

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.329 of 2011

M.Dakshinamurthy

... Petitioner

..Vs..

The State rep.by
The Inspector of Police,
Traffic Investigation Wing,
J-3, Guindy Police Station,
Chennai.

... Respondent

[Crime No.16/S2/2004]

Criminal Revision case filed under Section 397 r/w 401 of Crl.P.C. to set aside the judgment passed in C.A.No.129 of 2007, dated 02.02.2010, by the V Additional Sessions Judge, Chennai, confirming the judgment passed by the IV Metropolitan Magistrate, Saidapet in C.C.No.2732 of 2004 dated 15.03.2007.

For Petitioner : Mr.B.Singaravelu

For Respondent : Mrs.S.Thankira
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Petition has been filed against the judgment passed by the Vth Additional Sessions Court, Chennai, confirming the judgment of the trial Court wherein the petitioner was convicted for an offence under Section 304 (A) IPC, 337 IPC and under Section 184 of the Motor Vehicle Act, and he was sentenced to undergo six months Rigorous Imprisonment and pay a sum of Rs.3,000/- towards fine and in default to undergo three months Simple Imprisonment for the offence under Section 304 (A) IPC and he was sentenced to pay a fine of Rs.500/- and in default to undergo one month Simple Imprisonment for an offence under Section 337 IPC and was sentenced to pay a fine of Rs.500/- in default to undergo two weeks Simple Imprisonment for an offence under Section 184 of the Motor Vehicle Act.

2.The short facts that are necessary for the purpose of disposing of this Criminal Revision Petition:

2.1.On 10.01.2004, at about 10.45 p.m., the petitioner was driving a goods auto in a rash and negligent manner near Jones Road at Saidapet. Due to rash and negligent driving, the petitioner lost control of the vehicle and hit a parked vehicle and damaged the vehicle. Further, he also hit PW-2, who sustained injuries, and finally hit the deceased person who was a pedestrian who sustained multiple injuries all over the body and died on the same day. Ultimately, the vehicle came to a halt only after hitting an electrical post. The witnesses to the occurrence namely; PW-1, PW-6, PW-8 and PW-10, took PW-2 in an auto and admitted him at Saidapet Government Hospital. The said persons also took the deceased and admitted him at K.K.Nagar Government Hospital for treatment. The owner of the goods auto came to the Police Station and surrendered the petitioner/accused who caused the accident.

2.2.PW-12, Inspector of Police, based on the information received, visited the hospital and based on the complaint preferred by PW-1, registered an FIR in Crime No.16/S-2/2004, for an offence under Section 304 (A) IPC, 337 IPC and Section 184 of the Motor Vehicle Act.

2.3.In the meantime, the injured person Shanmugam died at K.K.Nagar Government Hospital at about 11.40 p.m., on the same day. After preliminary investigation PW-12 handed over the investigation to PW-13 for further investigation. PW-13 recorded the statement of the witnesses and on completion of investigation laid a Final Report against the petitioner.

2.4.The learned IV Metropolitan Magistrate, Saidapet took cognizance of the Final Report and framed charges against the petitioner for an offence under Section 304 (A) IPC, 337 IPC and Section 184 of Motor Vehicle Act.

2.5.The prosecution examined PWs-1 to 13 and marked Exs.P-1 to P-13 in order to substantiate the case. The trial Court on examination of the materials on record and on consideration of the facts and circumstances of the case convicted the petitioner for the above said offences and sentenced him in the manner mentioned supra. The petitioner aggrieved by the said judgment, preferred an appeal in C.A.No.129 of 2007 before the Vth Additional Sessions Court. The Appellate Court after taking into account the evidence available on record and after considering the submissions made on either side, came to the conclusion that the prosecution has proved the case beyond reasonable doubt and proceeded to confirm the judgment of the

trial Court. Aggrieved by the same, the present Criminal Revision Petition has been filed before this Court.

3.The learned counsel for the petitioner would submit that there is contradiction in the evidence of the witnesses and this has not been taken into consideration by both the Courts below. The learned Counsel further submitted that there was break failure in the vehicle and thereby the petitioner lost control of the vehicle and this aspect has not been considered by both the Courts below. The learned counsel further submitted that in the event of this Court confirming the order of conviction, this Court can consider the question of sentence taking into consideration the length of time and also after taking into consideration the fact that the petitioner underwent an abdomen surgery and he is a sole bread winner of the family.

