



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 09.04.2018
DELIVERED ON : 21.06.2018
CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.126 of 2017

and

Crl. M.P.(MD)Nos.1241 and 1242 of 2017

Kadarkarai

.. Petitioner

Vs.

The State rep. By its
The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
(Crime No.1 of 2011)

.. Respondent

Prayer : This revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for records in the Judgment of the II Additional District and Sessions Judge, Thoothukudi in C.A.No.22 of 2016 by Judgment dated 04.11.2016, confirmed the conviction and sentence passed by the learned Judicial Magistrate No.I, Kovilpatti, in C.C.No.2 of 2012 dated 25.04.2016 and set aside the same.

For Petitioner

: Mr.S.Ramasamy

For Respondent

: Mr.K.Suyambulinga Bharathi

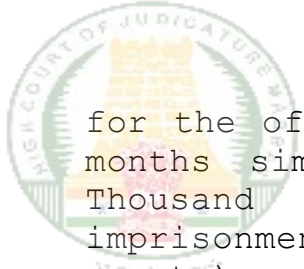
Government Advocate (Crl. Side)

ORDER

Heard Mr.S.Ramasamy, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

2.This revision case has been filed to set aside the order passed by the learned II Additional District and Sessions Judge, Thoothukudi in C.A.No.22 of 2016 by Judgment dated 04.11.2016, confirmed the conviction and sentence passed by the learned Judicial Magistrate No.I, Kovilpatti, in C.C.No.2 of 2012 dated 25.04.2016.

3.The respondent filed a case in Crime No.1 of 2011 under Sections 279, 338, 304(A) of IPC (5 counts). The case was taken on file in C.C.No.2 of 2012 before the learned Judicial Magistrate No.I, Kovilpatti. The accused was found guilty for the abovesaid offences and was convicted and for the offence under Section 279 of IPC sentenced to pay a fine of Rs.500/- (Rupees Five Hundred only) in default to undergo three weeks simple imprisonment and

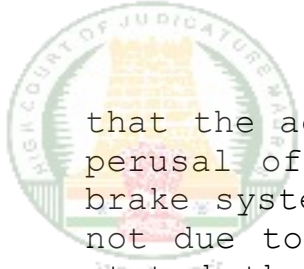


for the offence under Section 338 of IPC sentenced to undergo six months simple imprisonment and fine of Rs.1,000/- (Rupees One Thousand only) in default to undergo four weeks simple imprisonment and for the offence under Section 304(A) of IPC (5 counts) sentenced to undergo one year simple imprisonment and fine of Rs.1,000/- (Rupees One Thousand only) for each count in default to undergo four weeks simple imprisonment. The petitioner preferred an appeal in C.A.No.22 of 2016 before the learned II Additional District and Sessions Judge, Thoothukudi dated 04.11.2016 confirmed the judgment passed by the lower Court and dismissed the appeal.

4.On the side of the petitioner, it is stated that none of the eye witnesses speak about the rash and negligent act of the accused. The lower Court is wrong in believing the evidence of P.Ws.1, 2, 3 and 6 and none of the witnesses identified the petitioner. The revision petitioner did not drive the vehicle at the date of occurrence, only the Cleaner of the bus drove the vehicle and the same was admitted by P.W.2 in his cross examination and there is a mechanical fault in the bus. It is stated that the complaint I.e. Ex.P.1 is false one. It is stated that the name of the petitioner is not mentioned in the complaint and in the cross examination of P.W.12, it is admitted that he gave the name of the petitioner for the complaint and that the complaint is not proved properly. There is a delay in registering the FIR and there is delay in sending the same to the Court and also there is a delay in sending the statement of witnesses to the Court. He prayed that the petitioner is to be acquitted.

5.On the side of the respondent, it is stated that the revision petitioner is the Driver of the bus bearing Registration No.TN-69-T-4485 which dashed against one Two Wheeler and the defacto complainant's Car. Totally five persons died in the accident, out of which three persons are from the same family and two others stood near by them. P.W.1 is the eye witness and also injured in the accident. P.W.1 has identified the accused before the trial Court and P.W.13 who is the Conductor of the bus, has admitted that the petitioner drove the vehicle at the time of accident, and that there is no question of identifying the bus or the Driver.

6.Records perused. The petitioner is the Driver of the bus which is proved by the evidence of the P.W.1 and P.W.13, who is the Conductor of the bus. It is proved that the petitioner is the Driver of the bus who drove the bus in rash and negligent manner and dashed against one Two Wheeler bearing Registration No.TN-69-V-9802 and dashed against defacto complainant's Indica Car bearing Registration No.TN-67-AN-3369. It is clearly stated that the bus bearing Registration No.TN-69-T-4485 is involved in the occurrence. P.W.24 is the Motor Vehicle Inspector has stated that the brake is 64% in working condition and he has further stated



that the accident was not occurred due to any mechanical defect. A perusal of Ex.P.10 clearly shows that there is no failure in the brake system of the bus. Hence, it is decided that the accident is not due to mechanical fault. On the side of the petitioner, it is stated that only Cleaner of the bus was driving the bus at the time of accident. P.W.13 and the petitioner were engaged on that date to work as Conductor and Driver in the bus bearing Registration No.TN-69-T-4485. The evidence of P.W.12 clearly reveals that the bus was driven by the Driver and not by the Cleaner. P.Ws.13 and 4 are the eye witness. They have stated that the Driver drove the vehicle in a speedy manner. In Ex.P.7, complaint, it is stated that the Driver drove in rash and negligent manner. Even after dashing against Indica Car, the petitioner was not able to control the vehicle and the bus dashed against Two Wheeler and caused death of two more persons. This reveals that the petitioner drove the vehicle in a rash and negligent manner. Hence, it is decided that the petitioner drove the vehicle in rash and negligent manner and caused the death of five persons and caused injuries to P.W.1. Hence, this criminal revision case is dismissed thereby confirming the order passed by the first Appellate Court in C.A.No.22 of 2016. Consequently, Crl. M.P. (MD) Nos.1241 and 1242 of 2017 are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional District and Sessions Judge, Thoothukudi.
2. The Judicial Magistrate No.I, Kovilpatti.
3. The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Ramasamy, Advocate Sr.No.69230

MRN

VB/PN/SA2/04.07.2018/3P/6C