

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 08.12.2020
Pronounced On: 17.12.2020

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl. R.C.No.88 of 2018

Sankar

.. Petitioner

Vs.

State Rep by
The Sub Inspector of Police,
C2 Elephant Gate Police Station,
(Traffic Investigation
Chennai.
(Cr. No.26/C3/2013)

.. Respondent

Prayer: This Criminal Revision petition is filed to set aside the conviction and sentence the Judgment in Crl.A.No.32 of 2016 dated 14.12.2017 on the file of the VII Additional Sessions Judge at Chennai, confirming the Judgment of III Metropolitan Magistrate at George Town, Chennai in C.C.No.1053 of 2013 dated 06.01.2016 and acquit them from all the charges.

For Petitioner : Mr.S. Madhusudanan
For Respondent : Mr. K. Madhan
Government Advocate(Crl side)

ORDER

This Criminal Revision petition is filed against the Judgment passed by the learned VII Additional Sessions Judge, Chennai in Criminal Appeal No.32 of 2016 on 14.12.2017 confirming the Judgment passed by the learned III Metropolitan Magistrate, George Town, Chennai in C.C.No.1053 of 2013 on 06.01.2016.

2. The respondent police has laid a final report against the petitioner alleging that on 22.01.2013 at about 19:30 hours, the accused/petitioner had driven a van bearing Registration No:TN-AC-0619 in E.V. Ramasamy Salai from East to West in a rash and negligent manner and dashed the two wheeler/motor cycle bearing No. TN-04-M-1454, which was going in front of him, from behind in front of Everest Hotel and was responsible for the accident. In the course of the same accident, the petitioner had also hit an 70 year old unknown male person and caused death. The rider and pillion rider of the Motor cyclist Sundaram and his wife Pradeepa suffered simple injuries. Therefore, the petitioner is liable to be prosecuted for the commission of offences U/s 304(A), 337(2 counts) of I.P.C and Section 184 of Motor Vehicles act.

3. After completing the procedural formalities of furnishing copies and questioning the accused, the trial was commenced. The prosecution had examined P.Ws.1 to 13 witnesses and marked Exs.P.1 to P.4 documents. The sum and substance of the case of the prosecution had seen from the evidence of the prosecution witnesses in brief is as follows:

4. On 22.01.2013 P.W.1 was driving his two wheeler and was going in E.V. Ramasamy Salai from east to west direction, as the wife was travelling with him in the pillion, when he as going in front of Everest Hotel, the van had come from behind in a rash and negligent manner and hit his motor cycle. As a result he and his wife fell down and suffered injuries. The van had also hit an old man. He saw the van and the van driver. The Van No is TN-09-AC-0619, the injured were taken to Kilpauk Medical Hospital hospital, he gave Ex.P1 complaint and he learnt that the old man died on 27.01.2013. P.W.2 is the wife of P.W.1 and she corroborated the evidence of P.W.1, with regard to the manner in which the accident had happened.

5. P.W.3 another eyewitness was sitting with the accused in the van would state that at the time of the accident, the two wheeler rider had hit an

old man and applied sudden brake. He would also state that the van hit the bike consequently, the bike hit the old man.

6. P.W.12 was working as Inspector of Kasimedu Traffic Wing on the date of the accident. On receiving the intimation with regard the accident, she visited the accident place and then got the complaint from P.W.1 and Registered Ex.P.10 F.I.R.

7. P.W.5 Doctor has spoken about treating an 70 year old unidentified male. The injured was in an unconscious state of mind. He had cut injury in his right and left leg with a fracture in the right leg. The Accident Register copy is Ex.P.3.

8. P.W.6 Senthil Kumar spoken about the head injury found on the old man to the police, the treatment given to him and his death on 27.01.2003 inspite of the treatment he intimated the death to the police. The death certificate is Ex.P.4

9. P.W.7 conducted the post mortem in the body of the deceased/ unidentified old man and given Ex.P.9/post mortem certificate.

10. P.W.10 spoken about the injuries suffered by P.Ws 1 and 2 and found that the injuries suffered by them are simple injuries and given Exs.P.5, 7 and P.8 Accident copy Register.

