

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl.R.C.No.367 of 2014

Mohandoss

...Petitioner/Accused

Vs.

State rep.by its
The Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.
(Crime No.619/2007)

...Respondent/Complainant

Prayer: Criminal Revision petition has been filed under Section 397(1) & 401 of Cr.P.C to acquit the petitioner in the conviction of sentence and fine imposed thereon in C.C.No.35 of 2010 dated 25.10.2012 on the file of the Judicial Magistrate Court No.1, Nagapattinam and confirmed by the District and Sessions Court, Nagapattinam in Crl.Appeal No.58 /2012 dated 26.02.2014.

For Petitioner : Mr.K.M.Subrahmanian

For Respondent : Ms.S.Thankira
Govt. Advocate (Criminal side)

O R D E R

The Revision petitioner was convicted for the offences punishable under Section 279 IPC and sentenced to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for two weeks ; under Section 337 IPC and sentenced to undergo simple imprisonment for three months and under Section 304 -A IPC and sentenced to undergo simple imprisonment for six months, by the Judicial Magistrate No.I, Nagapattinam, by judgment dated 25.10.2012 in C.C.No.35 of 2010. Impugning the conviction and sentence imposed on him by the Judicial Magistrate, Nagapattinam, as abovestated, the revision petitioner preferred the criminal appeal No.58 of 2012 on the file of the District and Sessions Court, Nagapattinam and the District and Sessions Court, Nagapattinam, by judgment dated 26.02.2014 confirmed the conviction and sentence imposed on the revision petitioner by

the trial Court and consequently, dismissed the abovesaid appeal preferred by him. Challenging the same, the present revision petition has been preferred by the petitioner.

2.Shorn of unnecessary details, the case put forth against the revision petitioner is that on 25.09.2007 at 2.45 p.m near Agarakadambanur Bus stop, the revision petitioner/accused drove his lorry bearing Registration No.TN 51 4015 rashly and negligently with high speed and collided with a motor cycle bearing registration No.TN 51 C 3628 driven by one Saravanan with defacto-complainant Dilip on the pillion seat heading from east to west in the opposite direction and thereby, caused grievous injury to Saravanan on his head, face and cheeks, resulting in his death and caused simple injury to Dilip and thus, the accused had committed the offences punishable under Sections 279, 337 and 304(A) IPC.

3.To sustain the prosecution case, PWs 1 to 13 were examined and Exs.P1 to 11 were marked. No MO has been marked. On the side of the accused, he had examined himself as DW1 and no documentary evidence has been adduced. No MO has been marked.

4.On the conclusion of the prosecution evidence, the accused was examined with reference to the incriminating evidence tendered against him by the prosecution witnesses and the accused had denied the same. It is mainly put forth by the accused that the Lorry, which he was driving, was not responsible for the accident in question and according to him, the tanker lorry, which was passing the road at the time of the accident, is responsible for the accident and therefore, according to him, he has not committed the offences put forth against him.

5.The Courts below, based on the appreciation of the materials placed on record, both oral and documentary, had held that the revision petitioner/accused has committed the offences put forth against him and accordingly, sentenced him.

6.On an appreciation of the evidence adduced by the witnesses examined on the side of the prosecution, as assessed and determined by the Courts below, it is found that the defacto-complainant Dilip and Veeramani (PW6) are found to be the eye witnesses. PW1, in his evidence, has clearly deposed that on the date of the accident, while his friend Saravanan was riding the motorcycle and he being seated on the pillion seat, according to him, the Lorry driven by the accused came from the opposite direction at a high speed in a rash and negligent manner and hit the motorcycle, resultantly, he fell into a pond and he became unconscious and he has specifically deposed that it is only the Lorry, which belongs to M.N Transport which had

been driven by the driver rashly and negligently, had caused the accident. Despite the cross examination, as held by the Courts below, nothing has been culled out from PW1 to discredit his evidence with reference to the nature of the accident as spoken to by him. PW6, the another eye witness, has also deposed that while he was standing near the shop of PW3, he saw a motorcycle heading from the eastern direction and M.N.Transport Lorry heading from the western direction had collided with each other and the motorcycle rider was grievously injured and other person seated on pillion seat sustained simple injurious and further, he deposed that it is only the M.N transport Lorry, which is the cause for the accident. At this juncture, it is to be noted that PW6's evidence remains unchallenged and the accused had not taken steps to cross examine him and therefore, as rightly held by the Courts below, based on the evidence of PWs1 and 6 impeachable evidence, the prosecution has established that the accident in question was only due to the accused and he is responsible for causing the accident on account of rash and negligent driving.

