



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C. (MD)No.433 of 2014

A.Pandi

.. Petitioner/Appellant

Vs.

The Inspector of Police,
Nilakottai Police Station,
Nilakottai,
Dindigul District
Crime No.521/2009

.. Respondent/Respondent

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the judgment dated 27.08.2014 made in Crl.A.No.27 of 2013 on the file of the Principal Sessions Judge, Dindigul, confirming the judgment dated 04.04.2013 made in C.C.No.133 of 2010 on the file of the Judicial Magistrate, Nilakottai and set aside the same.

For Petitioner

: Mr.S.Bharathi

For Respondent

: Mr.K.Suyambulinga Bharathi,
G.A., (Crl. Side)

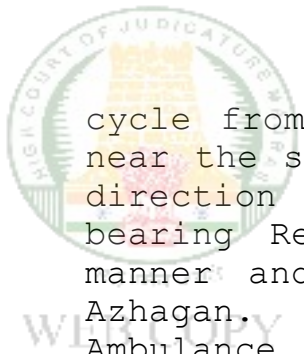
ORDER

The petitioner is the single accused in this revision. He was charged for the offence under Section 304(A) I.P.C. The trial Court, by its judgment dated 04.04.2013, found the petitioner guilty for the offence under Section 304(A) I.P.C. and sentenced him to undergo 6 months RI and to pay a fine of Rs.1,000/- in default to undergo 1 month SI. Against the said conviction and sentence, the petitioner preferred an appeal before the learned Principal Sessions Judge, Dindigul, in C.A.No.27 of 2013, wherein, the learned Principal Sessions Judge, vide his judgment dated 27.08.2014 dismissed the appeal confirming the judgment of the trial Court. Against which, this present revision has been filed.

2.The prosecution, in this case, has examined P.Ws.1 to 12 and marked Exs.P1 to 7.

3.The case of the prosecution is that on 01.10.2009 at about 16.00 hours, while the deceased Azhagan proceeding in his

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cycle from Nilakkottai to Silukkuvarpatti towards East from West near the sivan temple, the accused came from the back in the same direction towards East from West driven the Tata Ace vehicle bearing Registration No.TN 60 X 1424 in a rash and negligent manner and hit the deceased and caused death to the deceased Azhagan. P.W.1 Sangilikaruppan informed the incident to 108 Ambulance Service and gave complaint Ex.P1 before P.W.9, Rajamani Special Sub Inspector of Police, who registered a case in crime No.521 of 2009 for the offence under Section 304(A) IPC and FIR is Ex.P4. The injured was taken to Hospital through 108 Ambulance, where he was declared dead. P.W.10 postmortem doctor conducted postmortem, issued postmortem certificate Ex.P11. P.W.8, Motor Vehicle Inspector examined the vehicle involved in the accident and issued M.V.report Ex.P3 P.W.12, Inspector of Police took up investigation, visited the scene of occurrence, prepared observation mahazer Ex.P2, examined witnesses to the occurrence. Thereafter, examined the doctors and after obtaining postmortem certificate, forensic report, motor vehicle report, filed the charge sheet in this case.

4.The contention of the petitioner is that the trial Court convicted the petitioner mainly on the evidence of P.W.1, P.W.8 Motor Vehicle Inspector and Ex.P3 Motor Vehicle Inspector's report, Ex.P6 Rough sketch, which has been marked through the investigating officer, P.W.2, the eye witness, brother of P.W.1 was disbelieved by the trial Court. P.W.3 to 5 are the wife, sister and brother of the deceased respectively and their evidence are in the nature of hearsay. P.Ws.6 and 7 are the observation mahazer witnesses. P.W.7 categorically states that he had signed observation mahazer Ex.P2 at 7.00 p.m., which was also confirmed in the cross examination, whereas, P.W.12, investigating officer states that he visited the scene of occurrence and prepared observation mahazer and rough sketch only by 09.00 p.m. Further, in Ex.P6 rough sketch, no witness has attested. P.W.1 a co-worker working along with the deceased. P.W.1 eye witness does not identify the accused as the driver of the vehicle involved in the accident. No witness has identified the accused in this case. However, the trial Court on wrong premise has convicted the petitioner. The lower appellate Court, without appreciating the evidence and material, confirmed the finding of the trial Court.

5.The learned Government Advocate (criminal side) submitted that in this case, P.W.1 and the deceased are co-workers and as could be seen from the evidence of P.Ws.1 to 3, the petitioner driven the vehicle in a rash and negligent manner, hit the deceased and caused the death. The trial Court based on the evidence of P.Ws.1, 8, Motor Vehicle Inspector and Ex.P5 and 6, observation mahazer and rough sketch respectively, convicted the petitioner for the offence under Section 304(A) IPC and the lower



Appellate Court rightly appreciated the evidence and material and confirmed the judgment of the trial Court, which need not be interfered with.

6.Considering the rival submission and perusal of the materials, it is seen that the trial Court has placed its conviction solely on the evidence of P.W.1, who is the co-worker of the deceased and Ex.P6 Rough Sketch. It is seen from the rough sketch that both the TATA ACE driven by the petitioner and the cycle rode by the deceased were proceeding in the same direction viz., from West to East. P.W.1 admits that he was not travelling in the cycle and he was walking 30 feet away behind the scene of occurrence. He could not have witnessed the accident in the manner he had deposed before the Court. Further, he has not identified the accused person, being the driver of the vehicle. P.W.1, in his evidence, admits that the road, where the accident took place is a curved road, whereas, in the observation mahazer, the place of occurrence is shown as straight road. Therefore, there are contradictions with regard to the place of occurrence.

7.Further, in this case, though P.W.1 to 3 were examined, none have stated about the petitioner driven the vehicle involved in the accident at the time of occurrence. The topography mentioned by P.W.1 is contrary to Ex.P5 observation mahazer and Ex.P6 rough sketch. Further, admittedly, at the time of accident, P.W.1 came 30 feet behind the scene of occurrence.

8.In view of the same, this Court find that the prosecution had not proved the case beyond the reasonable doubt as against the accused and hence, the appellant is entitled to get benefit of doubt and acquittal.

9.Accordingly, this criminal revision is allowed and the conviction and sentence dated 27.08.2014 made in Crl.A.No.27 of 2013 by the Principal Sessions Judge, Dindigul, confirming the judgment dated 04.04.2013 made in C.C.No.133 of 2010 by the file of the Judicial Magistrate, Nilakottai are set aside and the petitioner is acquitted of all the charges levelled against him. The fine amount, if any, paid by the petitioner, shall be refunded to him. The bail bonds, if any, executed by him, shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



Arul

To

WEB COPY

- 1.The Inspector of Police,
Nilakottai Police Station,
Nilakottai,
Dindigul District.
- 2.The Principal Sessions Judge,
Dindigul.
- 3.The Judicial Magistrate,
Nilakottai
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.S.BHARATHI, Advocate (SR-104021[F] dated 09/12/2019)

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09.12.2019

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