

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.204 of 2012

S.Vinayagamoorthy

..Petitioner/Appellant/Accused

Vs

The State represented by  
The Inspector of Police,  
Tiruvallur Town Police Station,  
(Crime No.92 of 2009)

..Respondent/Complainant

Prayer:- This Criminal Revision case is filed under Section 397 & 401 Cr.P.C., to call for the records in C.A.No.73 of 2011 dated 28.01.2012 on the file of the learned Additional District Judge, Fast Track Court No.III, Tiruvallur confirming the conviction and sentence imposed in C.C.No.116 of 2010 dated 02.11.2011 on the file of the learned Judicial Magistrate No.1, Tiruvallur and set aside the conviction and sentence.

For Appellant : Mr.S.Pandian

For Respondent : Mr.Shanmuga Rajeswaran,  
Government Advocate (crl.side)

JUDGMENT

This Criminal Revision is directed against the concurrent finding of the Courts below holding the revision petitioner guilty for offences under Sections 337 and 304(a) I.P.C.

2.The brief facts of the case is that, on 30.01.2009, while the deceased - Devan and P.W.2 - Devaraj were proceeding near Municipal Office, Tiruvallur, in a motorcycle bearing registration No.TN 20 AC 9200, a Tipper Lorry driven by the revision petitioner bearing registration No.TN 01 D 0947 hit the two wheeler, due to rash and negligent driving. The deceased was on the pillion, sustained fatal injury and died. The rider of the two wheeler (P.W.2) sustained grievous injuries. P.W.2 was taken to the hospital for treatment.

3.The father of the deceased gave complaint to the respondent Police and thereafter, the case was taken up for investigation after registering F.I.R., - Ex.P.8 dated 02.02.2009. P.W.2 is the injured witness and P.W.3 is the witness who saw the accused. The evidence of P.Ws.2 and 3 establish the fact that the Tipper Lorry bearing registration No.TN 01 D 0947 driven by the revision petitioner hit the back of the two wheeler and both the rider and the person in the pillion were thrown away from the motorcycle.

4.The Motor Vehicle Inspector's reports in respect of offending Tipper lorry as well as two wheeler were marked as Exs.P.7 and P.2. The damages noted on the two vehicles clearly proves that the right front side of the Tipper Lorry bumper had hit the back side of the two wheeler. The rash and negligent driving of the revision petitioner/accused is thus established both by the ocular evidence and the territorial evidence namely, the Motor Vehicle Inspector's reports (Exs.P.7 and P.2). In the said circumstances, the Courts below rightly held that the revision petitioner is guilty of offences under Sections 337 and 304(a) I.P.C.

5.Heard the learned counsel for the petitioner and the learned Government Advocate (crl.side) appearing for the State. Records perused.

6.In this Criminal Revision, the learned counsel for the revision petitioner would contend that there is some contradictions between the evidence of P.Ws.11 and 12. P.W.11 is the witness to the observation mahazar. P.W.12 is the Investigating Officer. Therefore, the case of the prosecution ought to be disbelieved.

7.Similarly, it is also contended by the learned counsel for the petitioner that the accident did not take place in the manner in which the prosecution has projected. The Tipper lorry was moving from South to North in the Municipal Road, Tiruvallur whereas, the two wheeler was proceeding across the road East and West and hit the Tipper Lorry.

8.A perusal of the records reveal that P.W.11 is one of the witness to the observation mahazar and P.W.12 is the Inspector who has arrested the accused/revision petitioner. P.W.11 has identified the accused/revision petitioner as the Driver of the offending Tipper Lorry and he has signed the Observation Mahazar - Ex.P.10 and Sketch - Ex.P.11. P.W.12, the accused has voluntarily surrendered before the Inspector of Police (P.W.12) after the accident.

9.It is true that, in the admission made by the accused/revision petitioner which is confessional in nature, to the Investigating Officer (P.W.12), is not admissible in evidence, but, the evidence on the whole, available in this case, would prove that the revision petitioner herein is the person who has driven the Tipper Lorry bearing Registration No.TN 01 D 0947. The said Lorry was driven rash and negligently and hit the two wheeler bearing registration No.TN 20 AC 9200, the accident has caused death of Devan (deceased) and severe injuries on P.W.2 - Devaraj.

10.In the said circumstances, neither the identity of the person who driven the Tipper Lorry nor the conduct of the accused driving the lorry in a rash and negligent manner can be doubted.

11.The prosecution has proved the identity as well as the guilt of the accused/revision petitioner beyond reasonable doubt. The conviction and sentence imposed by the trial Court and confirmed by the First Appellate Court comparing to the gravity of the offence appears to be proportionate. Therefore, this Court finds no reason to interfere the well considered findings of the Courts below.

12.In the result, the Criminal Revision is dismissed and the judgments passed by the Courts below are confirmed. The trial Court is directed to secure the presence of the accused/revision petitioner to undergo the remaining period of sentence, if any.

Sd/-  
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The Chief Judicial Magistrate,  
Tiruvallur.
- 2.The Additional District Judge,  
Fast Track Court No.III,  
Tiruvallur.
- 3.The Judicial Magistrate No.1,  
Tiruvallur.

4.The Public Prosecutor,  
High Court, Chennai.

5.The Criminal Section,  
High Court, Madras.

+1cc to Dr.S.Manoharan, Advocate, S.R.No.23868

Cr1.R.C.No.204 of 2012

PP(CO)

RRS (30/04/2019)



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