7.It is mainly contended by the accused counsel that the accused, while driving the Lorry from west to east, gave way to a tanker lorry heading in the opposite direction and the motorcyclist had mistaken that the accused was siding for him, had proceeded further and collided with the tanker lorry and therefore, according to the accused, he is not responsible for causing the accident and the accident had occurred only due to rash and negligent driving of the motorcyclist. In support of his abovesaid defence version, he would rely upon the evidence of PWs2 and 3 and contended that they had noted the presence of the tanker lorry in the place of occurrence and therefore, according to him, on that premises, the Courts below should have held that it is only the tanker lorry, which is solely responsible for the accident. However, as held by the Courts below, even though Pws2 & 3 had deposed about the presence of the tanker lorry at the place of occurrence, however, from the evidence of Pws2 & 3, it is found that they had only heard about the accident and not directly witnessed the same and in such view of the matter, on the mere presence of the tanker lorry at the place of occurrence, would not by itself lead to the conclusion that the tanker lorry was responsible for the accident and not the accused by driving his lorry. As above pointed out, PWs1 & 6 have clearly deposed that it is only the accused, who had caused the accident by driving the lorry in a rash and negligent manner.

8.Though the accused has examined himself as DW1, however, during the course of cross examination, as held by the Courts below, he was unable to furnish any particulars about the said tanker lorry, which is alleged to be the cause for the accident

and in such view of the matter, the defence version that the tanker lorry was responsible for the accident, as such, cannot be believed and had been rightly rejected by the Courts below.

9.It is also contended by the accused counsel that the motorcyclist had driven the vehicle in a careless manner and he is responsible for the accident and further, it is also stated that the motorcyclist was not having pucca driving licence and therefore, the abovesaid factors should be held against him.

10.However, considering the evidence available on record, when it is seen that it is only the accused, who had driven the lorry in a rash and negligent manner, in such view of the matter, without any basis, it cannot be held that the motorcyclist was the cause for the accident. Further, merely because, the motorcyclist was not possessed of the driving licence, it cannot be held that the accident had occurred only due to his rash and negligent driving. As rightly held by the Courts below, the possession or non possession of the driving licence is not a relevant fact to decide the negligence on the part of the deceased.

11.The counsel for the accused lastly relied upon the M.V. Report and contended that considering the damage occasioned to the accused lorry, according to him, the Court should have held that it is only the motorcyclist, who had caused the accident on account of the rash and negligent driving. However, considering the M.V. Inspector's report projected in the matter, when it is seen that the damage to the lorry of the accused was on its right hand side cabin and the damage to the motorcyclist has occasioned in the front portion, accordingly, when it is found that the motorcyclist was driving the vehicle on the left side of the road, the accused had driven the lorry from the opposite direction and he having collided with the motorcyclist due to rash and negligent driving by crossing the road, accordingly, it is found that the damage had caused to the front portion of the motorcyclist and therefore, the report of the M.V. Inspector as held by the Courts below had not supported the defence version.

12.Considering the abovesaid factors in toto, it is found that the courts below had properly assessed and analysed the materials placed on record in the proper perspective and held rightly that it is only the accused, who had been responsible for causing the accident in question on account of the rash and negligent driving and consequent to the accident, the motorcycle rider having sustained death and the pillion seat rider having sustained injuries, in all, the courts below are found to be justified in convicting and sentencing the accused under Sections 279, 337 and 304-A IPC. No valid reason is projected warranting any interference with the abovesaid determination of

the courts below.

13.In conclusion, the criminal appeal fails and the same is dismissed. The trial Court is directed to secure the presence of the accused and commit him to prison to undergo sentence imposed on him as per law, if he has not complied with the sentence.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.
(Crime No.619/2007)
2. The Judicial Magistrate Court No.1,
Nagapattinam.
3. The District and Sessions Court,
Nagapattinam.

Crl.R.C.No.367 of 2014
and
M.P.No.1 of 2014

RR(CO)
KKV/15/06/2020

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