4.Per contra, the learned Government Advocate (Crl.Side) submitted that this is a case where the prosecution has proved beyond reasonable doubts that the petitioner drove the vehicle in a rash and negligible manner and caused a very serious accident where in he caused serious injuries to PW-2, caused the death of an innocent pedestrian and also caused damage to the parked vehicles. The learned counsel would further submit that the eye witnesses have cogently spoken about the incident and identified the petitioner as the driver and therefore there is no ground to interfere with the finding of the Courts below. Therefore, the learned counsel submits that this Criminal Revision Petition is liable to be dismissed.

5.This Court has carefully considered the submissions on either side and also the material available on record. Both the Courts below have taken into consideration the evidence of PW-1, PW-2, PW-6, PW-8 and PW-10 who have spoken about the incident. PW-2 in this case is an injured witness who sustained injury due to the rash and negligent driving of the petitioner. He has given details about the vehicle involved and also other minute details about the accident. Even though PW-1 is not a direct eye witness to the incident, the evidence of PW-2 corroborates the evidence of PW-1.

6.PW-6 who is also an eye witness to the incident was the owner of the Motor Cycle which got damaged in the accident. PW-6 has also cogently stated about the accident and his evidence is in line with the evidence given by PW-2. Likewise PW-8 has also given correct details about the accident and also about the injuries sustained by the deceased and PW-2. He was a person who accompanied the others in taking the injured person to the hospital. PW-10 also stands in the same footing as that of PW-8.

7. Even Though a submission is made by the learned counsel for the petitioner that there was break failure in the vehicle driven by the accused person, there is no evidence to substantiate the said contention and there is no report of the Motor Vehicle Inspector to that effect. Therefore, the contention is liable to be rejected.

8. Both the Courts below have considered the evidence of PW-1, PW-2, PW-6, PW-8 and PW-10 and have come to the definite conclusion that the accident took place due to rash and negligent driving of the petitioner. This Court sitting in revisional jurisdiction cannot re-appreciate the facts unless this Court is able to find that there is infirmity committed by both the Courts below in appreciating the evidence. This Court is in complete agreement with the findings of both the Courts below.

9. There are absolutely no grounds to interfere with the judgment of both the Courts below and the order of conviction passed by the trial Court and confirmed by the Appellate Court is further confirmed in this Criminal Revision Petition.

10. Insofar as the sentence is concerned, a long period has elapsed since the occurrence took place. The petitioner has also undergone an operation and he has to take care of his family. Taking into consideration these factors, this Court is of the considered view that the sentence awarded by the Courts below insofar as offence under Section 304 (A) IPC is concerned, requires modification. The sentence is modified from six months to the period already undergone by the petitioner. However, this Court finds that this is an appropriate case to award compensation in exercise of its powers under Section 397 of CrI.P.C.

11. The petitioner is directed to deposit a sum of Rs.25,000/- [Rupees Twenty Five Thousand Only] towards compensation before the IV Metropolitan Magistrate Court, Saidapet, within a period of six weeks from the date of receipt of copy of this order. On such deposit, the learned Magistrate is directed to issue notice to legal heirs of the deceased Shanmugam and permit them to withdraw the said compensation. If the petitioner fails to deposit the compensation within the time stipulated, there will be a default sentence of six months Simple Imprisonment. The learned Magistrate is directed to ensure that the above direction is strictly complied with, failing which, non bailable warrant should be issued to the petitioner in order to serve the default sentence.

12.The Criminal Revision Petition is partly allowed to the extent indicated above.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KP
To

1.The V Additional Sessions Judge,
Sessions Court,
Chennai.

2.The IV Metropolitan Magistrate,
Saidapet.

3.The Inspector of Police,
Traffic Investigation Wing,
J-3, Guindy Police Station,
Chennai.

4.Public Prosecutor,
High Court,
Madras.

+1cc to Mr.B.Singaravelu, Advocate Sr.48675

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