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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.882 of 2012

S.K.Vijaykumar

...Petitioner/P.W. -1

Vs.

1. State Rep. by

The Inspector of Police,
Gobichettipalayam Police Station,
Gobichettipalayam,
Erode District.

..1st Respondent/Complainant

2. Selvaraj @ Chinnakutti

S/o.Arumuga Nadar

..2nd Respondent/Accused

The Criminal Revision case filed under Section 397 read with 401 of Code of Criminal Procedure seeking to call for the entire records and to set aside the judgment in C.A.No.151 of 2010 dated 25.03.2011 passed by the Additional Sessions Court/Fast Track Court No.2, Gobichettipalayam, by reversing the well considered judgment in S.C.No.88 of 2010 on the file of the Assistant Sessions Court/Subordinate Court, Gobichettipalayam, dated 20.10.2010 and allow the criminal revision case.

For Petitioner : Mr.M.E.Rajasimhan for
M/s.Ma.P.Thangavel

For Respondents : Mr.T.Shanmuga Rajeswaran for R1
Mr.S.Kaithamalai Kumaran for R2

ORDER

The complainant has filed this revision against the judgment of acquittal made by the learned Additional Sessions Judge, Additional Sessions Court (Fast Track Court) - 2, Gobichettipalayam, in C.A.No.151 of 2010, dated 25.03.2011, reversing the judgment of conviction made by the learned Assistant Sessions Judge (Subordinate Judge), Assistant Sessions Court (Subordinate Court), Gobichettipalayam, in S.C.No.88 of 2010, dated 20.10.2010.

2 Case of the prosecution is that on 06.09.2007 at about 1.00 p.m., on Kolappalur Main Road, near Vadugapalayampudhur Ganapathy Timber Depot, when the deceased one Kolandaisamy proceeding from North to South by driving his Two Wheeler bearing Reg.No.TN 36 J 8617, the second respondent/accused, who was coming on the same direction by driving his Lorry bearing Reg.No.TN 55 5454, with rash and negligent manner, had dashed against the deceased and caused head injuries, and the deceased died on the spot. Therefore, a case was registered against the second respondent/accused for the offence under 304(ii) of IPC and after investigation laid a charge sheet before the jurisdictional Magistrate and the case was taken on file in S.C.No.88 of 2010 by



the learned Principal Sessions Judge, Erode, and made over to Assistant Sessions Court (Subordinate Court), Gobichettipalayam. The learned Assistant Sessions Judge, after trial, altered the offence from 304(ii) to 304(a) and convicted the second respondent/accused accordingly and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of four months. Aggrieved against the said judgment of conviction, the second respondent/accused has preferred an appeal in C.A.No.151 of 2010. The learned Additional Sessions Judge, Additional Sessions Court (Fast Track Court No.II), Gobichettipalayam, after hearing both the parties, by order dated 25.03.2011, allowed the appeal and acquitted the second respondent/accused by setting aside the judgment of conviction made by the trial Court. Aggrieved against the judgment of acquittal made by the lower appellate Court, the defacto complainant/P.W.1 is before this Court with the present criminal revision case.

3 According to learned counsel appearing for the petitioner/P.W.1, P.Ws.1 and 2 are eye witness to the occurrence and they have clearly spoken about accident. Even though, the learned Assistant Sessions Judge by rightly appreciating the evidence of P.W.1 and P.W.2, convicted the second respondent, the learned Additional Sessions Judge, without assigning any valid reason, extended the benefit of doubt in favour of the accused and acquitted the second respondent. P.W.1, is son of the deceased and during lunch hours, he came out of the Office, where he was working and was speaking with his father and P.W.2 also came and joined in the conversation and after completion of the same, when the deceased proceeded with his Two Wheeler, the offending vehicle came on the same direction with rash and negligent manner. On seeing the offending vehicle was going with rash and negligent manner, P.W.1 warned the driver of the vehicle and thereafter the offending vehicle dashed against the deceased and caused death. The second respondent/accused, even after the warning given by P.W.1, had driven the lorry in rash and negligent manner, which fact has been clearly deposed by P.W.1 and corroborated with the evidence of P.W.2. The lower appellate Court has failed to consider the evidence of P.Ws.1 and 2 and erroneously set aside the judgment of the trial Court and acquitted the second respondent/accused, which warrants interference.

