

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.754 of 2016
and
Crl.M.P.No.11663 of 2016

Sasikumar

...Appellant

Vs.

State,
Rep. by the Inspector of Police,
Kairlabath Police Station,
Ariyalur District.
(Cr.No.35 of 2015)

...Respondent

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure to set aside the judgment and conviction dated 20.10.2016 by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, in S.C.No.85 of 2015 and acquit the appellant.

For Appellant : Mr.C.Prabhakaran
For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl.Side)

JUDGMENT

The criminal appeal has been filed against the judgment of conviction 20.10.2016 by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, in S.C.No.85 of 2015.

2 A case was registered as against the appellant/accused in Crime No.35/2015 by the Inspector of Police, Kairlabath Police Station, for the offence punishable under Sections 304 Part II (4 counts), 338 (5 counts), 337 (2 counts) of IPC. After investigation, the respondent police laid a charge sheet, which was taken on file in P.R.C.No.43 of 2015 by the learned Judicial Magistrate, Ariyalur, and the same was committed to the learned Principal District and Sessions Judge, Ariyalur, where charges were framed against the accused and the case was taken on file in S.C.No.85 of 2015 and subsequently, the case was made over to the learned Sessions Judge, Fast Track Mahila Court, Ariyalur.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.36 were examined and Ex.P1 to Ex.P32 were marked and after examining prosecution witnesses,

when incriminating circumstances culled out from the prosecution witnesses and put before the accused, he denied as false. On the side of the accused, no one was examined and no document was produced and material object was produced either by prosecution or by accused. The learned Session Judge, after trial found the accused guilty for the offence charged against him and by judgment dated 20.10.2016 convicted the appellant/accused and sentenced to undergo rigorous imprisonment for a period of ten years for each count and to pay sum of Rs.1000/- for each count, in default, simple imprisonment for a period of two years for each default for the offence under Section 304 part II (4 counts), to undergo rigorous imprisonment for a period of one year for each counts and to pay a sum of Rs.500/- for each count, in default, simple imprisonment for a period of three months for each default for the offence under Section 338 (5 counts) and to undergo rigorous imprisonment for a period of three months for each count and to pay Rs.500/- for each count, in default, simple imprisonment for a period of one month for each default for the offence under Section 337 (2 counts) of IPC.

4 Assailing the judgment of conviction dated 20.10.2016, made by the Court below, the accused has preferred the present criminal appeal before this Court.

5 Case of the prosecution is that on 05.03.2015 at about 2.50 p.m., a Mahindra Van bearing Reg.No.TN 61 B 9858 was bringing back kinder garden children of Vidhya Mandir School to their home. While the School Van was coming to the junction and crossing the Bye-Pass road, a Taurus Lorry bearing Reg.No.TN 48 V 2802 loaded with limestone coming from South to North at high speed knowing fully well that the School Van was crossing the road, crossed the centre white line divider of the road and dashed against the School Van. The School Van was pushed to the waterless lake abutting the Bye-pass road on the right side and the Lorry followed the School Van to the lake and landed on top of the School Van, due to which, driver of the School Bus, attender, two children had died on the spot, five children sustained grievous injuries and to other children sustained simple injuries.

6 Therefore, respondent police had registered a case against the driver of offending vehicle namely the appellant in Cr.No.35 of 2015 and after completing investigation, filed a final report before the jurisdictional Magistrate and the finally the case was committed to the Sessions Judge, Fast Track Mahila Court, Ariyalur, which was taken on file in S.C.No.85 of 2015 and the learned Sessions Judge, after trial, convicted the appellant/accused.

7 The learned counsel for the appellant would submit

that there was a delay in lodging the complaint and sending FIR and other documents to the Court, which was not properly explained by the prosecution. There was no materials to attract the ingredients of Section 304 part II IPC. P.W.2 and P.W.3 had turned hostile. There is no proof to show that the appellant had driven the Lorry in a rash and negligent manner and prosecution did not prove that the accident had occurred only due to carelessness of the appellant. The prosecution has failed to prove its case beyond reasonable doubt. Further the alleged occurrence is only an accident and not a pre-planned incident, but the prosecution has given a criminal color for the accident. The Court below has failed to consider the nature of the case and erroneously convicted the appellant/accused.

8 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.2 and P.W.3 had clearly stated about the manner in which the accident had taken place and as far as identification of the accused is concerned, Exs.P1 to P6 would clearly show that the accident had occurred only due to the rash and negligent driving of the accused only. P.W.1 to P.W.3, who are eye witness to the occurrence, had clearly spoken about the manner of the accident and P.W.1 clearly identified the accused. P.W.1 is the complainant and was present at the place and time of occurrence, had corroborated the contents in Ex.P1. There is no material contradiction. The appellant/accused having seen the School Van crossing the road, without any care, drove the vehicle to the extreme right side of the road and dashed against the Van, due to which, two children, driver of the School Van and Attender died on the spot and other children sustained injuries. The learned Sessions Judge had rightly appreciated the evidence on record and convicted the appellant.

9 Heard the learned Counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

10 On a perusal of the records, it reveal that P.Ws.1 to 3, who are eye witnesses to the occurrence, had clearly stated that the accident had occurred only due to the rash and negligent driving of the offending vehicle. P.W.s 31 to 34, the Doctors, who conducted postmortem on the deceased children and driver of the School Van and Attender, had opined that the death had occurred only due the injuries, which was grievous in nature, sustained by them at the time of accident. It is evidenced that the appellant having seen the School Van crossing the road, had crossed the white line divider and drove the lorry to the extreme right side of the road and dashed against the School Van, which carries the Kinder Garden children. Assuming that it was an accident as stated by the learned counsel for the

appellant, this Court is of the view that when the appellant seen the School van crossing the road, he should have taken more care and conscious and should have applied the Break and avoided the accident. After perusing the entire documents available on record, this Court is of the view that the prosecution had proved its case beyond reasonable doubts. Trial Court after appreciating entire evidences, had come to the conclusion, that the accident had occurred only due to rash and negligent driving of the driver of the offending vehicle and hence convicted the appellant/accused, in which this Court does not find any reason to take a different view. However in order meet ends of justice, this Court is inclined to modify the sentence of imprisonment alone.

11 In the result, the conviction made by the trial Court is hereby confirmed. The sentence of imprisonment for a period of ten years for the offence under Section 304 part II of IPC alone is modified to seven years. The criminal appeal is partly allowed to the extent as stated above. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Fast Track Mahila Court, Ariyalur.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
Kairlabath Police Station,
Ariyalur District.
4. The Superintendent,
Central Prison, Ariyalur.
5. The Principal Session Judge, Ariyalur.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 29108

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Crl.M.P.No.11663 of 2016

RR(CO)
GN(19/02/2020)