



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:

(Reserved on: 10.03.2020 ; Pronounced on :13.05.2020)

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CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.RC.No.581 of 2016

M.Cyril Irudayaraj

..Petitioner/Appellant/Accused

Vs.

The State Rep. By
The Inspector of Police
K-4, Anna Nagar Traffic Investigation,
Police Station,
Chennai - 600 040.
(Cr.No.393/As2/2006)

..Respondent/Complainant

Prayer: Criminal Revision Case filed to set aside the judgment of conviction and sentence passed by the learned VI Metropolitan Magistrate, Egmore, Chennai 600 008 on 12.05.2015 in CC.No.1005 of 2007.

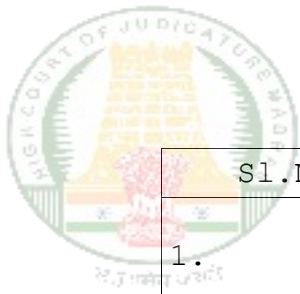
For Petitioner : M/s.G.Saravanan

For Respondent : M/s.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

ORDER

This criminal revision petition has been filed by the accused under Section 397 r/w 401 of Cr.P.C., against the judgment passed by the XVII Additional Sessions Judge, Chennai in Crl. Appeal No.117 of 2015 dated 15.02.2016 confirming the judgment of conviction and sentence passed by the VI Metropolitan Magistrate, Egmore, Chennai in CC.No.1005 of 2007 dated 12.05.2015.

2.The learned VI Metropolitan Magistrate, Egmore, Chennai has convicted the Revision Petitioner/Accused and sentenced him as follows:



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Sl.No.	Provision of law	Sentence
1.	U/s.304-A IPC (2 counts)	One year Simple Imprisonment for each count
2.	U/s.338 IPC (2 counts)	Fine of Rs.1000/- in default to undergo 4 weeks simple imprisonment for each count.
3.	U/s.337 IPC (2 counts)	Fine of Rs.500/- in default to undergo 2 weeks simple imprisonment for each count.
4.	U/s.279 IPC	Fine of Rs.1000/- in default to undergo 4 weeks simple imprisonment.
5.	U/s.411 r/w.177 of MV Act	Fine of Rs.100/- in default to undergo 1 week simple imprisonment.

He also directed that the sentences shall run concurrently.

3. Aggrieved by the said judgment of conviction and sentence, the accused has filed an appeal in CrI.A.No.117 of 2015 on the file of the XVII Additional Sessions Judge, Chennai. The learned Additional Sessions Judge, has dismissed the said appeal and thereby confirmed the judgment of conviction and sentence passed by the trial court. Feeling aggrieved, the accused has filed the present criminal Revision Petition.

4. The case of the prosecution is that on 21.11.2006 at about 14.45. hours opposite to Sakthi Cement and hardwares shop, near Aminjikarai Police Station, 3rd Avenue Road, Anna Nagar, Chennai, the accused has driven a MTC bus bearing Regn.NO.TN01 N 3169 from South to North in a rash and negligent manner hit against the median and came to the other end of the road in uncontrollable speed and dashed against an Auto Rickshaw which came from North to South and also hit against a tree along with



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tricycles which were parked under the tree one Mr.Kannan who was sleeping in his tricycle sustained injuries and died on the spot and another person namely Balaji who was travelling as a passenger in the Auto rickshaw also died and two more persons travelling in the bus and a person who sat on a tricycle and the driver of the Auto rickshaw were sustained injuries and hence the respondent has filed a chargesheet stating that the accused has committed offences punishable under Sections 304-A (2 counts), 338 (2counts), 337 (2 counts), 279 IPC and Section 411 r/w 177 of M.V.Act.

5. Before the trial court, the prosecution, in order to prove its case, examined 18 witnesses as P.Ws 1 to 18 and marked 22 documents as Exs.P1 to P22.

6. The learned Metropolitan Magistrate, after considering the materials placed before him found the accused guilty under Sections 304-A (2 counts), 338 (2 counts) 337 (2 counts) 279 IPC and under Section 411 r/w. 177 of MV Act and convicted him as stated above.

7. Aggrieved by the judgment of conviction and sentence, the petitioner/Accused has filed an appeal before the Sessions Court, Chennai. The learned Additional Sessions Judge has dismissed the said appeal and thereby confirmed the judgment of conviction and sentence passed by the trial court. The petitioner/Accused feeling further aggrieved has filed the present Criminal Revision Petition.

8.Heard Mr.G.Saravanan, the learned counsel for the petitioner/Accused and Mr.T.Shanmugarajeswaran, the learned Government Advocate (Criminal Side) for the respondent.

9. PW1 is the one of the injured persons. He lodged a complaint (Ex.P1) before the police and based on the same FIR has been registered. He has deposed that on 21.11.2006 at about 2.45 p.m., that when he was sitting in his tricycle, opposite to Sakthi Cement Shop, near Aminjikarai Police Station, 3rd Avenue Road, Anna Nagar, Chennai, the accused has driven a MTC Bus bearing Regn.No.TN01-N3169 from south to north, hit against the road median and come to the other end of the road in uncontrollable speed and dashed against the Auto-rickshaw which was coming from North to South and hit against a tree a long with the tricycles parked near the tree. He further deposed that on seeing that the bus was coming towards him, he attempted to ran away from his tricycle, but he was also hit by the bus and sustained injuries and later he found that one Mr.Kannan who was sleeping in his tricycle also sustained injuries and died on the spot and another person namely Balaji who was travelling as a passenger in the Auto Rickshaw also died and two more persons



who were travelling in the said bus also sustained injuries.

