



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD) No.4 of 2013

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Linganathan

... Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
B3, Theppakulam Police Station,
Madurai.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C, to set aside the order of conviction and sentence imposed on the appellant by the learned IV Additional District and Sessions Judge, Madurai by means of his judgment dated 05.11.2012 made in S.C.No.26 of 2012 and acquit him.

For Appellant : Mr.B.Jeyakumar

For Respondent : Mr.A.Robinson

Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offences under Sections 279 and 338 of I.P.C. vide judgment dated 05.11.2012 made in S.C.No.26 of 2012, on the file of the learned IV Additional District and Sessions Judge, Madurai, and sentenced to undergo one month rigorous imprisonment and three months rigorous imprisonment respectively. Both the sentences were run concurrently.

2.The case of the prosecution is that on 05.06.2011 at about 00.45 hours, when P.W.1/Nagarajan was engaged in patrol duty and vehicle check near Munisalai Road Junction, the appellant was driving the auto bearing Registration No.TN 59 AH 4421. When P.W.1 stopped the vehicle, the appellant without stopping the vehicle dashed against P.W.1. P.W.1 fell down and suffered a fracture on his ribs and also other minor injuries. In this regard, P.W.1 lodged Ex.P.1/complaint before B3, Theppakulam Police Station. Ex.P.4/FIR in Crime No.960 of 2011 was registered for offences under Sections 333 and 307 of I.P.C. and Section 3 r/w 181 of Motor Vehicles Act. Investigation was taken up and final report came to be filed against the appellant for offences under Sections 333 and 307 of I.P.C. and Section 3 r/w 181 of Motor Vehicles Act, before the learned Judicial Magistrate No.I, Madurai. Cognizance of the offences was taken and the case was committed to the Sessions Court



vide P.R.C.No.44 of 2011. The case was made over to the learned IV Additional District and Sessions Judge, Madurai, in S.C.No.26 of 2012. Charges were framed against the appellant for these three offences. The appellant denied the charges and claimed to be tried.

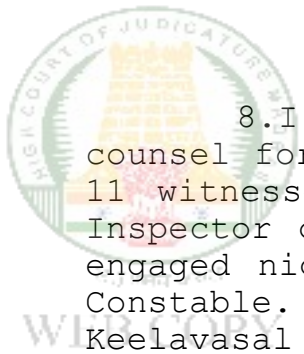
3.The prosecution examined as many as 11 witnesses and marked Exs.1 to 8. M.O.1/auto was also marked.

4.The learned Trial Judge by the impugned judgment dated 05.11.2012 acquitted the appellant of the charges under Sections 307 and 333 of I.P.C. and Section 3 r/w 181 of Motor Vehicles Act. However, he was found guilty of the offences under Sections 279 and 338 of I.P.C. and sentenced as mentioned above. Questioning the same, this criminal appeal came to be filed.

5.Heard the learned counsel on either side and perused the evidence on record.

6.The primary contention of the appellant's counsel is that the prosecution had come out with a specific case that in order to avoid a police check up, the appellant had with an intention to cause the death of P.W.1/Nagarajan dashed the vehicle against him. But then, for the charges, which were framed against the appellant, the appellant was rightly acquitted. Instead he was convicted for the offences under Sections 279 and 338 of I.P.C., for which no charge was framed against him. The appellant's counsel would contend that the offences for which he was eventually found guilty are distinct offences and that therefore, they warrant framing of charge inasmuch no charge for these offences, the Court below clearly erred in finding him guilty. The learned counsel placed reliance on Section 218 of Cr.P.C., which mandates that for every distinct offence of which any person is accused, there shall be separate charge and every charge shall be tried separately. He also contended that non-framing of charge under Sections 279 and 338 of I.P.C. has caused the appellant serious prejudice. The appellant was expected to put up a defence only to oppose what was alleged against him. In this case, the actual charge framed against the appellant was that he had deliberate intention to cause the death of the police official. Therefore, the appellant cannot be expected to defend himself that there was no negligence on his part.

7.The appellant's counsel also contended in the alternative that he had nothing to do with the offence and that he did not drive the vehicle in question. There is nothing to connect the appellant with the occurrence. The appellant has not claimed to be the owner of M.O.1. In fact in the statement filed by him under Section 313 of Cr.P.C., the appellant had stated that he had nothing to do with vehicle in question and that a case of accident was given a different colour and that the appellant is sought to be unfairly and unjustifiably blamed.