4 The learned Government Advocate (Crl.Side) appearing for the first respondent police would submit that through the evidence of prosecution witnesses 1 and 2, prosecution has proved its case beyond reasonable doubt and the trial Court also after trial convicted the accused, whereas, the lower appellate Court reversed the judgment of conviction and acquitted the accused, which warrants interference.

5 The learned counsel appearing for the second respondent/accused would submit that P.W.1 is son of the deceased and was working in TASMACH and alleged accident stated to have taken place at 1.00 p.m. therefore, it is not possible for P.W.1 to come out of TASMACH at working hours. But it is stated that after obtaining permission from his superior, P.W.1 came out, but,



prosecution has failed to examine the Superior from whom P.W.1 got permission. Prosecution has not examined any other witnesses except P.Ws.1 and 2 to prove the accident. The accident has occurred only due to negligence of the deceased only and not on the part of the second respondent/accused. There is no evidence to show that the accident had occurred only due to the rash and negligent driving of the second respondent. Even the rough sketch would go to show that the deceased only came on the wrong side. P.W.1 has stated that the offending vehicle dashed the Two Wheeler at front left side, whereas, P.W.2 stated that front right side. There are contradictions between the evidence of prosecution witnesses, which goes to root of the case. Even though, the learned trial Judge has failed to appreciate the prosecution evidence properly, the lower appellate Court, has appreciated the evidence of prosecution witnesses properly in the right manner and acquitted the second respondent/accused, which does not call for any interference.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 From the evidence of P.W.1, who is son of the deceased, it is clear that prior to the accident, P.W.1 met the deceased and had some conversation and at that time P.W.2 also came and joined in the conversation and thereafter, the deceased proceeded with his vehicle. At that time, the offending lorry came on the same direction following the deceased vehicle and dashed the deceased and caused death. P.W.1 and P.W.2 saw the second respondent, who was driving the lorry at high speed and with rash and negligent manner. It is seen that even though, P.W.1 warned him not to drive the vehicle with rash and negligent manner, without hearing the words, the second respondent/accused dashed against the deceased vehicle and caused death. P.W.2 also in his evidence has clearly stated that he has seen the accident. Even though, the learned counsel for the second respondent contended that P.Ws.1 and 2 are not eye witnesses, on careful reading of cross examination of witnesses, the second respondent/accused did not challenge their presence and therefore, putting bald suggestion that during working hours P.Ws.1 & 2 could not have been in the place of occurrence, is not sufficient to prove the defence, in the absence of any steps to produce the attendance register of P.Ws.1 & 2 by the defence. Even though, burden of proof on the side of the accused is not as strict as the prosecution, when a specific stand has been taken by the defence, it is for the defence to prove the same with substantial evidence. In the accident cases, the word 'accident' itself shows that no one would expect the thing and after the accident, they will try to safeguard the life of the injured person and not give importance to catch the accused. Under these circumstances, there may be some discrepancies in the evidence of prosecution witnesses. Therefore, on reading of the evidence of P.Ws.1 & 2, prosecution has proved the fact that the accident had taken place only due to rash and negligence driving of the offending vehicle. Hence, this Court finds that the judgment of acquittal made by the lower appellate Court is perverse, since this Court does not find any materials to justify the reversal judgment of acquittal and hence the same is liable to be dismissed.



8 In the result, the judgment of acquittal made by the lower appellate Court dated 25.03.2011 is hereby set aside and the judgment of conviction made by the trial Court dated 20.10.2010 is hereby confirmed and restored. Trial Court is directed to secure the presence of the second respondent/accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Sessions Court/Fast Track Court No.2, Gobichettipalayam.
- 2.The Assistant Sessions Court/Subordinate Court, Gobichettipalayam.
- 3.The Principal Sessions Judge, Gobichettipalayam.
- 4.The Public Prosecutor, High Court of Madras.
- 5.The Inspector of Police, Gobichettipalayam Police Station, Gobichettipalayam, Erode District.

Copy to : The Section Officer, Criminal Section,
High Court of Madras.

+1 cc to M/s.P.Thangavel, Advocate Sr.No. 51460
+1 cc to M/s.S.Kaithamalai, Advocate SR.No.51091

RS-I
AKM/16.08.19/4P-9C /

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