

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1085 of 2012

Chellamuthu

...Petitioner/Accused

Vs.

State by
The Inspector of Police,
Kumaralingam Police Station,
Coimbatore.
(Crime No.136/2008)

...Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the judgment dated 05.07.2012 made in Crl.A.No.185 of 2011 on the file of the Principal District and Sessions Judge of Coimbatore, confirming the judgment dated 09.08.2011 made in C.C.No.106 of 2009 on the file of the Judicial Magistrate No.1, Udumalpet and acquit the accused.

For Petitioner : Mr.D.Muthuselvam

For respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision has been filed to set aside the judgment dated 05.07.2012 passed in Crl.A.No.185 of 2011 by the learned Principal District and Sessions Judge of Coimbatore, by confirming the judgment dated 09.08.2011 passed in C.C.No.106 of 2009 by the learned Judicial Magistrate No.1, Udumalpet.

2. The case of the prosecution is that on 06.09.2008 at about 8.00 .pm PW-1 was transporting fishes in ice boxes in a Tata Ace Van bearing registration No.TN 41-W-22552. PWs-2 and 3 and the deceased were travelling in the said van along with the fish boxes. PW-1, while proceeding towards Kozhumam, on his way in front of Appolo Teachers' Training Institute, the accused was the driver of a van bearing registration No.TAP 4179, which transported vessel used for preparation of sugarcane juice and the said vessel was protruding from the van, dashed against the van driven by PW-1, due to which, Iyyappan, who was travelling in the Tata ace van driven by PW-1 was thrown off and he

succumbed to head injury. The respondent police registered a case in Crime No.136 of 2008 for the offence under Section 279 and 304-A IPC against the accused and after completing investigation, filed a final report before the learned Judicial Magistrate No.1, Udumalpet and the same was taken on file in C.C.No.106 of 2009. After trial, the learned Magistrate found the accused guilty for the offence under Sections 279 and 304(A) IPC and sentenced him to undergo 5 months Simple Imprisonment and fine of Rs.750/-, in default, one month Simple Imprisonment for the offence under Section 279 of IPC and 5 months Simple Imprisonment and fine of Rs.2,000/-, in default, one month Simple Imprisonment for the offence under Section 304(A) of IPC by judgment dated 09.08.2011. Challenging the said order, the accused preferred an appeal in Crl.A.No.185 of 2011 before the learned Principal District and Sessions Judge, Coimbatore. After hearing the arguments, the learned Sessions Judge dismissed the appeal and confirmed the conviction and sentence passed by the trial Court by judgment dated 05.07.2012. Against the said judgment, the accused preferred the present revision before this Court.

3. The learned counsel appearing for the revision petitioner would submit that the prosecution has failed to prove its case beyond reasonable doubts. The accident occurred not due to rash and negligent driving of the driver of the offending vehicle. The person, who was sitting inside the vehicle, was thrown away and sustained head injury, due to which, died. The accident had not occurred due to the collusion of the vehicle and hence, the judgment passed by the Appellate Court warrants interference.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that the accident has occurred due to rash and negligent driving of the driver of the offending vehicle. Both the Courts below rightly appreciated the entire evidence and convicted the accused, which warrants no interference.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and also perused the materials available on record.

6. On reading of the entire evidence, it is seen that there is no merit to show that the accident has occurred due to rash and negligent driving of the driver of the offending vehicle. The offending vehicle dashed against the Tata Ace van, due to which, the person, who was sitting the van was thrown away. If the person is holding any part of the vehicle, he could not have been died. There is no evidence to show that his death was due to accident and the accident has occurred only due to rash and negligent driving of the offending vehicle. The prosecution has

proved its case beyond reasonable doubts. Mere accident is not an offence. If the accident occurred, due to rash and negligent driving of the revision petitioner/accused and due to that, if anyone sustained injury, he is responsible for the injuries caused to the victim. In this case, admittedly, the deceased was sitting in the vehicle, due to the negligent on the part of the deceased, who sustained injury and subsequently, died.

7. In the circumstances, this Court feels that both the Courts below failed to consider the entire evidence on record. This Court finds that there is perversity in appreciation of evidence by both the Courts below and the same are liable to be set aside.

8. In the result, this Criminal Revision Case is allowed. The judgment dated 05.07.2012 in CrI.A.No.185 of 2011 passed by the learned Principal District and Sessions Judge, Coimbatore, confirming the judgment dated 09.08.2011 made in C.C.No.106 of 2009 on the file of the Judicial Magistrate No.1, Udumalpet, shall stand set aside. The Petitioner/accused is acquitted from all charges. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

KMI

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No.1,
Udumalpet.
3. The Inspector of Police,
Kumaralingam Police Station,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras-104.

+1cc to M/s.S.Gunalan, Advocate, SR.No.63044

CrI.R.C.No.1085 of 2012

Kak(03.10.2019)