

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.363 of 2019
and
Crl.M.P.Nos.5254 and 5255 of 2019

Rajuv Gandhi ...Petitioner/Appellant/Accused

-Vs-

The Inspector of Police
Thanipadi Police Station,
Chengam,
Tiruvannamalai District.

...

Respondent/Respondent/Complainant

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment dated 29.01.2019 made in C.A.No.05 of 2018 on the file of the learned Principal District and Sessions Judge, Tiruvannamalai and confirming the judgment and conviction dated 28.12.2017 made in C.C.No.85 of 2014 on the file of the learned Judicial Magistrate, Chengam.

For Petitioner : Mr.B.R.Shankaralingam

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

O R D E R

This revision has been filed to set aside the judgment dated 29.01.2019 made in C.A.No.05 of 2018 on the file of the learned Principal District and Sessions Judge, Tiruvannamalai and confirming the judgment dated 28.12.2017 made in C.C.No.85 of 2014 on the file of the learned Judicial Magistrate, Chengam.

2. The respondent police registered the case against the revision petitioner for the offence under Section 279 and 304(a) IPC. After investigation, the respondent Police filed a charge sheet before the learned Judicial Magistrate, Chengam for the above said offences and the same was taken on file in C.C.No.85 of 2014. During trial, on the side of the prosecution, the respondent police have examined as many as 13 witnesses viz., P.W.1 to P.W.13 and marked 7 documents viz., Ex.P1 to Ex.P7. On

the side of the defence, no oral and documentary evidence was produced. After fulfilled trial, the learned Magistrate found the accused guilty for the offence punishable under Sections 279 and 304(a) IPC and convicted the accused for offence under Section 279 IPC to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for one month and convicted him for the offence under Section 304(A) IPC to undergo simple imprisonment for two years and to pay a fine of Rs.3,000/- in default, simple imprisonment for two months.

3. Challenging the judgment of by the learned Magistrate, the revision petitioner preferred an appeal before the learned District and Sessions Judge, Tiruvannamalai in C.A.No.5 of 2018. After hearing an elaborate argument on bothsides, the learned Sessions Judge, dismissed the appeal and confirmed the judgment passed by the learned Magistrate. As against the judgment passed by the learned Sessions Judge, the revision petitioner has filed the present revision before this Court.

4. The learned counsel for the revision petitioner would submit that the manner of the accident has not been proved and the place of the accident has also not been proved. According to the father of the child, she was standing on the mud road opposite to his house and P.W.2/mother of the child stated that she was playing nearby his house. One of the eyewitness has spoken that the child was playing western side of the road and another eyewitness has stated that she was playing eastern side of the road. From the statement of eyewitnesses, it is seen that there was a several contradiction with each other before the trial Court and the prosecution has not proved the place of the accident. The investigation officer has not examined the owner of the vehicle. The revision petitioner has not committed the accident. Therefore, the benefit of doubt should be extended to the petitioner/accused against the Judgment of conviction and sentence. The learned Magistrate failed to consider all these aspects and convicted the petitioner herein on the ground of sympathy. The learned Sessions Judge has also failed to consider and appreciated the evidence and mechanically confirmed the judgment of the learned Magistrate, which warrants interference.

5. The learned Government Advocate (Crl. side) would submit that P.W.3 to P.W.7, who were the eyewitnesses in this case, have clearly stated the manner of the accident and also the place of the accident. All the eyewitnesses have clearly stated that the girl was playing only on the mud road. The vehicle while coming from north side to south side with speedier manner, dashed the girl and thrown away her and she got grievous injuries on her backside of head, left cheek, chin, left thigh and left hand. Due to which, she died on the spot. Therefore,

both the Courts below have rightly convicted the accused and there is no perversity in the judgments.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

7. The case of the prosecution is that on 22.02.2013 at about 5.30 p.m. one Bhuvanewari aged about 3 years was standing on the mud road, near her house. The revision petitioner/accused has driven the bus bearing Registration No.TN 23 L 7989, in a rash and negligent manner, dashed against the child and caused severe injuries on her backside of head, left cheek, chin, left thigh and left hand. Due to the injuries, she died on the spot.

8. The learned counsel for the petitioner submitted that during the cross examination, all the eyewitnesses have stated that they have not seen the occurrence directly. After hearing the noise, they have reached the alleged scene of occurrence and they have not corroborated with each other. The revision petitioner has not committed the accident and the vehicle has also not involved in the accident.

9. From the oral and documentary evidence, both the Courts have come to the conclusion that due to rash and negligence driving of the revision petitioner, the accident had occurred. At that time, the victim girl was playing on the mud road. The vehicle proceeded from north to south with speedier manner, dashed the victim girl and caused injuries. P.W.10/Motor Vehicle Inspector, who inspected the vehicle stated that there was no mechanical defect in the vehicle. The revision petitioner has driven the vehicle in a rash and negligent manner. Ex.P5/rough sketch itself shows that the place of the occurrence was found to be in mud road, not tar road.

10. Though the petitioner has stated that the accident was caused not due to his fault, the evidence of P.W.3 and P.W.9 are clear and against him. The prosecution is clear, cogent and convinced. The petitioner has not demonstrated that the accident was not due to his rash and negligent driving, he has not produced any evidence other than his own oral evidence. Both the Courts below have rightly appreciated the oral and documentary evidence and came to the conclusion that the accident has occurred due to rash and negligent driving of the driver of the offending vehicle.

11. This Court being a revision Court, while exercising the revisional jurisdiction, the scope of revision is very limited. While deciding a revision, this Court has to see as to whether there is any perversity in appreciating the evidence by the

Courts below. On a reading of the entire materials, it is seen that the revision petitioner had driven the vehicle in a rash and negligent manner and caused the accident. The road users, while riding the vehicle, should drive the vehicle with minimum speed and raise an alarm. Because, the pedestrians can easily avoid the vehicle and accident.

12. Both the Courts below have gone through the evidence by appreciating the same that the petitioner was at fault and found him guilty. The prosecution has cogently proved its case with oral and documentary evidence. Both the Courts below have given reason for conviction. Hence, the revision court cannot interfere with the judgments.

13. This Court does not find any special and compelled circumstances to take a different view in the present case on hand. Accordingly, the revision is dismissed as far as conviction is concerned. However, in order to meet ends of justice, the sentence alone modified from two years to one year.

14. With the above modification, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District and Sessions Judge, Tiruvannamalai
 2. The Judicial Magistrate, Chengam.
 3. The Inspector of Police
Thanipadi Police Station,
Chengam, Tiruvannamalai District.
 4. The Public Prosecutor, High Court, Madras.
- +1 CC to Mr.B.R.Shankaralingam, Advocate sr 37316.

CrI.R.C.No.363 of 2019
and
CrI.M.P.Nos.5254 and 5255 of 2019

VBA (CO)
SP(30/10/2019)