



WEB COPY

Crl. R.C. No. 48/2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. NO. 48 OF 2010

S.Arumugam

.. Petitioner

- Vs -

The Inspector of Police
Traffic Investigation Division
J-2, Adyar Police Station
Chennai.

.. Respondent

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure praying to call for the records relating to the order passed in Crl. A. No.299/2007 08.01.2010 on the file of the Addl. District & Sessions Court (FTC-I), Chennai, confirming the judgment passed in C.C. No.3354/05 dated 11.12.2007, on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai, and set aside the same.

For Petitioner : Mr. L.Baskaran

For Respondent : Mr. C.Iyyapparaj, APP

ORDER

This revision petition is preferred against the order dated 8.1.2010 passed by the learned Addl. District & Sessions Judge (FTC-I), Chennai, made in C.A. No.299/07, confirming the conviction and sentence recorded by the learned Metropolitan Magistrate No.4, Saidapet, Chennai, in C.C. No.3354/2005 vide order dated 11.12.07.

2. Since the main bundle was not available in the Registry of the Court as well as with the learned counsel for the petitioner, the Deputy Commissioner of Police, Adyar, Chennai was directed to produce the connected

1/11



records and in pursuance of the said direction, Mr.K.Krishnamoorthy, Assistant Commissioner of Police, Traffic Investigation East, Sasthri Nagar, Chennai, is present before this Court along with the connected records. The judgment of the appellate court is placed before the Court for perusal.

3. The accused was charged and tried before the learned Metropolitan Magistrate No.IV, Saidapet, Chennai, which ended in conviction for the offences u/s 304A IPC, 338 IPC, Section 184 of the Motor Vehicles Act and Section 411 r/w 177 of the Motor Vehicles Act and was sentenced as under :-

Section	Sentence
U/s 304A IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years.
U/s 338 IPC	Convicted and sentenced to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month.
U/s 184 of Motor Vehicles Act	Convicted and sentenced to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of two weeks.
U/s 411 r/w 177 of Motor Vehicles Act	Convicted and sentenced to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for a period of one week.

Aggrieved by the said conviction and sentence imposed on the accused/petitioner herein, the present revision has been filed.

4.The case of the prosecution is that on 8.3.05, at about 8.30 p.m., near C.P.T. Road, Tharamani, near VHS Hospital, the accused drove the tempo van, bearing Regn. No.TN-01-K-4353 in a rash and negligent manner at high speed and dashed against the motorcycle bearing Regn. No.TN-07-AD-1649 and the other motorcycle bearing Regn. No.TN-07-AB-8276 and as a result of the said accident, the driver of the motorcycle bearing Regn. No.TN-07-AD-1649 sustained grievous injuries and succumbed to the said injuries on the spot itself, while the driver of the motorcycle bearing Regn. No.TN-07-AB-8276, sustained grievous injuries on various parts of his body. After lodging the necessary information leading to the registration of the FIR, investigation was taken up by the investigating agency, which ultimately, led to the filing of the charge sheet against the accused for the offences as shown above.



5. On the appearance of the accused/petitioner, the provisions of Section 207 Cr.P.C. was complied with and the case was committed for trial in C.C. No.3354/05. After trial, the trial court found the appellant/accused guilty of the offences and sentenced him as above against which the petitioner/accused preferred appeal before the Addl. District & Sessions Court (FTC-1), Chennai. The appellate court, on the basis of the materials available before it, concurred with the view taken by the trial court to convict the accused/petitioner herein and, accordingly, affirmed the conviction and sentence imposed on the accused/petitioner herein. Aggrieved by the said conviction and sentence, the present revision has been preferred.

6. Mr.Baskaran, learned counsel appearing for the revision petitioner contended that no independent witness was examined and the witnesses examined by the prosecution are interested witnesses, on whose testimony, reliance cannot be placed to bring home the charge against the accused. It is the further contention of the learned counsel for the petitioner that the evidence of P.W.6 reveals that braking would not be foolproof in case of rains or the roads are muddled with water and since it is evident from the deposition of the witnesses that the roads were splashed with water on account of the incessant rain during the month of December, the accident could be attributed only to the act of God and criminality cannot be fastened on the petitioner herein. The evidence of the witnesses do not corroborate each other. However, the courts below have accepted the said evidence to convict the petitioner herein which requires interference at the hands of this Court.

