

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2019

PRONOUNCED ON : 09.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.525 of 2012

Mani

... Petitioner

vs

State rep. By
Inspector of Police,
Veppur Police Station,
Cuddalore District,
(Veppur Police Station
Crime No.34/2007)

... Respondent

Prayer:- This Criminal Revision is filed under Section 401 r/w 397 Cr.P.C., against the judgment rendered by learned Additional District cum Sessions Judge, (Fast Track Court No.3) Virudhachalam dated 18.04.2012 in CA No.103/2010 by confirming the judgment passed by the learned Judicial Magistrate No.1, Virudhachalam in C.C.No.73/2007 dated 12.08.2010.

For Petitioner : Mr.D.Rajagopal

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

ORDER

The revision petitioner herein is the Driver of the Tamilnadu state Transport Corporation. On 17/01/2007 at about 12.00 midnight, the passenger bus bearing registration No.TN 23 1733 driven by him got involved in the road accident on the Chennai to Trichy highways near Kalathur village. Four person in a motor cycle died. The prosecution case for rash and negligent driving against the revision petitioner was found proved by the courts below. Aggrieved by that, the present criminal revision petition is filed by the revision petitioner.

2.The case of the prosecution is that, according to the FIR, the case was registered based on the complaint given by one

Sanjay Gandhi (P.W.1), who is a resident of Kaluthur village. On 17/01/2007 night, after the pongal festival in the Village, he along with Rajamanikam, Akash, Subramaniam went to the Kumar tea shop, near bus stand. At that time, the TVS 50 motorcycle driven by Manoharan carrying Danasekaran, Palanivel and Ayyanar in the pillion was hit from back by the Government Bus bearing registration No. TN 23 1733 proceeding from North to South driven rash and negligently without hornning. All the four persons in the two wheeler were thrown away and succumb to the injuries. P.W.1 and others intercepted the Bus and enquired the Driver of the bus who disclosed his name as Mani and he is a native of Gudiyatham.

3.The Police investigated the complaint and filed final report against the petitioner for offences under section 279 IPC and 304 A IPC (4 counts).

4.Before the trial Court, the prosecution examined 19 witnesses. 16 documents were marked as exhibits. Considering the ocular evidence and the medical evidence coupled with the evidence of the Motor Vehicle Inspector, the trial Court held the accused/petitioner guilty and sentenced him to undergo one year rigorous imprisonment and fine of Rs.2,000/- in default to undergo two months simple imprisonment for offence under section 304 A IPC (4 counts). Sentenced to pay a fine of Rs.1,000/- for the offence under section 279 IPC.

5.On appeal, the Lower Appellate Court confirmed the conviction and sentence.

6.The learned counsel for the revision petitioner submitted that the finding of the Courts below is perverse and illegal. It requires reconsideration and interference by this Court for the following reasons:-

(i)The four persons who were travelling in the TVS 50 motor cycle on the night hours after celebration of Pongal festival coupled with the fact that 50 ml liquid found in the stomach of the deceased Manoharan who was driving the two wheeler carrying 3 persons in the pillion ought to have been drawn adverse inference about the persons who died in the accident. The courts below had failed to consider the said fact.

(ii)Manoharan, the Driver of the two wheeler had no driving licence to drive motor vehicle. While so, the rash and negligence attributed to the Driver of the bus/revision petitioner merely based on the evidence of the villagers, whose presence at the tea shop, near the bus stand which is quite far from the scene of occurrence is perverse and illegal.

7.The evidence of the witnesses and the rough sketch of the place of accident marked as Ex.P-12 perused. The case of the prosecution witnesses is that, the two wheeler carrying 4 persons was proceeding towards Southern direction along the school compound. The Bus driven by the revision petitioner came rash and negligently from behind and hit.

8.The bodies of the deceased were carried to some distance and thrown away. The sketch indicates that the collision was on the tar road. The two wheeler was on the tar road and not on the mud road, on the East running along with the school compound as deposed by the witnesses. Comparing the long distance Bus running in the night on the highways and the movement of local people of that place, the knowledge and expectation of vehicles movement at that place at that time, is more to the two wheeler driver than the bus driver. This fact, the courts below ought to have taken into consideration before accepting the evidence of the witnesses whose presence at the Kumar tea shop which is located on the Western side of the road itself doubtful since, the shop owner was not examined by the prosecution to prove that his shop was kept open at 12.00 midnight on that day. Further, the possibility of witnessing the accident from the tea shop is not probable due to the distance between the tea shop and the alleged spot of the accident.

9.The courts below based on the fact that the two wheeler was dragged by the Bus to some distance and then stopped had presumed only due to rash and negligent driving, the Bus Driver did not stop the vehicle immediately after the impact. Such inference is unsafe in this case because 4 persons travelling in the TVS 50 motorcycle contrary to the law and the absence of driving license of the two wheeler driver are also factors which ought to have been taken into consideration before holding that the accident was due to the rash and negligent driving of the revision petitioner.

10.This Court finds that the evidence of the ocular witnesses and the sketch indicate the accident could not have

happened due to the rash and negligent driving of the Bus Driver. Therefore, the improper conclusion of the Courts below by omitting to consider the factors relevant to decide rash and negligent driving is liable to be set aside.

11. Accordingly, the Criminal Revision petition is allowed and the judgments passed by the Courts below are set aside. The petitioner is acquitted from the charges levelled against him. Bail bond stands discharged. Fine amount paid, if any, shall be refunded to the revision petitioner.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District cum Sessions Judge,
(Fast Track Court No.3)
Virudhachalam.

2. The Judicial Magistrate No.1,
Virudhachalam.

3. -Do- Thro' The Chief Judicial Magistrate,
Cuddalore.

4. The Inspector of Police,
Veppur Police Station,
Cuddalore District.

5. The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,
The Criminal Section,
High Court, Madras.

+1cc to M/s.D.Rajagopal, Advocate Sr.34558

Cr1.R.C.No.525 of 2012

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srg 24/05/2019



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