

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2020

PRONOUNCED ON : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.1117 OF 2020

AND

CRL.M.P.NOS.7736 & 7738 OF 2020

V.Giri,
S/o.Vengi Udaiyar

... Petitioner

Versus

The State rep. by
The Inspector of Police,
Padalam Police Station,
Palladam,
Chengalpattu District.

... Respondent

Prayer:

Criminal Revision Petition filed under Section 397 & 401 of the Code of Criminal Procedure, to call for the records in C.A.No.40 of 2017 dated 21.02.2020 passed by Principal Sessions Court of Kancheepuram at Chengalpattu, confirming the judgment passed by the Judicial Magistrate No.1, Chengalpattu, dated 06.04.2017 made in C.C.No.302 of 2011 and set aside the same.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

The petitioner herein is accused in C.C.No.302 of 2018, on the file of the Judicial Magistrate No.1, Chengalpattu, was convicted by the judgment dated 06.04.2017 for the offence under Section 279, 338 and 304 (A) IPC of the Protection of Children from Sexual Offence Act, 2012. For the offence under Section 279 IPC, the petitioner was sentenced to undergo 6 months Rigorous Imprisonment and imposed with a fine of Rs.1,000/- and in default to undergo another one week Simple Imprisonment. For the offence under Section 338 IPC the petitioner was sentenced to undergo Two years Rigorous Imprisonment and to pay a fine of

Rs.1,000/- and in default to undergo one week Simple Imprisonment. For the offence under Section 304 (A) IPC, the petitioner was sentenced to undergo Two years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo one week Simple Imprisonment and further ordered to run the sentence concurrently. Against which the petitioner filed an appeal in C.A.No.40 of 2017 before the Principal Sessions Judge, Kancheepuram at Chengalpattu. The Principal Sessions Judge, Kancheepuram, Chengalpattu by its judgment dated 21.02.2020, dismissed the same confirming the judgment dated 06.04.2017 made in C.C.No.302 of 2018, on the file of the Judicial Magistrate No.1, Chengalpattu. Aggrieved over the same, the present Criminal Revision filed along with a petition for suspension of sentence.

2.The learned counsel for the petitioner as well as the learned Government Advocate (Crl.Side) for the respondent agreed for the revision to be taken up for the final hearing. Hence the Revision itself taken up for final disposal.

3.The case of the prosecution is that the petitioner is a driver in the State Transport Corporation. On 01.06.2011, between 12.30 a.m. to 01.00 a.m., the petitioner was driving the bus bearing No. TN 25 N 0056 which was proceeding from Chennai to Thiruvannamalai. While the bus was passing near Mamandur bus stop near Chengalpattu, attempted to overtake a lorry bearing No. TN.41 J 1266 which was coming from Orissa to Pollachi and dashed on the rear right side of the lorry and stopped the vehicle near the centre median. P.W.1, driver of the lorry got down and found that the left side of the bus got damaged. The conductor of the bus died on the spot. P.W.2, Mohan sustained injuries on his left hand and left leg and some more passenger sustained injuries. Thereafter the injured and the deceased were taken to Government Hospital, Chengalpattu. P.W.2 is the one of the injured passenger who travelled in the bus. P.W.6 is the Sub-Inspector of Police, who registered a case in Crime No.299 of 2011 for the offence under Sections 279, 337 and 304 (A) IPC and the complaint has been marked as Ex.P1. F.I.R. is marked as Ex.P3. Thereafter, P.W.6 visited the scene of occurrence, prepared observation mahazar and rough sketch/Ex.P4 and Ex.P5. P.W.7, Inspector of Police took up the investigation, visited the scene of occurrence, examined the witness viz., Motor Vehicle Inspector, Govindasamy produced the reports/Ex.P7 and Ex.P8. Ex.P7 is the Motor Vehicle report for the lorry and Ex.P8 is the Motor Vehicle report for the bus. Further he examined one Manoharan, Controller from the State Transport Corporation and marked Ex.P9/duty certificate. P.W.8, Investigating Officer took up further investigation, examined one Vimala/Doctor who treated P.W.2 and produced Accident Register/Ex.P10. The wound certificate issued from S.V.Hospital Ambattur were marked as

Ex.P11 and Ex.P12. From the wound certificate, it is seen that P.W.2 sustained grievous injury. Hence, Section altered to offences under Section 279, 338, 304 IPC and filed alteration report/Ex.P13 and charge sheet.

