal of the records, it reveal that P.Ws.1, 6, 7 and 8, who are eye witness to the occurrence, had clearly stated that the accident was occurred only due to the rash and negligent driving of the offending vehicle. P.W.12, the Doctor, who conducted postmortem on the deceased Sivakami, had opined that the death had occurred only by the injuries, which was grievous in nature, sustained by her at the time of accident. Hence, after perusing the entire documents available on record, this Court is of the view that the prosecution had proved its case beyond reasonable doubts. Therefore, the trial Court as well as the lower appellate Court, as a fact finding Court, after re-appreciating entire evidences, had come to the conclusion, that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle and convicted the petitioner.

10 This Court, as a revision Court, need not re-appreciate entire evidence of the prosecution, and if there is any perversity in the order of the Court, below, this Court can interfere with the same. In the absence of any perversity in the order of the Courts below, this Court need not interfere with the same. This Court carefully perused the judgments of both the Courts below and doest not find any perversity in the judgments.

11 In the result, the criminal revision is dismissed and judgment of conviction passed by the Courts below is hereby confirmed. The trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District and Sessions Judge, Salem.

2. The Judicial Magistrate No. I, Attur.
3. The Public Prosecutor, High Court of Madras.

+1cc to Mr. R.Valliyappan, Advocate, S.R.No.71334

Cr1.R.C.No.905 of 2013

GN(12/03/2019)



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