

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Crl.R.C.No.1342 of 2011

P. Ebinesan

... Petitioner/Appellant/Accused

Vs

The State Rep.by
Inspector of Police,
Sholavaram Police Station
(Crime No.346 of 2006 ...
Respondent/Respondent/complainant

Criminal Revision Case filed under Section 397(1) r/w 401 Cr.P.C.to call for the records pertaining to the order dated 20.06.2011 passed in C.A.No.50 of 2010 on the file of the Additional District and Sessions Court cum Fast Track Court No.4, Ponneri, confirming the conviction under Section 304(A) I.P.C.and modifying the sentence of one month into one wek and enhancing the fine amount from Rs.2,000/- to Rs.5,000/- as ordered by the learned Judicial Magistrate-II, Ponneri, made on 07.06.2010 in C.C.No.210 of 2006.

For Petitioner : No appearance

For Respondent : Mr.R. Ravichandran
Government Advocate

O R D E R

Though there is no representation for the revision petitioner, heard the Government Advocate and also on perusal of the available records, this revision petition is disposed of on merits.

2. The brief facts leading to file the revision case is as follows:

2.(a) The deceased Mr. Praveen and P.W.2 were proceeding in a motor cycle bearing Registration No.TN-05 S 1263 towards Karanodai Bridge. At that time the accused drove the lorry bearing Registration No.TN-21 Y 2500 in a high speed and hit the

motor cycle. As a result both the riders of the motor cycle were thrown out and Mr. Praveen succumbed to injuries and P.W.2 sustained simple injuries. In this regard P.W.1 lodged Ex.P.1.complaint. P.W.2 also seen the lorry came in a high speed and hit the motor cycle. P.W.8 investigating Officer received Ex.P.1 complaint and registered a case in Cr.No.346 of 2006 under Section 279, 304(A) I.P.C.under Ex.P.7, proceeded to the hospital and conducted inquest over the dead body and prepared Inquest Report and sent the body for post-mortem. P.W.7 doctor conducted autopsy and issued Ex.P.6 Post Mortem Certificate. P.W.6 Motor Vehicle Inspector conducted the vehicle inspection and issued Ex.P.4 Motor Vehicle Inspector Report stating that no mechanical defect in the lorry. P.W.8 conducted investigation of the case and laid final report against the accused under Section 279, 337 and 304 (A) I.P.C.

3. Learned trial Court, based on the material facts found the accused guilty under Section 279, 338, 304(A) I.P.C.and imposed rigorous imprisonment for one month under Section 304(A) I.P.C.and sentenced to pay a fine of Rs.1,000/- each for the offences under Section 279, 337 I.P.C.in default to undergo simple imprisonment for two months each. In the appeal, the sentence of one month rigorous imprisonment under section 304(A) I.P.C.was modified into one week simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one week. Since the accused was sentenced for the offence under Section 304(A) I.P.C.,no sentence was imposed for the offence under section 279 and 337 I.P.C.by the appellate Court. Aggrieved over the conviction and sentence of the first appellate Court, the present revision has been filed.

4. Perused the records. The first appellate court confirmed the conviction of the accused mainly based on the evidence of P.W.1 and P.W.2. Learned Government Advocate submits that P.W.1 is eye witness, P.W.2 is pillion driver. Their evidence would show the rash and negligent driving of the lorry driver. Normally, the revisional court will not re-appreciate the evidence of lower courts. However, when the trial court and appellate court are improperly appreciated the evidence and recorded conviction without any legal evidence, the revisional court can re-appreciate the evidence.

5. In this case, on perusal of the evidence of P.W.1, P.W.1 except stating that the lorry hitting motor cycle there is no whisper whatsoever with regard to the rash and negligent act on the part of the lorry driver in driving the vehicle. P.W.2 evidence though show that the lorry came in a high speed as a result accident occurred. The evidence of P.W.2 also indicated

that only handle bar of the motor cycle hit the lorry. These facts clearly indicate that the motor cycle while negotiating came into contact of the lorry. Further P.W.1 and P.W.2 evidence and cross examination also clearly show that the occurrence place is very narrow one. There is no possibility of vehicle driving in high speed and there is 'U' turn available. Therefore, under these circumstances, driving a lorry in a narrow place that too in a high speed is improbable. The evidence of P.Ws.1 and 2 do not show rash and negligent act on the part of the lorry driver. Unless the evidence on record established either rash or negligent act, the offence under section 279, 337 and 304(A) I.P.C.cannot be attracted.

6. Therefore, in the absence of any legal evidence, this Court is of the view that the conviction and sentence recorded by the trial court and appellate court are not sustainable. The same is liable to be set aside. Accordingly, the same is set aside. The revision petitioner/accused is acquitted from the charges. The fine amount, if any, paid by the revision petitioner/accused shall be refunded to him, on proper application. The revision is allowed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court No.4, Ponneri
2. The Judicial Magistrate No.2, Ponneri.
- 3.-do- The Chief Judicial Magistrate,
Ponneri.
4. The Inspector of Police, Sholavaram Police Station
Chennai.
5. The Public Prosecutor, High Court, Madras.

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