

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.497 of 2013

Batcha,
S/o.Ashkar Ali

...Petitioner

versus

State represented by,
The Inspector of Police,
Mettupalayam Police Station.

...Respondent

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the judgment dated 11.02.2013 made in Criminal Appeal No.271 of 2012 on the file of the learned Principal District and Sessions Judge, Coimbatore, in confirming the judgment dated 07.09.2012 in so far as confirming the conviction of the petitioner under Section 279 and 304-A of IPC made in C.C.No.102 of 2009 on the file of the learned District Munsif-cum-Judicial Magistrate, Mettupalayam and quash the same and allow the above Criminal Revision Petition.

For Petitioner : Mr.C.R.Malarvannan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

Aggrieved over the concurrent findings made in C.C.No.102 of 2019 dated 07.09.2012 on the file of the learned District Munsif-cum-Judicial Magistrate, Mettupalayam and in Crl.A.No.271 of 2012 dated 11.02.2013 on the file of the learned Principal District and Sessions Judge, Coimbatore, the petitioner, who is the appellant in the above referred appeal is before this Court by filing this Criminal Revision Petition to check the correctness of the judgments rendered by the Courts below.

2. The petitioner / appellant herein is the sole accused in C.C.No.102 of 2019 on the file of the learned District Munsif-cum-Judicial Magistrate, Mettupalayam. By a judgment dated 07.09.2012, the learned District Munsif-cum-Judicial Magistrate, Mettupalayam, convicted the revision petitioner for an offence under Section 279 of IPC and sentenced

to undergo one month Rigorous Imprisonment and to pay a fine of Rs.200/-, in default to undergo one week Simple Imprisonment. Further, he was convicted for the offence under Section 304-A of IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment.

3. Challenging the same, the petitioner filed an appeal before the learned Principal District and Sessions Judge, Coimbatore, in CrI.A.No.271 of 2012, wherein the learned Principal District and Sessions Judge, Coimbatore, affirmed the findings arrived at by the learned District Munsif-cum-Judicial Magistrate, Mettupalayam and dismissed the appeal. Aggrieved over the same, the petitioner is before this Court with this revision petition.

4. The case of the prosecution, in brief, is as follows;

4.1. On 19.09.2008, at about 1.30p.m., when P.W.2 and P.W.4 were standing and chatting near Meenakshi Hospital, P.W.5-Thangavel and P.W.6-Udayakumar, who are their friends, were proceeding to Karamadai to Mettupalayam on a bike. During the time of occurrence, the bike was driven by P.W.6-Udayakumar and P.W.5-Thangavel was travelling in the said bike as a pillion rider. While they were near to the Meenakshi Hospital, the deceased-Senthilkumar, who was the brother of P.W.1, was proceeding on his bike just ahead of them, from south to north. At the same time, the present revision petitioner-Batcha, who was coming in a Maruthi 800 Car bearing Registration No.TN 43A 544 from the opposite direction (north to south), drove his car at a high speed, negligently and knocked the Senthilkumar down.

4.2. Due to the same, the deceased-Senthilkumar sustained multiple injuries and immediately taken to the Government Hospital at Mettupalayam. He was given first aid and was taken to Ganga Hospital, Coimbatore, wherein he was died at about 1.00p.m. (midnight) on 20.09.2008. For the said occurrence, P.W.1, who is the brother of the deceased-Senthilkumar lodged a complaint under Ex.P.1 with Mettupalayam Police Station at 7.00a.m. on 20.09.2008.

4.3. P.W.8-Sivasamy, the then Head Constable, attached with Mettupalayam Police Station, on receipt of the complaint given by P.W.1, registered a case in Crime No.721 of 2008 for the offences punishable under Sections 279 and 304-A of IPC. The printed First Information Report was marked as Ex.P.5. Immediately after registration of the case, he handed over the case records to P.W.10-Saravanan.

4.4. P.W.10, the then Inspector of Police, Mettupalayam Police Station, took up the investigation and visited the scene of occurrence and in the presence of P.W.3-Nagaraj, prepared the observation mahazar under Ex.P.7. He drawn rough sketch under Ex.P.8. He held inquest on the dead body at Coimbatore Medical College Hospital and prepared the inquest report. He examined the witnesses and recorded their statements.

4.5. P.W.9-Dr.Jeyasingh, attached with Coimbatore Medical College Hospital conducted the post mortem on the dead body of Senthilkumar and gave opinion as the deceased would appear to have died of multiple injuries sustained by him. He issued post mortem certificate under Ex.P.6. On 20.09.2008, at about 1.30p.m. the Investigating Officer arrested the accused and sent him for remand, Further, he sent the vehicles for inspection by the Motor Vehicles Inspector.

4.6. P.W.7-Anandakumar, the Motor Vehicles Inspector inspected the vehicles on 20.09.2008 and issued certificates under Ex.P.3 and Ex.P.4 respectively, stating that the alleged accident has not occurred due to the mechanical defect found in the vehicles. Ex.P.3 pertains to the offending car and Ex.P.4 pertains to the bike driven by the deceased.

