

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2019

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl. RC. No. 317 of 2019

and

Crl.M.P.No.3970 of 2019

M. Shanmugasundaram

...Petitioner

Versus

The State rep by
The Inspector of Police,
Bhavani Police Station,
Erode District.
(Crime No.254 of 2012)

...Respondent

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, to set-aside the judgment and conviction passed in C.C.No.179 of 2012 dated 06.06.2018 on the file of the learned Judicial Magistrate-I, Bhavani and confirmed by the learned IV Additional District and Sessions Judge, Bhavani, Erode District in C.A.No.244 of 2018.

For Petitioner : Mr.B.Mohan

For respondent : Mr.R.Suryaprakash
Govt. Advocate (Crl. side)

O R D E R

The Revision has been filed to set-aside the order in C.C.No.179 of 2012 dated 06.06.2018 on the file of the learned Judicial Magistrate-I, Bhavani and confirmed by the learned IV Additional District and Sessions Judge, Bhavani, Erode District in C.A.No.244 of 2018.

2. The brief facts of the case as narrated hereunder:

The accused was working as school van driver. On 09.04.2012 the accused dropped the victim boy one Logeswaran aged about 4 years, near his house, while the victim boy along with his mother crossed the road, the driver of the van took the van in rash and negligent manner. Due to that the van hit one Logeswaran and he got grievous injuries. The victim boy was taken to hospital for treatment. Because of the grievous injuries, he died. Based on the complaint, the respondent police registered a case against the accused for the offences under

Sections 279 and 304-A IPC and Section 3 read with 181 of Motor Vehicle Act 1988. Thereafter, the prosecution filed charge sheet before the learned Judicial Magistrate I, Bhavani, which was taken on file in in Calendar Case No.179 of 2012

3. On appearance before the trial Court, the substance of the offences were explained. When the charges were read over and explained to the petitioner, the petitioner denied the charges and opted for trial.

4. In order to prove the case, the prosecution examined as many as 6 witnesses viz., P.W.1 to P.W.6, marked Exs.P1 to P7 and no material objects were produced. When the above incriminating materials were put to the accused under section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness and marked any documents. At the conclusion of trial, the learned Judicial Magistrate heard the arguments advanced on both sides and considered the evidences. Upon such consideration, the learned Judicial Magistrate came to the conclusion that the charges against the petitioner was proved and sentenced him to undergo rigorous imprisonment for 3 months Simple imprisonment for the offence under Section 279 IPC and further sentenced to undergo rigorous imprisonment for one year for the offence under Section 304(A) IPC and sentenced to undergo simple imprisonment for one month. As against the order, the petitioner had filed an appeal before the learned Principal District and Sessions Judge, Erode and the same was taken on file in C.A.No.244 of 2018. After hearing the both sides, the learned IV Additional Sessions Judge, Bhavani dismissed the appeal and confirmed order of the learned Judicial Magistrate. Challenging the above said conviction and sentence, the accused is before this Court with this Criminal revision.

5. I have heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. side), appearing for the respondent and also perused the materials placed before this Court.

6. The learned counsel for the petitioner would submit that the accident had not occurred in rash and negligent manner. The Driver of the van bearing Registration No.TN 04 V 3303 , when the van stopped at Thalavai pettai, Jambai Village, P.W.2 took the child. Due to negligence of the mother, the accident had occurred. It was not possible to the revision petitioner/driver to see the child, after got down from the van. Therefore, the accident had not occurred due to rash and negligence driving of the driver of the vehicle. Both the Courts below have not considered the evidence and prosecution has failed to establish the case beyond reasonable doubt. There is no eyewitness in this case. Therefore, the judgment of both the Courts below are liable to be set aside.

7. The learned counsel for the respondent would submit that P.W.3 has clearly stated that when the child got down from the van, the driver without noticing moved the van. Therefore, the accident had occurred. On reading of the materials placed by the prosecution, especially evidence of the prosecution eyewitness, it is seen that due to rash and negligence driving of the driver, the accident had occurred. Specifically, the revision petitioner has driven the vehicle without license. Therefore, the prosecution has proved the case beyond reasonable doubts. Hence, there is no need to interfere with the judgment of the Courts below.

8. The revision Court cannot re-visited and re-appreciated the entire evidence. This Court being a revisionary Court, while exercising the revisionary jurisdiction and while deciding a revision, this Court has to see as to whether there is any perversity in appreciating the evidence by the Courts below. The scope of revision is very limited. A perusal of the entire materials, charges levelled against the accused/revision petitioner that the grievous injuries caused to the victim is not in dispute and the revision petitioner is the driver of the school van bearing Registration No.TN 04 V 3303 is also not disputed. The only dispute is that after getting down from the van and without noticing the child, as to whether the child has moved with sufficient place and took a vehicle. Evidence of P.W.1 and P.W.3 have clearly stated that the petitioner without taking care negligently, he took the van and moved. Therefore, the accident how taken place. Both the Courts below have found that the accident had happened due to rash and negligence of the driver. It is for him to taken care while handling the school kids in the school van. It is the duty of the driver that the children have got the seat properly and they got down from the van, as to whether they have moved with sufficient distance and care takers or parents or guardians are present in the dropping and pick up point.

9. In view of the above discussions, this Court is of the considered view that the respondent has proved its case beyond reasonable doubts and the learned Judicial Magistrate was right in holding that the petitioner was guilty of the charges under Sections 297 and 304(A) of IPC and Section 3 read with 181 of M.V. Act and this Court does not find any merits in the revision to interfere with the findings of the Courts below.

10. In the result, the criminal revision case is dismissed and the judgment of conviction and sentence dated 21.12.2018 made in C.A.No.244 of 2018 passed by the learned IV Additional

District cum Sessions Judge, Bhavani, Erode is hereby confirmed.
Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District and Sessions Judge,
Bhavani, Erode.
2. The Judicial Magistrate-I,
Bhavani.
3. The Inspector of Police,
Bhavani Police Station,
Erode District.
4. The Public Prosecutor,
High Court, Madras.
5. The Section Officer,
Criminal Section,
High Court, Madras.

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