

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.214 of 2013

& M.P.No.1 of 2013

Farook Batcha ...Petitioner/Appellate/Accused

Vs.

State by  
Inspector of Police  
Arachalur Police Station  
Erode District.  
Crime No.145/2008.

...Respondent/Respondent/Complainant

Prayer: The Criminal Revision case filed under Section 397(1) read with 401 of Code of Criminal Procedure to set aside the Judgment dated 05.09.2012 passed in C.A.No.81/2012 on the file of the Principal Sessions Judge of Erode District, confirming the Judgment dated 04.04.2012 passed in C.C.No.91/2010 on the file of the Chief Judicial Magistrate Court, Erode.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.R.Ravichandran  
Government Advocate (Crl. Side)

ORDER

The present Criminal Revision Case has been filed by the revision petitioner to set aside the Judgment dated 05.09.2012 passed in C.A.No.81/2012 on the file of the Principal Sessions Judge, Erode, confirming the Judgment dated 04.04.2012 passed in C.C.No.91/2010 on the file of the Chief Judicial Magistrate Court, Erode.

2. It is the case of the prosecution that on 03.06.2008, P.W.1 and 2 were proceeding in their motor cycle to Annamar Temple. When they were nearing the accident place, the deceased

Ranjit, niece of P.W.1 was proceeding in a bicycle in front of Kalaivani Astrology Center. When the deceased was proceeding in his bicycle at about 08.45 am, the deceased was driving the lorry bearing registration No.K.A. 10 7153 in rash and negligent manner and dashed against the bicycle, which was proceeding on the left extreme side. The deceased sustained injuries. P.W.1 and 2 took the deceased to hospital immediately. P.W.3 one Mr.Thirumurugan at the relevant time was standing near the place of occurrence. He has also witnessed the occurrence. P.W.11 was running Astrology center near the place of occurrence, and at the time of occurrence she was standing in front of her house.

3. P.W.1 lodged a complaint before the respondent police, which was marked as Ex.P.1. The Head Constable - P.W.16 at Perundurai Police Station received complaint and registered the crime in Cr.No.145 of 2008 under Sections 279 and 337 IPC under Ex.P.3 - FIR. P.W.17, The Sub-Inspector of Police on 03.06.2008, took up the case for investigation and went to the place of occurrence at 15.30 hours and prepared Ex.P.2 Observation Mahazar in the presence of P.W.9 and 10 and examined them and recorded their statements. On 04.06.2008, he arrested the accused at 11.00 am and sent him to judicial custody on the same day. He has also sent the lorry bearing registration No.K.A. 10 7153 for inspection by Motor Vehicle Inspector. P.W.14, the Motor Vehicle Inspector examined the said vehicle on 04.06.2008 and found that there was no mechanical failure in the vehicle in respect of which he has issued Ex.P.6 report. P.W.17, in continuation of investigation, after receipt of the death intimation from the hospital, altered the crime into Section 304 (A) IPC under the alteration report Ex.P.8.

4. On the same day, P.W.13, the Inspector took up the case for further investigation and went to the hospital and conducted inquest over the dead body in the presence of witnesses and panchayatadars and prepared Ex.P.5 Inquest Report. Thereafter, he has forwarded the dead body for postmortem. P.W.15, the Postmortem Doctor on 09.06.2008 conducted the autopsy over the dead body of the deceased and found that there were injuries in the skull and also fracture on the left pelvis and finally opined that the deceased died due to the injuries on the head and issued postmortem certificate Ex.P.7. After obtaining the report from Motor Vehicle Inspector and Postmortem Certificate from the Doctor, finally the P.W.13 laid the charge sheet against the accused under Sections 279 and 304 (A) IPC.

5. Cr.No.145 of 2008 filed under Sections 279 and 304 (A) IPC was taken on the file of the learned Chief Judicial

Magistrate Court, Erode in C.C.No.91 of 2010. In order to prove the case of the prosecution as many as 17 witnesses, P.W's. 1 to 17 and 8 exhibits, Exs.P.1 to 8 were marked.

