

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2019

PRONOUNCED ON : 20.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.264 of 2012

K.Ponnambalam

Petitioner/Accused

Vs

State (Rep by)
The Inspector of Police,
Kangayam Police Station,
Erode District.
(Crime No.1037/2006)

..

Respondent/Respondent/Complainant

Prayer:- This Criminal Revision case is filed under Sections 397 & 401 Cr.P.C., to allow this criminal revision by setting aside the judgment dated 25.01.2012 on the file of the learned Additional District and Sessions Judge, Fast Track III, Tharapuram in C.A.No.121 of 2009.

For Appellant : Mr.G.Suresh, for
M/s.J.B.Solomon Peter Kamaladoss

For Respondent : Mr.T.Shunmuga Rajeswaran
Government Advocate (crl.side)

JUDGMENT

The revision petitioner herein was the Driver of the Government Public Transport Bus which met with the accident on 01.11.2006 at 14.10 hrs near Monica Hotel, Padiyur, Kangayam - Thiruppur Road. In the said accident, Balakrishnan the rider of the two wheeler TVS 50 crushed to death. Prakash @ Nachimuthu who was on the pillion of the two wheeler TVS 50 sustained grievous injuries on his hip and thigh. Since, the witnesses attributed the accident to the rash and negligent driving of the revision petitioner, a case was registered by the Kangayam Police in Crime No.1037/2006 and investigated.

2.On completion of the investigation, final report was filed against the revision petitioner for offences under sections 279, 338 and 304(A) IPC. To prove the charges, the prosecution has examined 11 witnesses (P.Ws.1 to 11). 9 exhibits (Exs.P.1 to P.9) and three photographs were marked as material objects (M.Os.1 to 3). In defence, 2 witnesses (D.Ws.1 and 2) and 2 exhibits (Exs.D.1 and D.2) were marked.

3.The trial Court found the accused guilty of all charges and convicted as below:-

For offence under Section 279 IPC, 6 months Rigorous Imprisonment;

For offence under Section 338 IPC, 6 months Rigorous Imprisonment and

For offence under Section 304(A) IPC, one year Rigorous Imprisonment.

4.Aggrieved by the conviction and the sentence imposed as stated above, a criminal appeal in C.A.No.121/2009 was filed before the learned Additional District and Session Judge, Tharapuram. In the appeal, the lower Appellate Court on appreciation of evidence partly allowed the appeal. The conviction and sentence imposed for offence under section 304 (A) IPC was set aside. The conviction and sentences in respect of offences under sections 279 and 338 IPC were confirmed.

5.The present revision petition is directed against the concurrent finding of the facts by the courts below.

6.The learned counsel for the revision petitioner would submit that,

a)the courts below erred in relying the evidence of PWs-1 to 14 though they are all interested witnesses. The evidence of DWs-1 and 2 were more probable and reliable. Disbelieving their evidence has led to miscarriage of justice.

b)The lower Appellate Court ought to have acquitted the petitioner in toto of the charges. It ought not to have stopped with section 304(A) IPC alone. For the offences under sections 279 and 338 IPC also there is no evidence against the revision petitioner.

c)The Courts below have failed to consider the fact that the victim was under-aged and did not have valid licence to drive the motor cycle. Due to his negligence while overtaking a motorcycle moving ahead of him, the accident occurred. The evidence of DW-1 in this regard not been properly appreciated.

d)The Investigating Officer has deliberately made a omission to mention the presence of barricade in the sketch and the same not been properly appreciated by the Courts below.

7.Per contra, the learned Government Advocate (crl.side) would state that, in the accident, PW-1 sustained grievous injuries and one Balakrishnan died. Both were in the two wheeler - TVS 50 when the Bus hit them. The Bus was rash and negligently driven by the revision petitioner. The Motor Vehicle Inspector report clearly indicates that the impact on the two wheeler was so severe that the two wheeler got complete damage. It was an head on collusion. The revision petitioner admittedly has come on the extreme right rashly to overtake the sand lorry parked ahead on the road. There was no barricade in that place. The sketch Ex.P-4 prepared immediately after accident discloses that, the revision petitioner has driven the Bus on the right side of the road and hit the two wheeler. The two wheeler rider caught under the wheels of the Bus and got crushed. The Motor Vehicle Inspector's report - Ex.P.9 show that the two wheeler was totally damaged. The extensive damage to the two wheeler and the nature of injuries found on the body of the deceased as well as PW-1 speaks for itself.

8.Heard the rival contentions made by both the sides. Records perused.

