

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.152 of 2012

L.Suresh,
S/o.Loganathan,
40, ATC Nagar,
Dasanaickenpatty,
Salem-636 201.

....Revision Petitioner/Accused

/versus/

State Represented by:
The Inspector of Police,
Mecheri Police Station,
Salem District.

... Respondent/Complainant

Prayer:- Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., against the conviction imposed by the Learned Additional Sessions Judge, Fast Track Court No.1, Salem in C.A.No.40 of 2010 by the judgment dated 20.01.2012 confirming the conviction and sentenced imposed on the file of the learned Judicial Magistrate No.II, Mettur, in C.C.No.73 of 2007 dated 24.02.2010.

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate

ORDER

The revision petition is directed against the judgment of the Courts below holding the petitioner guilty of offences under Sections 279 and 304 (A) of I.P.C.

2. The brief facts of the case is that on 17.04.2004, at about 5.10 a.m the appellant/accused was driving Eicher van bearing registration No.TN.30.E.7089, carrying a machine from Mysore to Salem. The deceased Thiagarajan was accompanying the appellant and sitting on the left side, in the front cabin of the eicher van. Near Mecheri on the Omalur Main Road, Chengatoor Road Junction to avoid the vehicle coming ahead, the appellant has turned to his left, lost the control and dashed a tamarind tree. In the impact, Thiagarajan who was sitting in the left side of the cabin sustained severe injury. He was taken to Gokulam Hospital at Salem. After treatment, he was later shifted for further treatment to the Government Hospital, Salem. He was

under treatment till 07.05.2006, but succumbed to the injury. At 11.45 p.m, on that day, the respondent police has registered complaint received from Mageshwari wife of the deceased. The accused surrendered before the respondent police on 18.04.2006. The case which was initially registered under Sections 279 and 337 of I.P.C was later altered to 279 and 304 (A) of I.P.C

3. To prove the charges, the prosecution has examined 11 witnesses. 9 Exhibits were marked. Though, PW.2 (Mathiazhagan) and PW.3 (Rathivel) witnesses to the prosecution have turned hostile. The Courts below taking note of the legal position that even the evidence of hostile witnesses can be relied upon for the facts spoken by them. Had considered the evidence let in by the prosecution on a whole and held that the prosecution has proved the accused driven the vehicle rashly and negligently and thereby, caused the death of Thiagarajan. Therefore, the trial Court, while sentenced the accused to undergo 6 months S.I and to pay a fine of Rs.2,000/- for offence under Section 304 (A) and fine of Rs.500/-, in default one month S.I for the offence under Section 279 of I.P.C.

4. On appeal, the Lower Appellate Court after re-appreciating the evidence and on the ground of attack confirmed the conviction and sentence.

5. Aggrieved by the concurrent findings both on conviction and sentence, the present revision is filed.

6. The learned counsel appearing for the revision petitioner would specifically submit that the witnesses to the occurrence have turned hostile. Even, according to the F.I.R, the accident has happened when the driver tried to avoid the upcoming vehicle. The victim succumbed to injury, after 20 days in the hospital. The intervening circumstances, not taken note by the Courts below. When there is no direct evidence to show the accident was caused due to rash and negligent driving of the accused, the Courts below ought not to have held him guilty for offences under Sections 279 or 304 (A) of I.P.C. The learned counsel would further submit that more particularly, the death of Thiagarajan cannot be attributed to the injury since, he was first taken to the private hospital at Salem, later shifted to the Government Hospital at Salem. He was under treatment for nearly 20 days and only thereafter, he died. The evidence of the doctor is not a conclusive proof to hold that the death was only due to the injury sustained in the accident. In the said circumstances, the learned counsel would submit that the failure of the prosecution to prove the negligence ought to have resulted in acquittal. Since, the Courts below has failed to taken note of the other facts like non-examination of the person who took the deceased to the hospital, hostility of the eye witnesses, the damage of the vehicle noted by the Motor Vehicle Inspector would go to show that there was no negligence on the part of the appellant.

7. Per contra, the learned Government Advocate would submit that the prosecution has proved the accident, causing the

death of Thiagarajan was due to the negligent driving of the petitioner. The witnesses to the accidents are PW.2 and PW.3, they did not say that the driver of the Eicher van was driving his vehicle rash and negligently. However, they have deposed that the tempo van diverted to towards the left and hit a tamarind tree. The reason for deviating from the road speaks for itself about the negligence.

Section 304-A of I.P.C reads as below:-

304-A. Causing death by negligence:- 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.

8. Any act of rash or negligence causing death is punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

9. Had the appellant been diligent enough, he could have very well avoided hitting the tamarind tree, which is far of from the road.

