

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 15.11.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

Crl.R.C.No.1293 of 2018 &
Crl.M.P.No.15200 of 2018

S.Ravi

.. Petitioner

versus

1. State Rep by
The Inspector of Police,
J-2, Adyar Traffic Investigation Wing
Crime No.730/AM2/2007.

.. Respondent

Prayer: This Criminal Revision Case is filed under Section 397 & 401 Cr.P.C., against the judgment of conviction dated 12.10.2018 passed by the II Additional Sessions Judge, City Civil Court in Crl.A.No.194 of 2015 against the petitioner.

For Petitioner : Mr.Ponjeganathan

For Respondent : Mrs.V.Sarathadevi,
G.A. (Crl.side)

ORDER

This Criminal Revision Case has been preferred by the petitioner, seeking to set aside the judgment of conviction dated 12.10.2018 passed by the II Additional Sessions Judge, City Civil Court in Crl.A.No.194 of 2015 against the petitioner, convicting and sentencing him to undergo simple imprisonment for three months and to pay a fine of Rs.25,000/- for the offence under Section 304(A) IPC and to pay a fine of Rs.100/- for the offence under Section 411 r/w 177 M.V.Act, in default of payment of fine, to undergo simple imprisonment for 15 days and if the fine amount is realized, it shall be paid to the legal heirs of the deceased.

2. The case of the prosecution is that on 25.12.2007 at 11.30 p.m., at R.K.Mutt Road, Mylapore, opposite to Bata Showroom, the revision petitioner/accused drove the vehicle, i.e. Mini Tempo Van bearing Regn.No.TN-09-AE-6435 in a rash and negligent manner on the wrong side of the road from north to south direction, dashed against Auto Rickshaw, which was coming

from south to north direction and caused head injuries to one Vijayasagar, who is a passenger in Auto rickshaw and he succumbed due to injuries on 26.12.2007 and thereby, the revision petitioner/accused committed the offences punishable under Sections 279, 304(A) IPC and Section 411 r/w 177 of M.V.Act.

3. In order to prove its case, the prosecution examined PWs.1 to 7 and marked Exs.P1 to P10. On behalf of the defence, no oral or documentary evidence was adduced.

4. P.W.1, Anbu is the Auto Driver of auto rickshaw. He deposed that on 25.12.2007 at 11.30 p.m. while they were proceeding to Mylapore, near Bata showroom at R.K.Mutt, a mini lorry bearing Registration No.TN-09-AE-6435 drove by the revision petitioner/accused in opposite direction on the wrong side of the road and dashed on the right side of the Auto, as a result of which, the deceased who was sitting on the right side of the Auto, sustained head injuries and succumbed to injuries in the hospital. PWs.2 and 3 also corroborated the version of the PW.1 and identified the revision petitioner as the driver of the offending vehicle.

5. PW.6, Sub Inspector of Police, Adayar Traffic Investigation, deposed that on receipt of information about the occurrence, he went to the hospital and received the complaint Ex.P1 given by PW.1 and returned to the Police Station and registered the case in Crime No.730 of 2007 under Sections 279, 337 IPC and took up the case for investigation. Ex.P5 is the First Information Report. Thereafter, he went to the scene of occurrence and prepared Ex.P2 observation mahazar and rough sketch Ex.P6 in the presence of witness PW.4 and went to Isabella Hospital, where he found the injured in unconscious state. He examined the witnesses PWs.2 and 3 and recorded their statements. The injured died on 26.12.2007 at the hospital.

6. PW.7 is the Inspector of Police, who took up further investigation from PW.6 and on receipt of Ex.P8 death report, he altered the case and conducted inquest of the deceased and prepared Ex.P9 Inquest report and then he sent the body for postmortem. Ex.P10 is the postmortem report. On 28.12.2007, he arrested the petitioner and sent him to judicial custody and on 8.1.2008, he seized the vehicle and sent it for motor vehicle inspection. PW.5, Motor Vehicle Inspector, on inspection, gave report Ex.P3 stating that there was no damage to the vehicle and brake efficiency was 64% and that the accident was not due to any mechanical defect. He also inspected Auto rickshaw and found damages on it occurred due to accident and gave report Ex.P4

stating that brake efficiency was 64% and the accident was not due to any mechanical defect. After completion of the investigation, PW.7 filed a final report.

