

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2018

PRONOUNCED ON : 02.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1352 of 2011

Gnanapandithan .. Petitioner/Appellant/Accused

-vs-

State Represented by,
The Inspector of Police,
Thiruppur South Police Station,
Thiruppur.
(Crime No.143 of 2007) .. Respondent/Respondent/
Complainant

PRAAYER: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., praying to set aside the judgment dated 28.07.2010 made in C.A.No.36 of 2010 on the file of the Additional District and Sessions Judge (FTC No.5) Tiruppur, confirming the conviction and sentence made in C.C.No.127 of 2007 dated 12.02.2010 on the file of the Judicial Magistrate No.II, Tiruppur.

For Petitioner : Mr.C.Venkatesan
(Legal aid counsel)

For Respondent : Mrs. V.Sarathadevi
Government Advocate (Criminal side)

ORDER

Convicted accused is the revision petitioner herein. This revision is filed against the judgment dated 28.07.2010 made in C.A.No.36 of 2010 on the file of the Additional District and Sessions Judge (FTC No.5) Tiruppur, confirming the conviction and sentence made in C.C.No.127 of 2007 dated 12.02.2010 on the file of the Judicial Magistrate No.II, Tiruppur.

2. The legal aid counsel appearing for the revision petitioner contended that both the Courts below have erroneously convicted the accused under Section 279 IPC and sentenced to undergo six months simple imprisonment. However, it ought to have seen that there may be a material contradiction between the oral and documentary evidence of PW.1(wife of the deceased) with that of PW.2 and thus the petitioner prayed for setting aside the conviction and sentence rendered by the Courts below.

3. The learned Government Advocate(Criminal side) appearing for the State would contend that the respondent/State had filed the final report for the alleged offence under Sections 279 and 304(A) IPC for the rash and negligent driving of the driver in dashing against the husband of PW.1. Further, the learned

Government Advocate (Criminal side) submitted that the oral evidence of PW1 and PW2 was duly corroborated by PW.6 and PW.8 and also corroborated with the medical witness of PW.7- Doctor and therefore, both the Courts below have concurrently held that the charges do not call for any interference.

4. The case of the prosecution is that on 06.03.2007 at about 08.30 a.m. at the junction of the mud road and thar road at K.V.R.Nagar and Ana Nagar a TATA Van bearing Registration No.TN-39-Q-1188 came in a rash and negligent manner and while passing the junction, the left side of the van door on the left hand side, which was not properly closed, got opened and dashed against the deceased and he had sustained injuries and he was taken to the Government Hospital, Tiruppur for treatment by the same TATA Van and there he was declared brought dead and hence, this charge is made against the petitioner herein. To prove the charges made by the wife of the deceased, she examined herself as PW.1 and the co-brother of the deceased as PW.2, who are said to have seen the occurrence of accident and they were at the scene of crime.

5. Points for consideration:

1) Whether the order of the Courts below in convicting the

revision petitioner/accused under Section 279 and 304(A) IPC is sustainable in law? and

2) whether the quantum of sentence granted by the Courts below is excessive?

6. It is seen from the records of the trial Court that both PW6 and PW8 are the independent witnesses. PW6 is the owner of the house, and PW1 was residing there. PW8 is running a Laundry business and they were at the scene of occurrence. PW5 is the Motor Vehicle Inspector, who inspected the vehicle and issued a report Ex.P3, which would show that the accident had not taken place due to mechanical defect. PW.7-Doctor.Priya Visuvasam has conducted post mortem and issued the post mortem report-Ex.P4. Based on the report, there were two suture injuries found on the head. The surgery was made on the right side of the head and there was a fracture with blood clot found on the skull of the deceased and the same has caused his death.

7. Though PW1 and PW2 are relatives, their deposition was corroborated by the two independent witnesses PW6 and PW8, who were in the scene of occurrence.

8. However, nothing was elicited in the cross examination

to disprove the presence of PW6 and PW8 at the scene of occurrence. It requires to be stated that PW8 was running a Laundry business and was not at the scene of occurrence. Taking into consideration of the oral evidence of PWs.1 and 2 accepted by the independent witnesses PW.6, PW.8 and PW.7-medical witness, I am of the considered view that the prosecution has proved the case beyond reasonable doubt, because the accident had occurred when the door of the van had hit on the head of the deceased, which is said to have caused his death.

9. It is to be stated that as per the evidence of PW.2-wife of PW1, who is along with the injured witness PW6 and PW8 categorically stated that when the van driven by the accused in the street, all of a sudden, the left door of the van got open in the said process. It dashed on the forehead of the deceased who was walking along with PW1 on the left hand side of the road. Taking into consideration the nature and condition of the road as described by PW1 and PW6 and as could be seen from Ex.P.6, this Court is of the considered view that the act of the accused/driver in not checking whether the left hand side door was properly locked was negligent but the evidence of PWs.1,2,3,4 and 8, they did not disclose that the driving was in a rash manner.

10. Section 304(A) IPC reads as follows:

"There must be direct nexus between the death of a person and the rash, or negligent act of the accused".

11. Since there is no possible evidence indicating the rashness on the part of the accused in driving the vehicle, from the evidence of the above said private prosecution witnesses and also the sudden opening of the well locked door cannot be termed as rash driving and due to which, the victim caused injury on the head. Subsequently, the husband of PW1 is died.

12. Hence, in this view of the matter, the conviction and sentence under Section 304(A) IPC passed by both the Courts below is hereby set aside. The conviction under Section 279 IPC is sustained. However, the sentence imposed under Section 279 IPC is enhanced to fine of Rs.5,000/- and the same to be paid within two weeks from the date of receipt of a copy of this order and on such deposit, the same could be disbursed to the wife of the deceased (PW.1).

13. Accordingly, this Criminal Revision Case is partly allowed to the extent as indicated above.

01.02.2019

Index : Yes / No

<http://www.judis.nic.in>

Internet : Yes

PJL

To
1.The Additional District and Sessions Judge,
Fast Track Court No.V,
Tiruppur.

2.The Judicial Magistrate No.II,
Tiruppur.



WEB COPY

RMT.TEEKAA RAMAN, J.

PJL



**ORDER MADE IN
CRL.R.C.No.1352 of 2011**

WEB COPY

01.02.2019