4.7. On 10.10.2008, the Investigating Officer, examined the medical officers and collected certificates. He also examined the Motor Vehicles Inspector and collected certificates. After completion of investigation, he laid the final report against the accused on 25.10.2008.

5. Based on the above materials, the trial Court examined the accused under Sections 279 and 304-A of IPC and the accused denied the same and opted for trial. Therefore, in order to prove their case, on the side of the prosecution, as many as 10 witnesses were examined as P.W.1 to P.W.10 and 8 documents were exhibited as Ex.P.1 to Ex.P.8.

6. Out of the said witnesses, P.W.1-Saravanakumar, is the brother of the deceased. According to him, he knew the occurrence through P.W.2 and thereafter, he lodged a complaint before the Mettupalayam Police Station.

7. P.W.2-Gnanasekaran, P.W.4-Panneerselvam, P.W.5-Thangavel, P.W.6-Udayakumar cited as occurrence witnesses, were stated before the trial Court in their evidences as during the time of occurrence, the revision petitioner herein, driven his vehicle at a high speed and dashed against the bike, in which, the deceased was travelled.

8. P.W.3-Nagaraj, is the resident of the same locality, in which, P.W.1 was residing, he has stated about the

preparation of observation mahazar and the rough sketch by the Investigating Officer.

9. P.W.7-Anandakumar, the Motor Vehicles Inspector, speaks about the examination of the vehicles, which have been met with an accident.

10. P.W.9-Dr.Jeyasingh, attached with Coimbatore Medical College Hospital, speaks about the details of the post mortem conducted on the dead body of the deceased-Senthilkumar. According to him, the death is due to the multiple injuries sustained by the deceased.

11. P.W.8-Sivasamy and P.W.10-Saravanan, are the police officers, stated about the details in respect to the registration of the case, examination of the witnesses, preparation of inquest, obtaining the Motor Vehicles Inspector report and about the filing of the final report.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any documents on his side.

13. After perusing all the above materials placed, by a judgment dated 07.09.2012, the learned District Munsif-cum-Judicial Magistrate, Mettupalayam found the accused guilty for the offences under Sections 279 and 304-A of IPC and sentenced him as stated in the second paragraph of this petition.

14. By a judgment dated 11.02.2013 in CrI.A.No.271 of 2012, the learned Principal District and Sessions Judge, Coimbatore, affirmed the findings arrived at by the learned District Munsif-cum-Judicial Magistrate, Mettupalayam and dismissed the appeal. Aggrieved over the said judgment, the petitioner is before this Court with this petition.

15. I have heard Mr.C.R.Malarvannan, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State. I have also perused the records carefully.

16. The learned counsel for the petitioner / accused would contend that before the trial Court in order to prove the occurrence, 4 witnesses have been examined as P.W.2, P.W.4, P.W.5 and P.W.6, all of them narrated the occurrence as during the time of occurrence, the revision petitioner herein driven his vehicle with a high speed and dashed against the vehicle, in which, the deceased was travelled. He would further submit that the report given by P.W.7, the Motor Vehicles Inspector shows

that the car, which was driven by the petitioner sustained damages only on the left side. If the vehicle driven by the accused from south to north, there could not be any possibility for sustaining the damage on the left side of his vehicle. The Courts below without considering the same, convicted the accused, which is erroneous in law. According to him, the revision petitioner is an innocent person did not commit any offence as alleged by the prosecution.

17. Per contra, learned Additional Public Prosecutor appearing for the respondent police would submit that the witnesses examined on the side of the prosecution proves the guilt of the revision petitioner and therefore, interference of this Court is not necessary in the findings arrived at by the Courts below.

18. I have considered the rival submissions made on either side and perused the records carefully.

19. First of all, on going through the evidences given by P.W.2, P.W.4, P.W.5 and P.W.6, all of them categorically stated as during the time of occurrence, the revision petitioner herein driven his car with a high speed. At any point of time, they did not said anything about the rashness or negligent act of the revision petitioner.

20. At this juncture, it is relevant to see the judgment of STATE OF KARNATAKA vs. SATISH reported in (1998) 8 SCC 493 wherein, our Hon'ble Apex Court has held as follows;

"4...Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or

"negligence" could be drawn by invoking the maxim "res ipsa loquitur"...."

21. Now applying the ratio laid down in the above referred judgment to the case in our hand, herein also the witnesses examined on the side of the prosecution did not say anything about the rashness or negligence. However, the Courts below without looking into the said aspect, convicted the accused, which is nothing but injustice and perverse.

22. More than that, if two vehicles dashed against each other, as already observed that there could not be any possibility to sustain the damage on the left side of the car. Therefore, in this aspect also, the prosecution fails to prove under what circumstances, the car sustained damage on its left side.

23. In the light of the above discussions, I am of the considered opinion that the conviction and sentence awarded by the Courts below is liable to be set aside. Accordingly, it is set aside. The fine amount, if any paid, shall be refunded to him.

24. In the result, the Criminal Revision Petition is allowed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Coimbatore,
2. The District Munsif-cum-Judicial Magistrate,
Mettupalayam.
3. State represented by,
The Inspector of Police,
Mettupalayam Police Station.
4. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.497 of 2013

RSV(CO)
RV(21/12/2020)