7. On consideration of both oral and documentary evidence, the trial Court found the petitioner guilty of the offences under Sections 379 and 304-A IPC and Section 411 r/w 177 Motor Vehicles Act and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/- under Section 304-A IPC in default to undergo simple imprisonment of two months and also sentenced to pay a fine of Rs.100/- under Section 411 r/w 177 of Motor Vehicles Act, in default to undergo simple imprisonment for a week. On appeal, the lower Court appellate Court also confirmed the conviction, however, modified the sentence by sentencing him to undergo simple imprisonment for three months and to pay a fine of Rs.25,000/- for the offence under Section 304(A) IPC and to pay a fine of Rs.100/- for the offence under Section 411 r/w 177 M.V.Act, in default of payment of fine, to undergo simple imprisonment for 15 days and if the fine amount is realized, it shall be paid to the legal heirs of the deceased. Aggrieved by the judgment of conviction and sentence of the lower appellate Court, the petitioner is before this Court.

8. Assailing the judgment of conviction, the learned counsel appearing for the petitioner would contend that the Courts below have not appreciated the evidence in proper perspective and also failed to take note of the contradiction in the evidence of the prosecution witnesses. He would also contend that though the trial Court imposed fine amount at Rs.5100/-, it was arbitrarily enhanced to Rs.25,100/- while showing leniency to the petitioner in reducing the sentence to three months, which could not be complied with by the petitioner.

9. A perusal of the evidence let in by the prosecution as extracted above, it is clear that during the night hours on 25.12.2007, the eye-witnesses, viz., PWs.1 and 2 including the deceased were travelling in an auto-rickshaw to go from Besant Nagar to Royapettah and while they were near Bata Show room at Luz corner, a mini lorry bearing Regn.No.TN-07-AE-6435 came in opposite direction on wrong side and dashed on the right side of the auto-rickshaw and caused grievous heard injuries to the deceased, due to which, he succumbed in the hospital. This cogent evidence was also corroborated by the documentary evidence adduced by the prosecution vide Exs.P1 to P7.

10. Section 304-A IPC says that "whoever causes the death of any person by doing any rash or negligent act not amounting to

culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

11. The requirements of this section are that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words, there must be proof that the rash or negligent act of accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused.

12. As stated earlier, PW.1, driver of the Auto rickshaw has clearly narrated the manner in which the accident had taken place, that while they were proceeding in auto-rickshaw to Mylapore, near Bata show room at Luz corner, a mini lorry driven by the petitioner came in opposite direction on the wrong side of the road and dashed against the auto rickshaw and caused head injuries to the deceased due to which, he died in the hospital. Further a perusal of Ex.P2 Observation Mahazar and Ex.P6 rough sketch, it reveals that the auto-rickshaw was proceedings from south to north keeping extreme left side of the road while the offending vehicle driven by the petitioner came in opposite direction on wrong side and took a deviation towards the right side and in that process, accident took place. Further, as per the report given by the PW.5 Motor Vehicle Inspector, there was no mechanical defect found in the offending vehicle. Therefore, the prosecution has clearly proved beyond all reasonable doubt that it was rash and negligent act of the petitioner who drove the vehicle in opposite direction, that too on the wrong side, that caused death of one Vijayasagar (deceased). This Court does not find any infirmity in the findings of the Courts below in order to interfere with the same.

13. As regards the sentence, the learned counsel for the petitioner would submit that though the trial Court imposed lesser fine amount, however, the lower appellate Court has exorbitantly enhanced from Rs.5100 to Rs.25100/-. This Court also does not find any scope to interfere with the same since the lower appellate Court has shown leniency in the matter of sentence by reducing one year rigorous imprisonment to three months simple imprisonment. Further, to alleviate the grievance of the dependents of the deceased, the lower appellate Court directed the fine amount if paid, to pay to the legal heirs of the deceased, which is, in the opinion of this Court is appropriate and cannot be disturbed.

14. For the foregoing reasons, the Criminal Appeal fails and the same is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional Sessions Judge,
Sessions Judge,
City Civil Court,
Chennai.

2.The IV Metropolitan Magistrate,
Saidapet, Chennai.

Copy to

The Section Officer,
Criminal Records Section,
High Court, Madras.

+1cc to Mr.S.Pon Jeganathan, Advocate Sr.77912

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