11. P.W. 9 Motor Vehicle Inspector Grade I inspected the Van bearing Registration No: TN-09-Ac-0619 and stated that front portion of the Radiator cover was damaged. He was of the opinion the accident was not happened due to mechanical defect. His certificate is Ex.P.6

12. P.W.11 Motor Vehicle Inspector Grade II inspected the Motor cycle bearing Registration No: TN-04-N-1454 Motor cycle and found that the rear mud guard was found bent and head light was found broken. He was of the opinion that the accident was not happened due to mechanical defect. His Certificate his Ex.P.9.

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13. P.W.8 stated that the vehicle No: TN-09-AC-0619 belongs to their concern and this vehicle was driven by the accused and handed over the documents and accused to the police. In continuation of investigation P.W.11 recorded the statement of witnesses, acquitted the accused and released him

on bail and placed the records for further investigation taken up by the Inspector.

14. P.W.13 Inspector of police conducted further investigation and altered the Section and filed alteration report conducted inquest and prepared Ex.P15/inquest report. Examined the witnesses and completing the investigation, filed a final report.

16. On considering the oral and documentary evidence produced before the Trial Court, the learned Judicial Magistrate found the petitioner/accused found guilty Under Section 304 A, 337(2) counts of I.P.C and Section 184 of Motor Vehicle Act and imposed a sentence of Rigorous imprisonment for 1 year U/S 304(A) of I.P.C and a fine of Rs.5,000/- in default to pay the fine to undergo 1 month simple imprisonment, 3 months rigorous imprisonment each for the offences U/s 337 (2counts) of I.P.C and to pay a fine of Rs.1,000/- U/s 184 of Motor Vehicles Act, in default to pay a fine and to undergo 2 weeks simple imprisonment.

17. The petitioner aggrieved against the conviction and sentence preferred an appeal in Criminal Appeal No.32 of 2016 on the file of the VII

Additional Sessions Judge, Chennai. The learned sessions Judge found no reason to interfere with the Judgment of conviction and sentence of the Lower Court and confirmed the Judgment of the Lower Court. Therefore, the petitioner is before us by way of this Revision petition.

18. The point for consideration in this Revision petition is whether the Lower Courts has failed to appreciate the facts and wrongly convicted the petitioner and imposed sentence as alleged by the petitioner in the grounds of Revision and in the course of his argument.

19. The learned counsel for the petitioner submitted that P.W.1 who is riding the two wheeler bearing Registration No:TN-04-1544 was alone responsible for the accident. P.W.1 had no driving licence at the time of the accident. Without knowing how to drive the two wheeler, she suddenly applied the brake and that resulted in the petitioner hitting the two wheeler. It is seen from the evidence of P.W.4 that P.W.1 was responsible for the accident, suddenly applying the brake, in the process van hit his two wheeler from the behind and in turn the two wheeler hit the old man and the old man fell on the van. In other words it is submitted by the learned counsel for the petitioner that the old man crossed the road, two wheeler rider applied sudden

brake to avoid hitting an old man which resulted in the van hitting the two wheeler.

20. It is also submitted by the learned counsel for the petitioner that there is contradiction in the evidence of P.Ws.1 and 2 with regard to the identification of the petitioner that P.W.1 stated that the petitioner was present at the spot and he had seen him . P.W.2 stated that she did not notice the petitioner and he had run flew from the scene of occurrence.

21. However, it is submitted that there is no corroborative piece of evidence from independent eyewitness to prove that the accused/ petitioner was alone responsible for the accident with his rash and negligent driving. However, without considering these aspects the Trial Court has wrongly convicted and sentenced the accused/petitioner. Therefore, the learned counsel for the petitioner prayed for setting aside the Judgment of the Lower Courts by allowing this petition and acquitting the petitioner.

22. In response to the submissions made by the learned counsel for the petitioner, the learned additional public prosecutor submitted that P.W.4 travelling with the petitioner and was the close associate to him. Therefore,

his evidence with regard to the accident cannot be believed. The case of the prosecution clearly established by the prosecution through the evidence of P.Ws. 1 and 2 and other material evidence produced in this case.