10. Heard the respective counsels.

11. The evidence placed before the trial Court proves the fact that the appellant was the driver of the eicher van bearing registration No.TN.30.E.7088. The said eicher van meted with an accident on 17.04.2006, at about 5.10 a.m. The occupant of the eicher van Thiagarajan sustained grievous injury and therefore, he was taken to the Gokulam hospital, at about 6.30 a.m for treatment. Later, he was shifted to the Government Hospital, Salem for further treatment but, he succumbed to the injury on 07.05.2006. The post-mortem certificate which is marked as Ex.P.5 and spoken by the Dr.Kesavalingham (PW.7) indicates the victim had sustained multiple injuries on the parietal region of his scalp and back neck fractured and dislocation of C2 and C3 vertebra of spinal column. The nature of injury sustained by Thiagarajan in the accident can alone be the cause for the death and no other intervening factor. In the said circumstances, this Court finds that the conviction of the revision petitioner is proper and in accordance with law. The conviction is based on the evidence available.

12. Insofar as sentence is concerned, the accident has occurred due to want of diligence. From the evidence of PW.1, it appears that the deceased has engaged the accused from Salem and proceeded to Mysore to purchase a machine and accident has occurred, while they were returning back very near to their home, in the early morning hours on 17.04.2006.

13. Considering the facts and circumstances, this Court is of the opinion that instead of sentencing him to undergo imprisonment, the sentence shall be modified, as fine of

Rs.25,000/-, in default one month S.I. The fine amount of Rs.2,000/- if already paid, shall be deducted.

14. Accordingly, the Criminal Revision Petition is party Allowed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bsm

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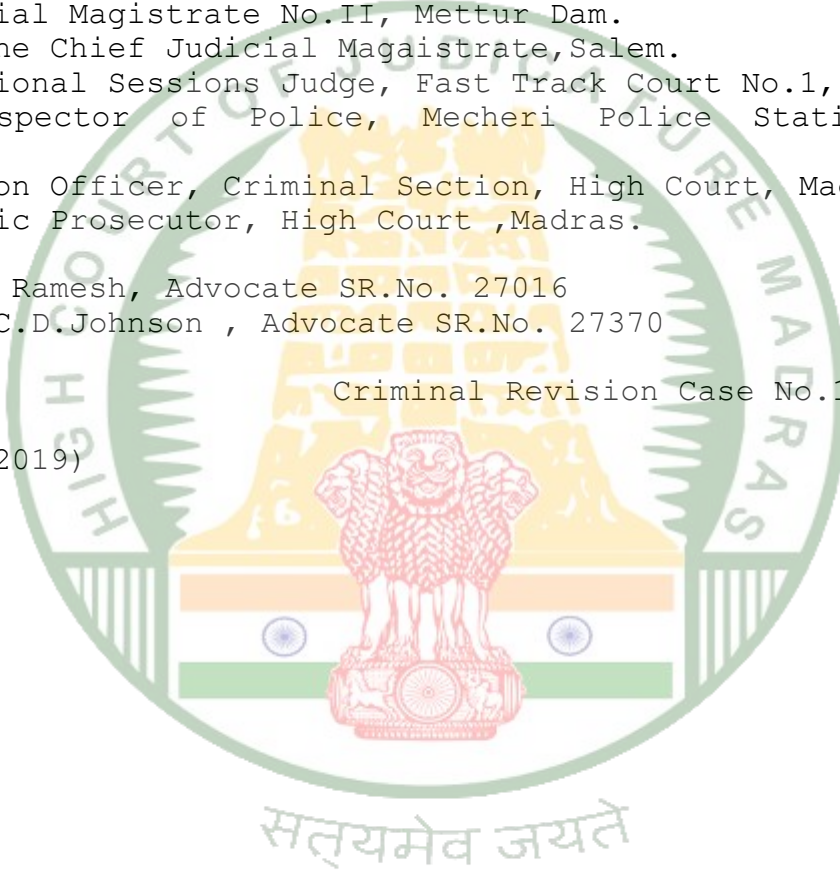
- 1.The Judicial Magistrate No.II, Mettur Dam.
- 2.Do thro The Chief Judicial Magistrate,Salem.
- 3.The Additional Sessions Judge, Fast Track Court No.1, Salem.
4. The Inspector of Police, Mecheri Police Station, Salem District.
- 5.The Section Officer, Criminal Section, High Court, Madras.
6. The Public Prosecutor, High Court ,Madras.

+1cc to Mr. Ramesh, Advocate SR.No. 27016

+1cc to Mr.C.D.Johnson , Advocate SR.No. 27370

Criminal Revision Case No.152 of 2012

A.SK(29/04/2019)



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