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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.605 of 2012

Rajan .. Petitioner / Accused

Vs.

State represented by its
Inspector of Police,
Erode North Police Station,
Erode.

(Crime No.744 of 2006) .. Respondent / Complainant

Criminal Revision filed under Sections 397(i) and 401 Cr.P.C., praying to set aside the judgment dated 16.03.2012 made in Crl.A.No.89 of 2011 passed by the learned Principal Sessions Judge, Erode, confirmed the judgment dated 19.07.2011 made in C.C.No.1243 of 2006 passed by the learned Judicial Magistrate No.1, Erode.

For Petitioner : Mr.K.Nagarajan

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

O R D E R

This Criminal Revision Case has been filed to set aside the judgment dated 16.03.2012 made in Crl.A.No.89 of 2011 passed by the learned Principal Sessions Judge, Erode, by confirming the judgment dated 19.07.2011 made in C.C.No.1243 of 2006 passed by the learned Judicial Magistrate No.1, Erode.

2. The respondent police registered a case in Crime No.744 of 2006 for the offence under Sections 279 and 304A IPC against the revision petitioner/accused. After completing investigation, the respondent police filed a final report before the learned Judicial Magistrate No.1, Erode and the same was taken on file in C.C.No.1243/2006. After trial, the learned Magistrate found that the revision petitioner committed the offence under Sections 279 and 304A IPC and sentenced him to undergo one month simple imprisonment and fine of Rs.500/-, in



default, one week simple imprisonment for the offence under Section 279 IPC and one year simple imprisonment and fine of Rs.2,000/-, in default, one month simple imprisonment for the offence under Section 304A IPC by a judgment dated 19.07.2011. Challenging the said judgment, the accused preferred an appeal in CrI.A.No.89 of 2011 before the learned Principal District and Sessions Judge, Erode. The learned Sessions Judge, after hearing the arguments on either side and considered the materials placed before it, dismissed the appeal and confirmed the judgment of the trial Court by a judgment dated 16.03.2012. There against, the accused preferred the present revision before this Court.

3. This revision has been filed in the year 2012 and it is pending for more than 7 years. Despite several opportunities given by this Court, the revision petitioner has not come forward to proceed the revision. Heard the learned Government Advocate (CrI. Side) appearing for the respondent. Perused the entire materials available on records.

4. It is the case of the prosecution that the revision petitioner is the driver of the bus bearing registration No.TN-33-N/1584 belongs to the Tamil Nadu State Transport Corporation. On 24.09.2006 at 12.40 p.m when the victim was returning from Thindal to Perundurai Road, the accused drove the bus from Erode to Perundurai. A bullock cart was proceeding ahead of the bus and during the course of overtaking the bullock cart, the accused hit against the motorcyclist and dragged to some extent and stopped the bus. The motorcyclist/ victim sustained head injury and died on the spot. PW-4 is the eye-witness, who was also proceeding from Erode to Perundurai in motorcycle and at that time, he saw the occurrence. PW-4 went to Veerappanchatram Police Station and lodged the complaint/Ex.P1. PW-2 is the wife and PWs-3 and 5 are children of the deceased and after hearing the news, they rushed to the spot.

5. PWs-1 and 4 are cited as eye-witnesses on the side of the prosecution. On a careful reading of the evidence of PW-4, it is seen that he has clearly narrated the occurrence and he only lodged the complaint before the respondent police. PW-1 has stated that he has also seen the occurrence and also corroborated the evidence of PW-4. PWs-2, 3 and 5 are only hearsay witnesses, who went to the spot after hearing the news. PW-7, who is the Assistant Engineer working in the Jeeva Transport Corporation, Goundapadi branch, has spoken that on the date of occurrence the bus bearing registration No.TN-33-N-1584, was driven by the revision petitioner, who was engaged by the Tamil Nadu State Transport Corporation. Ex.P9-report clearly shows that the accident was not due to any mechanical defect. On a reading of the evidence of PWs-1, 4 and 7 and Ex.P9, it is



seen that the accident had happened due to rash and negligent driving of the driver of the bus belongs to Tamil Nadu State Transport Corporation. On a perusal of the judgment of the trial Court reveals that the learned Magistrate has clearly appreciated the evidence and found guilt of the revision petitioner/accused for the offences under Section 279 and 304A IPC and sentenced him as stated above. The lower Appellate Court, as the final Court of fact finding, re-appreciated the entire evidence and given the independent finding that the revision petitioner/accused has committed the offence.

6. This Court, being the Revisional Court, cannot sit in the arm chair of the Appellate Court and cannot reassess all the evidence and take a different view and substitute its own view, when there is no perversity in appreciation of the evidence by the Courts below. On reading of the evidence of PWs-1 and 4 coupled with the evidence of PW-7, it is seen that on the date of occurrence, the revision petitioner/accused was the driver of the said bus. From the evidence of PWs-1 and 4, the prosecution was able to establish that the accident occurred due to rash and negligent driving of the bus, due to which, the victim sustained head injury and succumbed to death on the spot. Therefore, this Court does not find any sound reason or ground to interfere with the judgements of the Courts below. However, considering the fact that the accident was unintentional, this Court is inclined to modify the sentence imposed on the revision petitioner/accused for the offence under Section 304A IPC, which will meet the ends of justice. Accordingly, this Criminal Revision Case is partly allowed by reducing the sentence imposed on the revision petitioner/accused from one year to 6 months Simple Imprisonment for the offence under Section 304 A IPC. The other portion of sentence imposed by the trial Court remains unaltered.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Principal Sessions Judge,
Erode.



2. The Judicial Magistrate No.1,
Erode.

3. - do - through The Chief Judicial Magistrate,
Erode.

4. The Inspector of Police,
Erode North Police Station,
Erode.

5. The Public Prosecutor,
High Court, Madras-104.

Cr1.R.C.No.605 of 2012

CA(CO)
SSM(13/08/2019)