

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.No.1090 of 2020

CRL.M.P.No.7606 of 2020

Srinivasan

... Petitioner/
Accused

Vs.

State rep.by
Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District.

... Respondent/
Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 & 401 of Criminal Procedure Code to set aside the judgment in C.A.No.132/2018 dated 29.10.2020 of the Principal District and Sessions Judge, Cuddalore, confirming conviction and sentence passed by the Judicial Magistrate No.II, Panruti in C.C.No.10/2013 dated 03.12.2018 and call for the records and acquit the petitioner from all the charges.

For Petitioner : Mr.R.Prasadh

For Respondent : Mr.C.Iyyappa Raj
Additional Government Pleader

O R D E R

This Criminal Revision Petition has been filed to set aside the judgment in C.A.No.132/2018 dated 29.10.2020 of the Principal District and Sessions Judge, Cuddalore, confirming conviction and sentence passed by the Judicial Magistrate No.II, Panruti in C.C.No.10/2013 dated 03.12.2018 and call for the records and acquit the petitioner from all the charges.

2. The petitioner/accused in C.C.No.10/2013 was convicted by the trial Court and imposed a fine of Rs.500/- in default, to undergo simple imprisonment for one week for the offence under Section 279 IPC and convicted and imposed a fine of Rs.500/- in default, to undergo simple imprisonment for one week for the offence under Section 337 of IPC and convicted

and sentenced to undergo simple imprisonment for six months each and to pay a fine of Rs.500/- each, in default, simple imprisonment for one month for the offence under Section 338(3 counts) of IPC and convicted and sentenced to undergo simple imprisonment for two years each under Section 304(A)(2 counts) of IPC. Total fine amount of Rs.2,500/- to be paid by the accused. Thereafter, the petitioner had preferred an appeal before the Sessions Court, Cuddalore. The learned Principal District and Sessions Judge, Cuddalore, by order dated 29.10.2020, dismissed the appeal confirming the sentence of the trial Court, against which, the present revision petition has been filed.

3. The learned counsel for the petitioner and the respondent agreed to take up the revision for final hearing.

4. The gist of the case is that on 10.09.2010, one Karunakaran along with his wife, children, his relatives and one Venkatesan travelled in a Tata Ace Vehicle, for hire bearing Registration No.TN-51-Q-6508, which was driven by one Karunakaran. After completing the work, when they were nearing Chemplastt Company, in Kumbakonam-Chennai Road at Kadampuliyur Road, the bus bearing Registration No.TN-01-N-6640 driven by the accused coming in the opposite direction in a rash and negligent manner, tried to overtake a vehicle in front of him, which resulted in plucking the life of driver Karunakaran and Susseendhiran and caused injuries to the witnesses namely Karunakaran, Venkatesan, Panchavarnam and Thirumurugan. Hence, a case was registered against the petitioner for the offence under Section 279, 337, 338(3 counts) and 304(A)(2 counts) of IPC.

5. During trial, the prosecution had examined P.W.1 to P.W.15 and marked exhibits Ex.P1 to P14. On the side of the defence, no witnesses and no documents were marked. The Trial Court, on examination of witnesses and materials produced, had convicted the petitioner as stated above and the Lower Appellate Court also dismissed the appeal confirming the conviction and sentence of the trial Court.

6. The learned counsel for the petitioner would submit that the TATA Ace Vehicle driven by D1/Karunakaran in a rash and negligent manner, caused accident and it is not by the petitioner. Though it was stated that the petitioner attempted to over take a lorry and caused accident, the said lorry driver was not examined as witnesses. Further, as per Ex.P4, it is mentioned that the bus was on the eastern side of the road and in the rough sketch, it shows that the accident took place on the western side of the road. The Lower Court giving its own explanation that the accident took place at 3.00 a.m., and the police visited the scene of occurrence at 6.30 a.m. and it is possible that the vehicles were removed from the scene of occurrence. Though there are six witnesses cited as eye-witnesses, only four of them were examined namely

P.W.6, P.W.7, P.W.12, P.W.13 and P.W.13 is the conductor of the bus, who travelled along with the petitioner. P.W.7 and P.W.12 are the husband and wife/passenger in TATA Ace Vehicle, their evidences were contrary to each other and P.W.6 is the passenger travelled in the bus. P.W.6, P.W.7 and P.W.12 are the injured witnesses. On the contrary, in their wound certificate, it is clearly mentioned that the TATA ACE Vehicle dashed against the bus and not otherwise. Further, P.W.1, who is the father of deceased Karunakaran, is not an eye-witnesses and P.W.2 to P.W.4 and P.W.8 to P.W.11 are not eye-witnesses. The evidence of P.W.6, P.W.7 and P.W.11, had not given clear statement about how the accident took place. Thus, from the evidence, it cannot be stated that the petitioner had driven the bus in a rash and negligent manner and caused accident. It is to be seen that the petitioner name is not found in the FIR. How P.W.1 came to know about the name of the petitioner is doubtful since the petitioner is a stranger to the place.

