



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :18.07.2018
Orders Pronounced on:02.08.2018

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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.24 of 2012

Kamalasekaran ..Petitioner/Appellant/Accused

Vs.

State,
Rep by Inspector of Police,
Baluchettychatram Police Station,
Crime No.378 of 2006 ..Respondent/Respondent/De-facto
complainant

PRAYER: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, against the judgment dated 19.10.2011 made in Crl.A.No.121 of 2010 on the file of Hon'ble District Sessions Judge No.II, Kanchipuram, confirming the conviction & sentence made in Judgment dated 26.11.2010 in C.C.No.367 of 2006, on the file of the learned Judicial Magistrate No.II, Kanchipuram.

For Petitioner : Mr.D.Ravichander

For Respondent: Mr.R.Surya Prakash,
Government Advocate (crl.side)

O R D E R

The convicted accused is the appellant herein.

2. The respondent-State filed a Final Report in Crime No.378 of 2006 alleging commission of offence under Sections 279 and 304(A) of I.P.C by the accused.

3. After observing the formalities, the same was taken on file as C.C.No.367 of 2006 on the file of the learned Judicial Magistrate No.II, Kanchipuram.

4. Before the trial Court, 10 witnesses are examined and 10 exhibits are marked and no material objects are recovered.

5. On the side of the prosecution, the occurrence witness was examined as P.W.1 and relative of the deceased examined as P.W.2 and hearsay witness P.W.3 were also examined. The Motor Vehicle Inspector was examined as P.W.4 and occurrence witness who has lodged a complaint was examined as P.W.5 and



Seizure Observation Mahazar were examined as P.W.6 and P.W.7. While, the Doctor who gave a treatment and conducted the treatment was examined as P.W.8. The person is conducted autopsy over the dead body of the deceased and issued Post mortem certificate was examined as P.W.9 and Inspector of Police was examined as P.W.10.

6. The case of the prosecution is as follows:-

i) on 07.08.2006 at about 06.30 hours while the deceased Venkatesan was walking alone on the left side of the road near Manapakkam junction, Chennai to Bangalore Highways, one Kamalasekaran [petitioner/accused] drove a Tanker Lorry vehicle bearing Regn.No.TN-28-P-5873 in a rash and negligent manner and hit the deceased, due to which the deceased sustained injury and died at the Government Hospital, Chennai. Hence, the complaint.

ii) a case was registered in Baluchettychatram Police Station Crime No.378 of 2006, under Section 279, 304(A) IPC on 07.08.2006 at about 14.00 a.m., against petitioner/accused by Tr.M.Babu, then Sub Inspector of Police and was taken up for investigation

iii) after conducting due trial, the learned Judicial Magistrate No.II, Kanchipuram by its judgment dated 26.11.2010 in C.C.No.367 of 2006 convicted the petitioner/accused on the following offences:-

U/s.279 I.P.C	To pay a fine of Rs.500/- i/d to undergo one month S.I
U/s.304 (A) I.P.C	Sentenced him to undergo 6 months S.I and to pay a fine of Rs.5000/- i/d he shall undergo three months S.I

iv) Aggrieved over the above said conviction and sentence, the petitioner/accused filed Criminal Appeal in C.A.No.121 of 2010, dated 19.10.2011 before District and Sessions Judge No.II, Kanchipuram confirming the judgment dated 26.11.2010 in C.C.No.367 of 2006 on the file of the learned Judicial Magistrate No.II, Kanchipuram.

7. The learned counsel for the appellant would submit that mere occurrence of an accident will not be sufficient to convict a person under Sections 279, 304(A) I.P.C and there is a discrepancy with regard to the manner of accident as described by P.W.1 and P.W.5 and both the Courts below have not properly appreciated the evidence of the prosecution and wrongly convicted the appellant herein and seeks for acquittal.

