

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.168 of 2019
and
Crl.M.P.No.4468 of 2019

S.Palani
S/o. Poongavanam Appellant/Sole Accused

Vs

State rep by,
The Inspector of Police,
Poonamallee Traffic Investigation,
(Police Station)
Crime No.1417 of 2014
Tiruvallur District Respondent/Complainant

PRAYER: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, against the judgment of conviction dated 28.01.2019 in S.C.No.261 of 2016 made by the learned III Additional Sessions Judge, Poonamallee convicting the appellant for an offence under Section 304(A) of the Indian Penal Code (2 counts) and sentencing him to undergo two years Rigorous Imprisonment.

For Petitioner : Mr.R.John Sathyan
For Respondent : Mr.R.Ravichandran
Government Advocate (Criminal Side)

ORDER

The respondent police registered a case against the appellant for the offence under Section 279, 304(A) (2counts) of IPC. After completing the investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No-I, Poonamallee. After taking cognizance of the charge sheet on file, the learned Judicial Magistrate No-I, Poonamallee, committed the case to the Principal District and Sessions Judge, Tiruvallur. After taking case on file in S.C.No.261 of 2016 and the same was made over to the learend III Additional Sessions Judge, the III Additional Sessions Judge, Tiruvallur, after trial found guilt of the appellant and convicted him for the offence under Section 279, 304(A) (2 counts) of IPC and

sentenced him to undergo rigorous Imprisonment for 2 years for each count and imposed a fine of Rs.5,000/- in default, to undergo simple Imprisonment for two months. The sentences for both counts shall run concurrently.

2 The case of the prosecution is that on 03.10.2014 at 00.45 hours, when the deceased Kalicharan aged 35 years Grade I Police constable 35983 of Nazarathpet Police Station and Chelladurai aged 25 years constable of night patrol police Youth Brigade were on night rounds at Vandalur to Nemelicherry New 400 feet road in a police patrol a motorcycle TVS Appachi bearing Registration No.TN01 G 5382 with red and blue lights turned on, at that time, the appellant who was driving Tempo Traveller bearing registration No. TN11 E 9896 from south to north in a rash and zigzag manner and losing his control over the vehicle dashed against the backside of the said police patrol motorcycle, which was moving in the same direction due to the said accident, the two constables had fallen down on the road with motorcycle and were dragged to 10 feet distance, one kalaicharan sustained severe head injury and fracture in the right leg thigh and died on the spot and one Chelladurai sustained severe head injuries and died on the way to the hospital.

3 In order to prove the case of the prosecution, as many as 11 witnesses were examined and 10 documents were marked on the side of the prosecution.

4 After completing the prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses put forth before the appellant for which, he denied as false. On the side of the defence no oral and documentary evidence was produced.

5 The learned counsel for the appellant would submit that the accident would not have taken place as projected by the prosecution. P.W.1 is the complainant who is said to be as an eye witness in this case. But, during the cross examination, he has clearly denied that he has not given the complaint in writing and the same was written by the police, and he admitted the signature alone. The learned counsel further submitted that the complainant is an illiterate and he does not know to read and write. Further he has stated that only tempo driver overtake him. But, he has not clearly spoken about the driver of the tempo van bearing registration No. TN11 E 9896 who drove the tempo in a rash and negligent manner P.W.2 and P.W.3 could not have been as eye witnesses because, they have stated that after hearing the sound only they have seen the accident. Even, P.W.7 who is an engineering in WIPRO Company, has stated that due to the sudden break applied by the driver only the persons fallen

outside from the two wheeler. Therefore, the prosecution has not proved its case through its evidence beyond all reasonable doubts. Hence, it is submitted that the benefit of doubt should have been extended to the appellant. The learned Sessions Judge failed to appreciate the evidence in a right manner. Therefore, the conviction and sentence imposed on the appellant warrants interference.

6 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the witness of P.W.1, 2, and 3 have clearly stated that the eye witnesses P.W.7, one who travelled in the offending vehicle bearing registration No. TN11 E 9896 is present at the time of the accident. Therefore, the accident is proved only on the part of the evidence of P.W.1 and it is clearly made that the appellant drove the vehicle in a high speed and dashed against the two wheeler bearing registration No. TN01 G 5382, in which, the victims have travelled as rider and pillion rider and also met an accident. Therefore, the prosecution has proved its case beyond reasonable doubt. There is no merits in the appeal and which is liable to be dismissed.

7 The case of the prosecution is that on 03.10.2014 at 00.45 hours, when the deceased Kalicharan aged 35 years Grade I Police constable 35983 of Nazarathpet Police Station and Chelladurai aged 25 years constable of night patrol police Youth Brigade were on night rounds at Vandalur to Nemelicherry New 400 feet road in a police patrol a motorcycle TVS Appachi bearing Registration No. TN01 G 5382 with red and blue lights turned on, at that time, the accused who was driving Tempo Traveller bearing registration No. TN11 E 9896 from south to north in a rash and zigzag manner and lost his control over the vehicle dashed against the backside of the said police patrol motorcycle, which was moving in the same direction due to the said accident, the two constables had fallen down on the road with motorcycle and were dragged to 10 feet distance, one kalaicharan sustained severe head injury and fracture in the right leg thigh and died on the spot and one Chelladurai sustained severe head injuries and died on the way to the hospital. The defence taken is total denial by stating that the accused was falsely implicated in this case.

