



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.R.C. (MD)No.40 of 2013

WEB COPY

Rajamanickam

... Petitioner

Vs.

State represented by
The Sub-Inspector of Police,
Pandalkudi Police Station,
Virudhunagar District,
(Crime No.228/2005)

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur in Crl.A.No.235 of 2007 by Judgment dated 15.11.2012, confirming the conviction and sentence of imprisonment imposed by the learned Judicial Magistrate, Aruppukottai in C.C.No.31 of 2006 dated 07.11.2007 set aside the Judgments of the Court below and acquit the petitioner.

For petitioner : Mr.S.Mahendrapathy

For Respondent : Mr.A.Robinson

ORDER

Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

2.It is a case of rash and negligent driving, causing death of one Shanmugaraj and grievously injured his daughter Shanmugapriya, while they were crossing the road near Aruppukottai - Tuticorin National Highways, Lingapuram bus stop. The alleging accident has taken place on 24.12.2005 at about 7.30 p.m.

3.The trial Court after considering the evidence of the injured witness P.W.1 and eye witness to the accident had held that the container lorry driven by the revision petitioner herein was driving in rash and negligent manner, causing death of Shanmugaraj and injury to his daughter Shanmuga priya. The trial Court had convicted him for offences under Sections 279, 338 and 304(a) of IPC and imposed a fine of Rs.500/- in default, sentenced to undergo one month simple imprisonment for the offences under Sections 279 and 338 of IPC. Sentenced to undergo three months simple imprisonment and a fine of Rs.1,000/- in default, sentenced to undergo two months simple imprisonment and a fine of Rs.2,000/- for the offence under Section 304(a).

<https://hcservices.ecourts.gov.in/hcservices/>
Appealed by the order of the learned Judicial Magistrate, Aruppukottai, an appeal has been preferred before the Principal District Judge, Virudhunagar at Srivilliputhur, in Crl.A.No.235 of



2007. The Appellate Court after re-appreciating the order of the trial Court, has confirmed the order of the learned Judicial Magistrate, Aruppukottai.

5.The present revision is preferred on the ground that in the evidence of P.W.1, she does not attribute any rash and negligence, on the part of the revision petitioner. P.W.1 has rightly deposed that at the time of the accident neither P.W.2 nor P.W.3 was present. Therefore, the evidence of P.W.2 and P.W.3 should not have been relied by the Court below. While, P.W.1, the injured victim has admitted that at the time of accident, they were at the middle of the road which is also spelled by the observation mahazar Ex.P.5 and the sketch. The Court below ought to have acquitted the revision petitioner.

6.The learned counsel for the revision petitioner relied upon the cross examination of P.W.1, tried to impress upon this Court that the prosecution has failed to prove their case that the accident has occurred due to rash and negligence of the petitioner. In such circumstances, the conviction by the trial Court, as confirmed by the appellate Court, ought to be set aside.

7.The Additional Public Prosecutor would submit that both the Courts on facts had properly appreciated the evidence let in by the prosecution and held the revision petitioner guilty and convicted. The national highway, on which the accident took place is a busy area, near bus stop where the driver of the container ought to have driven the vehicle carefully while negotiating the road. Having failed to do so, the accident has causing death of a person and injured P.W.1 who was about 8 years old at the time of occurrence.

8.Hence, he submitted that there need not be any interference in the sentence and conviction, since, the trial Court as well as the Appellate Court imposed only a fit bite imprisonment for a period of three months of simple imprisonment for the offences under Section 304(A).

9.Since the learned counsel for the revision petitioner relied upon the evidence of P.W.1, this Court perused the deposition of P.W.1 who is the injured victim. At the time of deposing, she was 10 years old. From her evidence, it is clear that she along with her father, the deceased Shanmugaraj, were crossing the road pushing their push cart, used for ironing the cloths.

10.It is an admitted fact that the deceased was carrying out his livelihood by running a laundry shop near the bazaar. After completing the day work, he along with his daughter P.W.1 where crossing the road, pushing their push cart. At the time, the revision petitioner / accused had dashed them, which was fatal to Shanmugaraj. To the suggestion to P.W.1 that she and her father were negligent in not observing the approaching vehicle had crossed the road negligently, P.W.1 has denied it.



11. Though, the presence of P.W.2 and P.W.3 is questioned by the revision petitioner, their evidence does not indicate that they were planted witnesses by the prosecution. Just because, they are relatives to the deceased person, we cannot come to the conclusion that they were not presented at the scene of accident. They were all residents of same place and the place of accident is a bus stop where several petty shops are seen as per the sketch. P.W.2 in her evidence has stated that she is a flower vendor on the road side, selling flowers near the bus stop. At the time she has seen the accident.

12. In the said circumstances, considering the place of accident and the injury caused to the victims, this Court is unable to arrive at any other conclusion than what the Courts below had concluded. Insofar as the sentence is concerned, though the counsel would plea that some concession may be given regarding the period of sentence, this Court finds that sentence period of imprisonment is three months simple imprisonment. In the said circumstances, this Court finds that there is no justification to reduce the sentence any further.

13. The learned counsel for the revision petitioner submits that the revision petitioner has to undergo bypass surgery, therefore some time may be given to surrender. Considering his request three months time is granted for the revision petitioner to surrender before the trial Court to undergo the remaining period of sentence.

14. Accordingly, this Criminal Revision Case is dismissed.

Sd/

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar (CS-II)

To:

1. The Judicial Magistrate,
Pudukottai.
2. The Additional District Judge,
Pudukottai.
3. The Sub-Inspector of Police,
Pandalkudi Police Station,
Virudhunagar District.

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