4.During Trial, P.W.1 to P.W.8 were examined and Ex.P1 to Ex.P13 were marked on the prosecution side. The defence not examined any witness and marked any document. On conclusion of the Trial, the Trial Court convicted the petitioner as stated above.

5.The petitioner preferred an appeal before the Sessions Court, the Sessions Court dismissed the appeal confirming the conviction and sentence of the petitioner.

6.The contention of the learned counsel for the petitioner is that P.W.1 is the driver who driven the lorry which was involved in the accident. The accident took place on the right rear side of the lorry. Hence, P.W.1 cannot see the manner in which the accident occurred. Further submitted that the accident occurred in a four lane National Highway. The accident occurred due to the negligence of the P.W.1 who turned to the right side suddenly without signaling. To escape from his negligence and liability, P.W.1 had spoken against the petitioner. Further, P.W.1 in his evidence has not stated how accident took place except stating that the lorry was hit on the right rear side. P.W.2 is the passenger who travelled in the bus. Evidence of this witness is that he sustained fracture in his right hand and leg due to the accident. Other than that he does not stated about the manner in which the accident occurred. The evidence of P.W.2 and P.W.4 who are the brothers of the deceased Srinivasan is in the nature of hearsay. They are not the eye witness.

7.P.W.5 is the Doctor who conducted postmortem and filed a report Ex.P5.P.W.6 is the Sub-Inspector of Police who registered the complaint of P.W.1. P.W.7 and P.W.8 are the Investigating Officers. It is to be seen that P.W.7 admits that he examined one Govindasamy/Motor Vehicle Inspector and from him he received Ex.P7 and Ex.P8/Motor vehicle reports. No reason given as to why the said Motor Vehicle Inspector was not examined in this case. The Motor Vehicle Inspector ought to have been examined to prove that the accident occurred due to rash and negligence of the petitioner/driver of the bus. Further, it is to be seen that in this case the rear windscreen and rear bumper of the bus got damaged and no explanation given for the damage of windscreen and bumper of the bus. There may be yet another vehicle hit from the back side of the bus which could have caused the accident. P.W.6 and P.W.7, Investigating officer were unable to give any reason for the cause of this damage. P.W.8, Investigating Officer produced Ex.P10/Accident Register, Ex.P11

and Ex.P12/Wound certificate of P.W.2. Ex.P10 issued by one Vimala/Doctor and the said Dr.Vimala was not examined as witness. Likewise no witness have been examined from S.V. Hospital, Ambattur.

8.The Lower Court convicted the petitioner merely on the surmises and conjecture put forth on the petitioner. In this case, there is no iota of evidence to show that the petitioner driven the vehicle in rash and negligent manner and he is the reason and cause for the accident. The Lower Appellate Court simply dismissed the appeal without considering all these aspects. The prosecution has not proved the case beyond the reasonable doubts and the petitioner convicted only on surmises and conjecture. Further without prejudice to his contention on merits, the petitioner has come forward and paid Rs.75,000/- to the legal heir of the deceased Srinivasan viz., S.Muthamizh and Shanmugasundaram. The copy of Demand Draft has been produced and same has been handedover to the respondent Police, who had handed over to them.

9.The Government Advocate submitted that the accident took place on 01.06.2011 during the night hours between 12.30 a.m to 01.00 a.m. The petitioner is the driver of the bus bearing Registration No.TN 25 N 0056 which was proceedings from Chennai to Chengalpattu. P.W.1 is the driver of the lorry bearing Registration No.TN 41 J 1266 which was proceeding towards Pollachi. While overtaking the lorry, the petitioner bus dashed on the rear right side of the lorry and hit on the centre median. Due to the same the conductor of the bus died on the spot. P.W.2 is one of the passenger seriously injured, other passenger also sustained injuries due to the accident. Thereafter, the conductor and the passengers were taken to Government Hospital, Chengalpattu. P.W.2 sustained grievous injury and he got himself admitted in S.V. Hospital, Ambattur. P.W.1 lodged a complaint to the Sub-Inspector of Police and F.I.R came to be registered. Thereafter, she visited the scene of occurrence, prepared Observation Mahazar and Rough sketch and handedover to P.W.7, Investigating Officer who took up the further investigation, visited scene of occurrence examined the witnesses including Motor Vehicle Inspector, Govindasamy and one Manoharan Controller of the Transport Corporation and obtained Ex.P7 to Ex.P9, Motor vehicle inspection report and duty certificate of the petitioner. Thereafter, P.W.8 took up the further investigation, collected the documents Ex.P10 to Ex.P12, accident register and wound certificate of P.W.2.