8 Before deciding the issue, the facts, which revealed from the evidences it is essential to go through the evidence of P.W.1. Though the learned counsel for the petitioner submitted that P.W.1 is an illiterate, and the complaint was not given by the P.W.1 and he only admitted with the signature found in the complaint, this Court cannot discard the evidence of P.W.1 easily. Further, the evidence of P.W.2 and P.W.3 may not be helpful to the prosecution to some extent that the accident had

happened due to the rash and negligent manner. But their evidence revealed that after hearing the noise from the occurrence place they came to the spot and have seen the accident they may not be an eyewitnesses to the accident.

9 On careful reading of the evidence of P.W.1 and P.W.7, it is crystal clear that, if the accused had driven the vehicle in a moderate speed, the accident could not have happened. However, on going through the evidence of motor vehicle Inspector and the report, it is revealed that the deceased were travelled in a two wheeler and the tempo driven by the appellant in a high speed dashed behind the two wheeler. It is the conjoint reading of the evidence of P.W.1, P.W.7, RTO and the damages found in the offending vehicle shows in the report of the motor vehicle inspector, the accident had happened due to the rash and negligent driving of the appellant.

10 Therefore this Court is an appellate Court as fact finding Court, it has re-appreciated and re-assessed the entire evidence independently with the materials available on record before it, and come to the conclusion that the accident had happened due to the rash and negligent driving of the driver of the tempo bearing registered No.TN11 E 9896. Hence, the appellant has committed the offence under Section 279, 304(A) (2 counts) of IPC, and the trial Court rightly pointed out and convicted the appellant and there is no merit in the appeal. The conviction recorded by the trial Court does not warrant any interference. However, the accident is not an intentional and though the victims were died due to the accident. But it is only incidental and it is only due to the rash and negligent and not guilty mind of killing the person. Therefore, under these circumstances the sentence awarded by the learned III Additional Sessions Judge, Poonamallee, in S.C.No.261 of 2016 is modified to one year Rigorous Imprisonment instead of Two years Rigorous Imprisonment.

11 Accordingly, the present Criminal Appeal is partly allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

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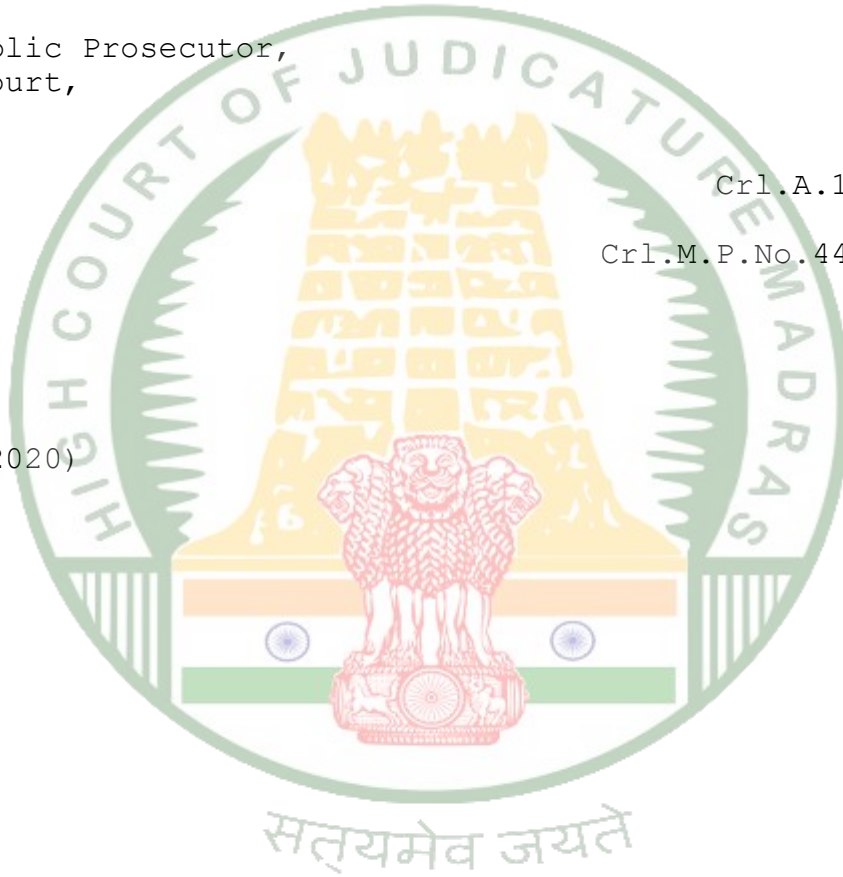
Sub-Assistant Registrar

To

- 1.The Judicial Magistrate No.1, Poonamallee
2. The learned III Additional Session Judge,
Poonamallee.
3. The Inspector of Police,
Poonamallee Traffic Investigation,
Tiruvallur District.
4. The Public Prosecutor,
High Court,
Madras.

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GMR (CO)
SP (22/01/2020)



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