8. The learned Government Advocate (Crl.side) would submit that as per the report issued by the Motor Vehicle Inspector/P.W.4 that the accident is not due to any mechanical defects and as per the evidence of the Doctor, P.W.9 who are



issued Ex.P8, Post Mortem Certificate, the person died due to the injuries sustained in the accident and both the Court below have concurrently laid the conviction made submissions in support of the order of the trial Court.

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9. Heard both sides and perused the records.

10. As stated supra, P.W.1, Tr.Pugazhanthi, the eye witness have clearly deposed regarding witnessing the incident on 07.08.2006 at about 6.30 hours while, the deceased was walking alone on the left side of the road and a vehicle which was driven by the petitioner/accused in a rash and negligent manner had hit him and after hitting the person, it went up topple on the side of the road and the accused ran away and surrendered before the police.

11. The criminal law was yet into motion by filing the complaint under Ex.P1 by P.W.5 Anbalagan, the defacto complainant he had categorically deposed regarding the manner of on which, the deceased was walking on the day and left inside of the road and the lorry came in a rash and negligent manner as against him and he along with P.W.1 went and took the injury was in hospital initially, Government Hospital, Kanchipuram and Doctor P.W.8 has received and gave a initial treatment. Subsequently, he died due to the injury sustained under the Doctor as could be seen from the Ex.P8, Post-mortem certificate issued by P.W.9, Government Doctor.

12. On a plain reading of P.W.1, P.W.2, P.W.3 and P.W.5, the manner of the accident and position of the respective parties namely, the deceased before the accident and the vehicle came in a same direction in a high speed in a negligent manner as against the injury person walking on the road and after hitting the person, it toppled and fell down on the road. In the cross-examination, P.W.5 has categorically stated that when the injured was riding in the road with multiple injuries. The injured himself has also described the manner the accident had happened. It has been clearly spoken to by P.W.5 in the cross-examination immediately. After the accident, the said statement has been given by none other than the injured immediately after the accident to the P.W.5 and hence, it comes as relevant fact under Indian Evidence Act and coupled with another occurrence, P.W.1 deposed about the manner of the accident as projected by the prosecution which has been clearly established in the absence of any worthwhile cross-examination to describe the evidence of P.W.1 and P.W.5.

13. Both the Courts below have come to the correct conclusion that the prosecution has proved the manner of the accident and negligence with which the vehicle has been driven which caused the accident. Thus, the prosecution has proved beyond reasonable doubt as to the manner of the accident and the manner of the accident has been clearly spoken to by P.W.1 and



P.W.5, the occurrence witnesses and they have also identified the accused in the witness box during the trial and the said accident was caused by the accused and the said accident has taken place due to the rash and negligent driving of the accused and based upon the medical evidence, the injured person died due to the injuries sustained in the accident. As per the evidence of the P.W.4, the accident has not taken place as it had happened due to the mechanical defect of the vehicle and hence, all the ingredients for the offences under Sections 279, 304(A) I.P.C have been clearly proved beyond reasonable doubt by the prosecution. Hence, the conviction given by the trial Court, as confirmed by the lower Appellate Court/Sessions Court, is well merited and well considered and it does not warrant any interference at this revision stage and accordingly, the same is hereby confirmed.

14. On the question of sentence, as a trial Court is justified in sentencing the accused, which according to me, cannot be described as exorbitant and accordingly, the sentence awarded by the trial Court as confirmed by the Sessions Court, Kanchipuram, is hereby confirmed.

15. Accordingly, this Criminal Revision Petition is dismissed. The conviction and sentence imposed by the Courts below are hereby confirmed. Since the petitioner is on bail, the trial Court is directed to take steps to secure the custody of the petitioner/accused to undergo the remaining period of sentence if any.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Sessions Judge No.II, Kanchipuram,
- 2.The Judicial Magistrate No.II, Kanchipuram.
- 3.The Inspector of Police,
Baluchettychatram Police Station.

+ 1 cc to Mr. D. Ravichander, Advocate Sr.53112

Cr1.R.C.No.24 of 2012

KS (CO)
EU (20/09/2018)