9.The accident is spoken by PW-1. He is the injured victim. The other victim succumbed to the injuries. The accident report and the post mortem reports are evidence for the nature of injuries sustained by the victims in the road accident. The offending vehicle namely, the Ashok Leyland Bus of the Transport Corporation bearing registration No. TN 45 N 2152 was driven by the revision petitioner. Besides prosecution evidence, the letter of the petitioner marked as Ex.D-2 is the admission to the said fact. In the said letter addressed to his Branch Manager, the petitioner/accused has written that the accident occurred due to the negligence of the victim. The victim fell on his Bus while overtaking a two wheeler. The pillion rider of that motorcycle was carrying a TV box, the victim Balakrishnan

hit the box while overtaking and lost his balance. He fell on the rear wheel of the Bus and got crushed.

10.The said defence version is only a lame excuse for the rash and negligence act of the petitioner. The motor vehicle Inspector report proves that the two wheeler TVS 50 damaged completely in the accident. Unless the petitioner has driven his vehicle (Bus) in a rash and negligent manner, the extensive damage to the vehicle (TVS 50), is not possible. In the sketch (Ex. P.4) the body of the victim is shown in between the front and rear wheel of the Bus. This mean, the victim was run over by the front wheel of the Bus and stopped thereafter. Therefore, the evidence as found and gathered by the prosecution does not support the defence version.

11.The Courts below had properly appreciated the evidence. The rash and negligent driving by the accused/petitioner is held to be proved. While convicting for the offences under sections 279 and 338 IPC, the Lower Appellate Court has extended the benefit of doubt in respect of charge under section 304 (A) IPC. In the light of the above discussions, this Court holds that the finding of the courts below need no interference.

12.In the result, the Criminal Revision Petition is dismissed. The judgment of the Lower Appellate Court is confirmed. The revision petitioner is directed to surrender within 45 days from today to undergo the remaining sentence imposed. The sentences shall run concurrently. The period of sentence already undergone by the petitioner shall be given set off as provided under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
Fast Track III,
Tharapuram.

2.The Judicial Magistrate,
Kangeyam, Tiruppur District.

3.The Inspector of Police,
Kangeyam Police Station,
Erode District.

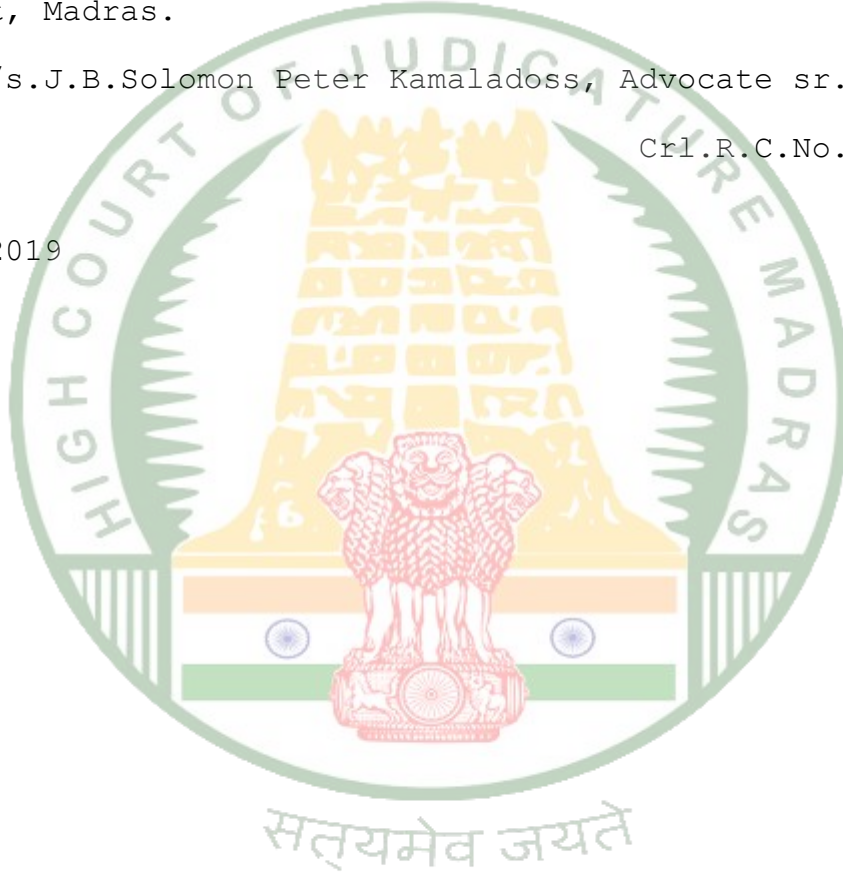
4.The Public Prosecutor,
High Court, Chennai.

5.The Criminal Section,
High Court, Madras.

+1cc to M/s.J.B.Solomon Peter Kamaladoss, Advocate sr.26601

Crl.R.C.No.264 of 2012

ssd(co)
nr 04/07/2019



WEB COPY