10. PW5 is the Auto driver. He also deposed that when he was driving his auto rickshaw from North to South, the accused has driven his bus from South to North in a rash and negligent manner and crossed the road median and hit against his auto rickshaw, tricycles and a tree and caused death to two persons and injuries to four persons and he also sustained injuries. P.Ws 8 to 12 also deposed corroborating the evidence of P.Ws 1 and 5. Motor vehicle Inspector was examined as PW6. He has deposed that the accident was not due to any mechanical defect in the bus and also in the Auto rickshaw.

11. The petitioner/Accused has not denied the fact that he has driven the said bus at the time of occurrence. He has taken a defence before the trial court that since suddenly a small female child has crossed the road, in order to avoid to hit against the said child, he turned his bus on the right side and hence his bus hit against the road median and caused accident. Both the courts below concurrently did not accept the said defence. There is no evidence that a child suddenly crossed the road at the time of occurrence. Hence, this court also rejected the said defence.

12. The learned counsel for the petitioner / Accused has submitted that the Rule 378 of the Tamil Nadu Motor Vehicles Rules insists that the inspection report of the motor vehicles involved in accident shall be in Form AIR but in this case, the PW6 (MVI) has not submitted his inspection report in the prescribed form. He further submitted that the PW6 has admitted in his cross examination that he has not tested the bus by riding the same and hence his report cannot be accepted.

13. It is not the case of the accused that the occurrence took place due to the mechanical defect in the bus. On the contrary, during cross examination of PW1, it was suggested that suddenly a child crossed the road and hence the accused applied brake and turned the bus, but the bus pulled towards right side and caused accident. So, it is clear that there was no mechanical defect in the said bus at the time of occurrence. Further, the petitioner/accused has not shown how he was prejudiced for not giving the report by the MVI in the prescribed Form. Unless he has shown any prejudice, merely because MVI's report was not given in the prescribed Format, the case of the prosecution cannot be thrown out.

14. Further, the evidence of MVI is an opinion based one. When the unshaken evidence of the eye witnesses/injured witnesses is available before the court, much importance need



not be given to the MVI's report.

15. Both the courts below, taking into consideration of all the materials available before the court, concurrently found that the prosecution has proved the case beyond reasonable doubts. This court, does not find any illegality, irregularity, perversity or infirmity on the findings of the courts below. Accordingly, the conviction recorded by the trial court as confirmed by the appellate court is confirmed.

16. The learned counsel for the petitioner relying on the decision of the Hon'ble Supreme Court in State through Central Bureau of Investigation, Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla and another (2015) 13 SCC 444 has submitted that as per Section 361 of Cr.PC, the trial court must consider the provisions of Section 360 of Cr.P.C and the provisions of the probation of offenders Act and when it is not possible to release a convict on probation, the trial court must record its special reasons, but in this case, the trial court has not recorded its reasons for not giving relief under the provisions of Section 360 of Cr.PC under the provisions of the probation of offenders Act and therefore he prayed to release the petitioner under the probation of offenders Act.

17. In the same decision, particularly in respect of the offence punishable under Section 304-A of IPC, in para-22, the Hon'ble Supreme has observed as follows:-

"22. It does appear that depending upon the facts of each case, causing death by what appears (but is not) to be a rash or negligent act may amount to an offence punishable under Part II of Section 304 of the IPC, not warranting the release of the convict under probation. There may also be situations where an offence is punishable under Section 304-A of the IPC in an accident "where mens rea remains absent" and refusal to release a convict on probation in such a case may be too harsh an approach to take. An absolute principle of law cannot be laid down that in no case falling under Section 304-A of the IPC should a convict be released on probation. This is certainly not to say that in all cases falling under Section 304-A of the IPC, the convict must be released on probation - it is only that the principles laid down in Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act should not be disregarded but should be followed and an appropriate decision, depending on the facts of the case, be taken in each case."



18. From the aforesaid decision, it is clear that the Hon'ble Supreme Court did not say that in all cases falling under Section 304 -A of IPC, the convict must be released on probation. It is only that the principles laid down in Sections 360 and 361 of the Cr.PC and the probation of offenders Act should not be disregarded but should be followed and an appropriate decision depending on the facts of the case, be taken in each case.

19. In this case, the incident happened within the city limit. The rough sketch (Ex.P19) prepared by the Investigating Officer shows that in the place of occurrence so many shops are situated and hence, the need to be greatly circumspect while driving motor vehicles. The petitioner being a professional driver, he should have driven the Motor Vehicle at most care and caution. But, the evidence on the record would show that the petitioner has driven the bus in a rash and negligent manner and crossed the road median and went to the other side of the road and dashed against an Auto rickshaw which was coming in the right direction and right side and also hit against tricycles which were parked under a tree and caused death to two persons and caused grievous hurts to two persons and simple hurts to two persons and also caused damages to tricycles. Hence, this court is of the view that the petitioner is not entitled to the benefits of either Section 360 of Cr.PC or of the provisions of the probation of offenders Act.

20. In the result, the judgment of conviction passed by the trial court as confirmed by the Appellate court is confirmed. However, the sentence of one year simple imprisonment awarded by the trial court as confirmed by the Appellate Court for the offence under Section 304-A IPC for each Count is modified from one year to six months simple imprisonment for each count. The said sentences shall run concurrently. In so far as the fines imposed by the trial court as confirmed by the Appellate Court in respect of other offences are concerned are confirmed by this court. The trial court is directed to take steps to secure the accused and send him to jail to undergo the remaining period of sentence ,if any.

21. This Criminal Revision Petition is partly allowed by modifying the sentence to the extent indicated above.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv



To

1. The VI Metropolitan Magistrate, Egmore,
Chennai 600 008.

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Pre-delivery Order made in
CRL.RC.No.581 of 2016

MR (CO)
KKV/09/07/2020