10.He further submitted that the petitioner is the driver of the bus and the accident took place near Manandur bus stop. While attempting to overtake the lorry, the driver of the bus hit rear right side of the lorry thereby caused accident,

instantaneous death to the conductor and injuries to P.W.2 and other passengers. P.W.5 is the Doctor who conducted postmortem stated that "The deceased would appear to have died of shock due to Multiple Injuries". Thus the prosecution proved by cogent evidence. The petitioner is a cause of accident due to which the conductor died and the passengers sustained injuries. The Trial Court considering the evidence and materials produced rightly convicted the petitioner which was confirmed by the Lower Appellate Court.

11. Considering the rival submissions and on perusal of the materials, it is seen that it is not in dispute that the petitioner is the driver of the bus bearing No.TN 25 N 0056 which was proceedings from Chennai to Thiruvannamalai near Manandur bus stop. While attempting to overtake the lorry, the bus dashed against the lorry on the right rear side causing the accident. Admittedly in this case P.W.1 is the driver of the lorry who has not seen that the accident only felt the accident which took place in the rear side of the vehicle. P.W.2, passenger who traveled in the bus stated that he sustained injuries and nothing more. It is seen that the rear windscreen and bumper of the bus got damage no reason given and no investigation has been conducted as to whether any other vehicle dashed behind the bus which caused the damaged at the rear side of the bus. P.W.7 and P.W.8/Investigating Officer have not given any explanation for the same. Admittedly, in this case, the Motor Vehicle Inspector, Govindasamy who issued Ex.P7 and Ex.P8 were not examined and Manoharan, Controller of the State Transport Corporation who had given duty certificate/Ex.P9 is also not examined. Ex.P10, is the Accident register of P.W.2 but no witness from the S.V. Hospital, Ambattur was examined. Further in this case no x-ray has been produced. Ex.P4 and Ex.P5, the Observation Mahazar and Rough Sketch have been marked through P.W.6, Sub-Inspector of Police and no independent witness examined.

12. Thus, it is seen that documents Ex.P4 to Ex.P9 have not been marked and produced in the manner known to law. No witness have stated that driver of the bus driven the bus in a rash and negligent manner and he is the reason for the accident. The Trial Court as well as the Lower Appellate Court convicted the petitioner on the denial suggestion put to P.W.1 and P.W.2 and nothing more. In view of the same, this Court finds that the judgment of the Trial Court as well as the Lower Appellate Court is perverse and unsustainable in law. Finding that the prosecution has not been proved case beyond the reasonable doubt, this Court is inclined to allow the Criminal Revision Case and acquit the petitioner from all his charges.

13.In view of the above, the judgment dated 06.04.2017 made in C.C.No.302 of 2011 by the Judicial Magistrate No.I, Chengalpattu, confirmed by the Principal Sessions Court of Kancheepuram, Chengalpattu by its judgment dated 21.02.2020 made in C.A.No.40 of 2017 is hereby set aside and the Criminal Revision Case is allowed. Consequently, connected miscellaneous petitions are closed. It is made clear that this deposit made is only on humanitarian consideration.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Sessions Judge,
Kancheepuram, Chengalpattu.
2. The Judicial Magistrate No.I,
Chengalpattu.
3. The Inspector of Police,
Padalam Police Station,
Palladam,
Chengalpattu District.
4. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.B.Jawahar, Advocate, S.R.No.43063 & 43083

CrI.R.C.No.1117 of 2020
and CrI.M.P.Nos.7736 and 7738 of 2020

SR II (CO)
CS/19/01/2021

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