8. I am unable to agree with the submission of the learned counsel for the appellant. The prosecution had examined as many as 11 witnesses. P.W.1 is the injured witness. He was working as Inspector of Police (Crime) in Vilakuthoon Police Station. He was engaged night patrol on 05.06.2011. He was accompanied by a Head Constable. He saw M.O.1/auto coming in a rash manner from Keelavasal side at about 12.45 a.m. P.W.1 states that he signalled the auto to stop. The auto did not stop. On the other hand it dashed against P.W.1 and sped past. P.W.1 identified the appellant as the person, who drove the offending auto. As a result of the hit, P.W.1 fell down and suffered fracture in his left ribs and he also suffered other minor injuries. Even as P.W.1 fell down, he instructed the other policeman to stop the vehicle. Since the patrol vehicle was readily available, the auto was chased and stopped and brought to the place, where P.W.1 was present. One Vimalkumar was in the said auto as passenger. P.W.1 lodged Ex.P.1/complaint before Theppakulam Police Station. P.W.9 registered the FIR based on Ex.P.1/complaint. P.W.11, the Inspector of Police, Theppakulam Police Station conducted up the investigation. P.W.6 was working as Sub Inspector of Police (L & O) in Theppakulam Police Station. He received information from the control room to go to Munisalai Road Junction. P.W.6 went there and saw that M.O.1 was detained and the appellant was also detained. P.W.6 handed over M.O.1/auto as well as the appellant to Theppakulam Police Station. P.W.11, the investigating officer arrested the appellant and detained M.O.1/auto in the station itself. After completing all the formalities, he filed the final report before the learned Judicial Magistrate No.I, Madurai. Cognizance of the offences under Sections 333 and 307 of I.P.C. and Section 3 r/w 181 of Motor Vehicles Act was taken and the case committed to Sessions Court in P.R.C.44 of 2011.

9. It is true that the appellant was acquitted in respect of the offence with which he was charged but found guilty in respect of the offences with which he was not charged. Though Section 218 of Cr.P.C. states that there should be separate charge for every distinct offence, I am of the view that Section 222 of Cr.P.C. will come into play in this case. Section 222 (1) and (2) of Cr.P.C. reads as follows:-

"222. When offence proved included in offence charged

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(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts



are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it."

10. In this case, the offences with which the appellant was originally charged consisted of several particulars. The appellant was said to have dashed P.W.1 with the auto with an intent to cause his death. Of course, the Court below rightly acquitted the appellant in respect of the offence under Section 307 of I.P.C. as the appellant did not have the requisite *mens rea*. But then, the prosecution had clearly established beyond reasonable doubt that the appellant had dashed P.W.1 with M.O.1.

11. Section 279 of I.P.C. reads as follows:-

*"279. Rash driving or riding on a public way-
Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."*

12. Section 338 of I.P.C. reads as follows:-

*"338. Causing grievous hurt by act endangering life or personal safety of others -
Whoever causes grievous hurt to any person to doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."*

13. In this case, it has been established beyond reasonable doubt by the prosecution that the appellant had driven M.O.1/auto in a rash manner so as to endanger the personal safety of P.W.1. P.W.1 admittedly suffered fracture in his left ribs. Therefore, even though a separate charges under Section 279 and 338 of I.P.C. were not framed, the ingredients of those provisions are very much found in the charge itself. A reading of the three charges framed against the appellant clearly indicate that the appellant was accused of a rash driving. It is not a case of negligent driving, it is a case of rash driving. If the *mens rea* had been established, the appellant would have been found guilty for the offence under Section 307 of I.P.C. Since the *mens rea* was not established, the appellant was rightly acquitted and he was found guilty of the lesser offences. I find no ground to interfere with the judgment impugned in this criminal appeal. The criminal appeal stands dismissed. It



is stated that appellant was in prison for about 11 days. The period of incarceration undergone by the appellant will of course be set off in terms of Section 428 of Cr.P.C.

Sd/

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To:

1.The IV Additional District and Sessions Judge,
Madurai.

2.The Inspector of Police,
B3, Theppakulam Police Station,
Madurai.

+1 cc Mr. R.JEYAKUMAR ,Advocate, SR.No. 80700

Cr1.A.(MD)No.4 of 2013

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KK/SAR/26.02.2020/5P-4C