6. The learned Chief Judicial Magistrate Court, Erode, after hearing both sides, came to the conclusion that the accused/revision petitioner found guilty under Sections 279 and 304 (A) of IPC and convicted under Section 255 (2) of Cr.P.C and sentenced for the offence punishable under Section 304 (A) of IPC to Simple Imprisonment for six months and fine Rs.5,000/- in default of payment of which to undergo Simple Imprisonment for one month. No sentence is awarded for the offence punishable under Section 279 of IPC in view of Section 71 of IPC.

7. Aggrieved against the order of the learned Chief Judicial Magistrate Court, Erode in C.C.No.91 of 2010 dated 04.04.2012, the accused/revision petitioner herein preferred the Criminal Appeal before the learned Principal Sessions Judge, Erode District, in Crl.A.No.81 of 2012.

8. On a perusal of the witnesses and from the evidences available on record, the learned Principal Sessions Judge, Erode District, found the accused guilty, beyond all reasonable doubts and confirmed the conviction and sentence passed by the learned Chief Judicial Magistrate, Erode in C.C.No.91 of 2010 dated 04.04.2012.

9. Against the Judgment of the learned Principal Sessions Judge, Erode District, in Crl.A.No.81 of 2012 dated 05.09.2012, the revision petitioner is before this Court with the present Criminal Revision Case.

10. The deceased was a school going boy, knocked down by the lorry which was driven by the accused on 03.06.2008. This fact is not in dispute. It is nowhere highlighted by the accused that he never drove the lorry at the relevant point of time. The accident itself is not in dispute. The very suggestion put by the learned counsel for the accused to the witnesses shows that as if the deceased suddenly crossed the road while overtaking the passengers bus and invited the accident.

11. The evidences of P.W.1 and 2 clearly spoken that they were proceeding in their motor cycle in order to go to temple at the relevant point of time. The deceased was proceeding in a bicycle keeping extreme left side of the road near the place of occurrence and the accused who was driving the lorry from south to north in rash and negligent manner and dashed against the deceased who was going on the left side of the road. P.W.3 is another eye witness to the occurrence. In his evidence he has clearly spoken that at the relevant point of time he was

standing near the place of occurrence and at the time the lorry came in a high speed and dashed against the deceased. P.W.11, she witnessed the occurrence is not even properly denied by the accused. P.W.12 also spoken about the scene of occurrence.

12. Heard both sides and perused the materials available on record.

13. The lorry driver while driving the heavy vehicle in a public road is expected to drive the same very carefully and cautiously in the bus stop. When the lorry driver noticed the bus stop, he ought to have taken much care and slowed down his vehicle anticipating the fact that many passengers alight from the bus may suddenly cross the road. Knowing that the bus was stationed in the bus stop and inspite of that, driving the lorry in such a speed, the above conduct clearly indicate that the accused had a clear knowledge about the possible danger to the human being particularly in the bus stop. The evidence of the eye witnesses clearly show that only the lorry driver drove the vehicle in rash and negligent manner. Under these circumstances this Court does not find any infirmity in the order passed by the learned Principal Sessions Judge of Erode District, in C.A.No.81/2012 dated 05.09.2012.

14. Therefore, the Judgment in Criminal Appeal No.81/2012 dated 05.09.2012 is confirmed. However the sentence passed by the learned Principal Sessions Judge of Erode District, is modified. Instead of six months, three months is ordered, which will meet the ends of justice. With the above modification the present Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,  
Erode District.

2.The Chief Judicial Magistrate,  
Erode.

3. The Inspector of Police  
Arachalur Police Station  
Erode District.

4. The Public Prosecutor  
Madras High Court.

CrI.R.C.No.214 of 2013  
& M.P.No.1 of 2013

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