23. It is seen from the report of the Motor vehicle Inspector that front portion of the van and brake portion of the two wheeler got damaged in the accident. Suggesting that the van had alone hit the two wheeler from behind, the petitioner had driven the vehicle cautiously with a controlled speed. Certainly, he would have avoided the accident. The fact that he had dashed not only hit against the two wheeler, but also an old man shows that the person was driving the van in an very rash and negligent manner and was primarily responsible for the accident. Therefore, the learned additional public prosecutor prays for confirming the Judgment of the Courts below and the dismissal of this petition.

24. Considering the rival submissions and perused the oral documents available in this case. It is seen from the evidence of P.Ws. 1,2 and 4 that even the accused has not disputed the accident, the only dispute was the manner in which the accident has happened.

25. On the other hand the petitioner claims that P.W.1 was responsible for the accident by applying the sudden brake. There is no dispute with regard to the fact, the van bearing No: TN-09-AC-0619 was driven by the petitioner at the time of the accident, that was confirmed by the evidence of P.Ws.8,9 and Ex.P.6.

26. Ex.P.5/post mortem report reveals that the deceased unidentified male aged 70 years had injuries found on the post mortem certificate and he died of head injuries. Similarly it is seen from Exs.P.7 and P.8 that P.Ws 1 and 2 suffered simple injuries. Exs.P.11 rough sketch gives a clear indication of the scene of crime, it shows that the width of road on the southern side is 15 meters. The accident had happened at 2 meters from the platform on the southern side. It is clear that lot of space available to negotiate the vehicle going in front of the vehicle. The petitioner had not only hit the two wheeler but also hit the old man.

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27. The prima facie establishes the fact the petitioner was driving the van in an rash and negligent manner and without being able to control, hit the two wheeler and then the old man and he driven the van in an uncontrollable speed and cautiously, certainly the accident would have been avoided, more

certainly the death of the old man would have been avoided. The petitioner act spoke for itself, he was driving the van in rash and negligent manner and prima facie was established in this case. Assuming without admitting the case of the petitioner P.W.1 was responsible for the accident by applying sudden brake, had the petitioner driven the van cautiously he would have avoided the accident, but, that was not happened. It can established clearly that the petitioner was driving the two wheeler in a rash and negligent manner and was solely responsible for the accident.

28. Both the Trial Court and the appellate Court had appreciated the evidences rightly in proper manner and came to the right conclusion by convicting the petitioner U/s 304 A, 337 (2 counts) of I.P.C and Section 184 of Motor Vehicle Act and imposed sentence. However, considering the fact that this case is of the year 2013 and we are now of the year 2020 and the petitioner has been escaping this case for all these years. I am of the considered view, that the sentence imposed U/s 304 of I.P.C for one year Rigorous imprisonment can be modified into sentence of simple imprisonment of 3 years and for the offence U/s 337 (2 counts of I.P.C) sentencing him to **undergo 3 months rigorous imprisonment for each count is modified as 3 months simple imprisonment.** In other aspects the Judgment of the Court

below is confirmed.

29. In the result, this Criminal Revision Petition is allowed in part. The sentence imposed U/s 304 (A) of I.P.C, sentencing him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month simple imprisonment **is modified into the sentence of simple imprisonment for 3 years simple imprisonment** and the fine amount of Rs.5,000/- in default to undergo one month simple imprisonment is maintained and convicting him for the offence U/s 337 (2 counts of I.P.C) and sentencing him **to undergo 3 months rigorous imprisonment for each count is modified as 3 months simple imprisonment** and convicting him for the offence U/s 184 of Motor vehicles Act and imposing a fine of Rs.1,000/- in default to undergo 2 weeks simple imprisonment is maintained.

सत्यमेव जयते

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To

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Index : Yes /No

Internet : Yes/No

Speaking order/ Non Speaking order

To

The learned II Additional District and Sessions Judge, Chidambaram



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G.CHANDRASEKHARAN

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