



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C. (MD)No.883 of 2013

WEB COPY

Kasinathan

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Pateeswaram Police Station,
Thanjavur District.

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records in Crl.A.No.42 of 2012, on the file of the Additional District and Sessions Judge, Special Court for Essential Commodity Cases, Thanjavur and hear the revision petitioner and set aside the conviction and sentence passed by the judgment 29.07.2013 in Crl.A.No.42 of 2012, on the file of the Additional District and Sessions Judge, Special Court for Essential Commodity Cases, Thanjavur, confirming the judgment dated 17.09.2012 in C.C.No.354 of 2004, on the file of the learned Judicial Magistrate, Kumbakonam.

For Petitioner : Mr.M.Murugesan

For Mr.R.Rajaraman

For Respondent : Mrs.S.Bharathi

Govt. Advocate (Crl. Side) for R1

O R D E R

The revision petitioner is a TNSTC driver. He was convicted for the offence under Section 304(A) of I.P.C. and sentenced to three months simple imprisonment, vide judgment dated 17.09.2012 in C.C.No.354 of 2004, on the file of the learned Judicial Magistrate, Kumbakonam. Questioning the same, he filed C.A.No.42 of 2012, on the file of the learned Additional District and Sessions Judge, Special Court for Essential Commodity Cases, Thanjavur. The Appellate Court by judgment dated 29.07.2013 dismissed the appeal and confirmed the judgment of the Trial Court. Challenging the same, this criminal revision case has been filed.

2.The case of the prosecution case is that on 20.03.2004 at about 07.30 a.m., the revision petitioner was driving TNSTC bus bearing Registration No.TN 29 N 0493, when the bus dashed against the two wheeler bearing Registration No.PY 02 0116, ridden by one Mehboob Khan near Ariyapadaitoor Chathiram Bus Stand. One Murugan was the pillion rider in the two wheeler. As a result of the accident, the rider of the vehicle Mehboob Khan died on the spot.



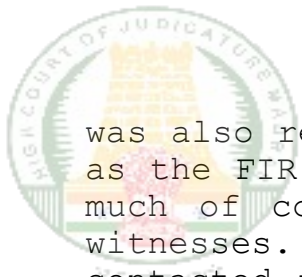
Murugan died later. In this regard, P.W.1 Abdul Gaffor lodged Ex.P.1/complaint before Pateeswaram Police Station. Crime No.51 of 2004 was registered for the offence under Section 304(A) of I.P.C. Investigation was undertaken and final report came to be filed before the learned Judicial Magistrate, Kumbakonam, against the revision petitioner herein for the offence under Section 304(A) of I.P.C. Charge was framed against the revision petitioner and he denied the same and claimed to be tried.

3.The prosecution examined 12 witnesses and marked Exs.1 to 10. On the side of the accused no evidence was adduced.

4.The learned Trial Magistrate by judgment dated 17.09.2012 found the revision petitioner guilty of the offence Section 304(A) of I.P.C on two counts and sentenced him three months simple imprisonment. The same was affirmed by the Appellate Court also.

5.The learned counsel appearing for the revision petitioner submitted that the revision petitioner did not drive the vehicle and he has been falsely implicated. The said contention is baseless. As rightly pointed out by the learned Government Advocate (Crl. Side), P.W.12, the investigating officer had deposed that on the occurrence day i.e., 20.03.2004, the revision petitioner appeared in Pateeswaram Police Station along with the vehicle bearing Registration No.TN 29 N 0493 route No.454 and surrendered. The revision petitioner was sent to judicial custody. The vehicle was sent to Motor Vehicle Inspector/P.W.10. Ex.P.4 is the inspection report submitted by the Motor Vehicle Inspector. In the said report, in column No.6 the name of the driver has been mentioned Kasinathan, S/o.Sivasamy. In the face of this unimpeachable evidence, I fail to understand as to how the revision petitioner would take a plea that he did not drive offending vehicle and that he has been falsely implicated. I have no hesitation to uphold the contention of the learned Government Advocate (Crl. Side) and reject the submission of the revision petitioner's counsel.

6.Ex.P.8 is the rough sketch. It is seen therefrom that the revision petitioner was driving the vehicle from south to north. The two wheeler was coming from opposite direction that is north to south. If we examine the testimony of P.W.1, it can be seen that the front side left wheel of the bus had run over the two wheeler riders. It clearly means that the two wheeler was coming on the wrong direction. The two wheeler ought to have kept to the left side of the road that is eastern side. Instead, they had come on the western side. In other words, the bus was going on the correct side and it was the two wheeler that came on the wrong side. This Court will have to take note of the fact the four witnesses examined as eye witnesses by the prosecution namely., P.W.1, P.W.2, P.W.4 and P.W.5 are close relatives of the deceased. P.W.1 would claim that he lodged information on the same day i.e., 20.03.2004 and the FIR



was also registered on the same day. Both Ex.P.1/complaint as well as the FIR reached the Court only on 23.03.2004. There is also too much of contraction between the depositions given by the various witnesses. P.W.1 would claim in his chief examination that he contacted the ambulance but in his cross he would admit he did not know who called the ambulance. P.W.2 would also state that he came to the accident spot only after the occurrence. If P.W.4 and P.W.5 were actually present, definitely their names should have found place in Ex.P.1/complaint. P.W.12 the investigation officer also admits that P.W.1 and P.W.2 have not said anything about the presence of P.W.4 and P.W.5. P.W.4 and P.W.5 are close relatives of Murugan. It is an admitted fact. P.W.4 would state that the road runs to east to west. Actually the road goes from south to north. While P.W.4 would claim that he and P.W.5 went by the same cycle, P.W.5 would state that they went by separate cycles and not in a same cycle. All these circumstances give an impression that the prosecution in order to bolster their case had set them up as eye witnesses. Thus the following conclusions emerge:-

(i) The revision petitioner had driven the vehicle in question on the occurrence date and time and that he had taken a false defence before the Courts below as well as before this Court that he did not drive the vehicle.

(ii) The bus driven by the revision petitioner was going on the right side and that it was the two wheeler that came on the wrong side.

(iii) The testimony of the so called eye witnesses does not inspire the confidence of this Court and there is nothing on record to indicate that the revision petitioner drove the vehicle in a rash and negligent manner and thereby caused the accident in question

7.In this view of the matter, the impugned judgment is set aside and the criminal revision case is allowed and the revision petitioner is acquitted.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

To:

1.The Additional District and Sessions Judge,
Special Court for Essential Commodity Cases,
Thanjavur.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Judicial Magistrate,
Kumbakonam.

3.The Inspector of Police,
Pateeswaram Police Station,
Thanjavur District.

+2 CC to M/s.R.RAJARAMAN, Advocate (SR-79429[F] dated 02/08/2019)

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KK/SAR/22.08.2019/4P-6C/