7. Per contra, Mr.Iyyapparaj, learned Addl. Public Prosecutor appearing for the respondent submitted that the evidence of the witnesses corroborate each other, which has been taken note of by the courts below. Further, it is the submission of the learned Addl. Public Prosecutor that non-examination of independent witnesses would not vitiate the prosecution when the evidence of the other witnesses inspire the confidence of this Court and are corroborating each other. The courts below have appreciated the evidence in proper perspective and, therefore, no interference is warranted with the judgment passed by the courts below.

8. This Court heard the submissions of the learned counsel appearing for the petitioner and the learned Addl. Public Prosecutor appearing for the respondent and perused the materials available on record.

9. A careful analysis of the evidence on record reveals that the accused/petitioner had driven the vehicle in a rash and



negligent manner, at high speed and dashed not only against the motorcycle of the deceased, but also against one other motorcycle. It is to be pointed out that had the petitioner driven the vehicle adhering to the rule of the road, definitely he would not have hit against the other motorcycle. The evidence of P.W.1, the other motorcyclist, who was injured in the said accident, has given a verbatim account of what had happened and has also narrated the cause of the accident. Therefore, the sequence of the entire accident reveals that all was not well with the driving of the petitioner, which had resulted in the accident, taking away the life of the breadwinner of the family.

10. Insofar as the contention of the learned counsel for the petitioner that the slippery nature of the road due to incessant rains during the particular monsoon month had led to faulty brake resulting in the accident cannot be accepted for the simple reason that the evidence of P.W.s 5 and 6 clearly reveal that the accident was not due to mechanical fault and that the condition of the brake was also good. Even if it is to be accepted that incessant rains had led to slippery roads, it is the duty of the person driving the vehicle to drive carefully and in the case on hand, the petitioner had hit with such a force, so as to result in the death of the motorcyclist. Therefore, the contention of the counsel for the petitioner that the failure of the brake on account of the rain had resulted in the accident is liable to be rejected. The courts below have considered the evidence in proper perspective and have decided to impose the conviction, which does not warrant any interference.

11. However, when this Court was about to confirm the sentence, learned counsel appearing for the petitioner submitted that the petitioner herein is aged about 60 years and is survived by his wife and daughters, who have to be given in marriage and as a father, he is required to see that his daughters are married and settled and in that view of the matter, this Court may, taking a lenient view, consider modification of the sentence.

12. No doubt, the courts below have imposed sentence of two years on the petitioner and fine has also been imposed. It is evident that the accident had happened in the year 2007 and almost a decade has passed since then. The petitioner was aged around 45 years on the date of the occurrence and by now he would be around 60 years of age and that the passage of time and the damocles sword of conviction and sentence hanging over his head for all these years, would definitely have made a man out of him and a harsh sentence at this stage of life would have a traumatizing effect on the family of the petitioner more than



the petitioner. However, the act of the petitioner cannot be brushed aside without the petitioner being made to realise that by his act, he has obliterated the breadwinner of the family and sufferings that the said family would have undergone is inexplicable beyond words. In such view of the matter, this Court is of the considered opinion that while confirming the conviction, the sentence of two years rigorous imprisonment could be modified to one year of simple imprisonment, but maintaining the fine imposed.

13. In the facts and circumstances of the case, the criminal revision petition is dismissed confirming the conviction and sentence of fine imposed on the petitioner u/s 338 IPC and 184 and 411 r/w 177 of the Motor Vehicles Act. But insofar as the sentence u/s 304A IPC is concerned, the sentence of ten years rigorous imprisonment is modified and instead he is sentenced to simple imprisonment for a period of one year for the offence u/s 304 IPC.

14. In the result, this criminal appeal is dismissed with the above modification in sentence. It is reported that the petitioner is on bail. The trial court is directed to secure the presence of the petitioner and commit him to prison to serve the remaining period of sentence imposed upon him.

Sd/-
Assistant Registrar(CS-)

// True Copy//

Sub Assistant Registrar

GLN

To

- 1.The Addl. District & Sessions Judge
(FTC-I), Chennai.
- 2.The Metropolitan Magistrate No.IV
Saidapet, Chennai.
- 3.The Inspector of Police
Traffic Investigation Division J-2,
Adyar Police Station
Chennai



4.The Chief Metropolitan Magistrate
Egmore, Chennai.

5.The Director General of Police
Mylapore, Chennai.

6.The Deputy Commissioner of Police
Adyar, Chennai.

7.The Assistant Commissioner of Police, Traffic
Investigation, East Sasthri Nagar,
Chennai.

8.The Public Prosecutor
High Court, Madras.

CRL. R.C. NO. 48 OF 2010

RJI (CO)
GS (21/07/2020)