7. The learned counsel for the petitioner would submit that the Lower Court and the Lower Appellate Court failed to consider the evidence and materials. On the other hand, the Lower Appellate Court had given its theory extracting the judgment of the Hon'ble Apex Court, which is not relevant to the facts and circumstances of the case and dismissed the appeal. He would further submit that the petitioner had voluntarily paid Rs.75,000/- each to the mother of the deceased Karunakaran and to the mother of Suseendhiran.

8. The learned Additional Public Prosecutor would submit that the petitioner is the driver of the bus, which is proved by the evidence of P.W.13/Conductor of the bus and P.W.1 lodged a complaint to the respondent police about the accident and the accident took place on a National Highway at about 3.00 a.m. P.W.6 is the passenger in the bus, who had clearly stated about the accident. In the Post-Mortem Certificate/Ex.P7 and Ex.P8, it is seen that the death was caused due to the accident. Ex.P9 and Ex.P10 are the Motor Vehicle Report, Ex.P11, Ex.P12, Ex.P13 and Ex.P14 are the wound certificates. On receipt of the complaint, the respondent police visited the scene of occurrence, prepared observation mahazaar, rough sketch, enquired the witnesses present in the scene of occurrence and on receipt of the reports from the Motor Vehicles Inspectors and the Doctors of the Government Hospital, filed the charge sheet before the trial Court.

9. The learned Additional Public Prosecutor would submit that in this case, the Motor Vehicles Inspector and the Doctors were not examined. The rough sketch is not clear about the spot of accident. The Investigating Officer had collected all the documents and filed a final report before the Lower Court. The trial Court, considering all these aspects, had rightly found the petitioner guilty and convicted the petitioner. The Lower Appellate Court found that the

contentions of the petitioner are unsustainable and dismissed the appeal, confirming the conviction and finding of the trial Court.

10. Considering the submission and on perusal of the materials, it is seen that the petitioner is the driver of the lorry which is proved by the conductor of the bus/P.W.13. P.W.6, P.W.7 and P.W.12 are the injured witnesses. From the available evidence, it cannot be conclusively held that the petitioner had driven the bus in a rash and negligent manner. The driver of the lorry, whose lorry is said to have been overtaken and the reason for the accident, is not examined as witnesses. The direction and position of the bus shown in rough sketch is contrary to the oral evidence, and the doctors who treated the injured and conducted post-mortem, were not examined as witnesses in this case. Likewise, the Motor Vehicles Inspector was not examined as witnesses. Exs.P7 to P14 are marked through Investigating Officer. In view of non-examination of Doctors and Motor Vehicles Inspector and failure in marking the documents through the appropriate witnesses, it cannot be conclusively held that the documents are proved and further nothing to show that the petitioner driven the vehicle in a rash and negligent manner and he is the cause for the accident. The prosecution had failed to prove the case beyond any reasonable doubt against the petitioner. Both the Courts' below have not properly appreciated the evidence and materials in a proper and perceptive.

11. In view of the above, this Court is inclined to set aside the judgment in C.A.No.132 of 2018 dated 29.10.2020 of the Principal District and Sessions Judge, Cuddalore, confirming conviction and sentence passed by the Judicial Magistrate No.II, Panruti in C.C.No.10/2013 dated 03.12.2018. Accordingly, the Criminal Revision Petition is allowed. Consequently, connected miscellaneous petition is also closed.

सत्यमेव जयते
sd/-

Assistant Registrar(CS VI)

//True Copy//

WEB COPY
Sub Assistant Registrar

ssb

To

1.The Principal District and Sessions Judge,
Cuddalore.

2.The Judicial Magistrate No.II,
Panruti.

3. The Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District

4. The Public prosecutor,
Highcourt, Madras.

RSI (CO)
SM/19/02/2021

CRL.R.C.No.1090 of 2020



WEB COPY