

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1118 of 2020 and
Crl.M.P.Nos.7741 & 7742 of 2020

N.Kinnaskandan ... Petitioner

Vs.

State represented by,
Inspector of Police,
Bungalowpudur Police Station,
Gobichettipalayam, Erode District.
Cr.No.149/2014.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the conviction imposed in the judgment dated 01.10.2020 made in C.A.No.45 of 2020 on the file of the IIIrd Additional District and Sessions Judge, Gobichettipalayam confirming the conviction imposed the judgment dated 17.12.2019 made in C.C.No.36 of 2015 on the file of the Judicial Magistrate No.I, Gobichettipalayam and the same was confirmed in the by allowing this criminal revision petition.

For Petitioner : Mr.J.Ranjith Kumar

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

By consent of both the learned counsel for the petitioner and the learned

Additional Public Prosecutor, the revision has been taken up for final disposal

at this stage.

2.This Criminal Revision has been filed to set aside the impugned judgment, dated 01.10.2020, in C.A.No.45 of 2020 passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam, confirming the conviction and sentence imposed in judgment, dated 17.12.2019, in C.C.No.36 of 2015 passed by the learned Judicial Magistrate No.I, Gobichettipalayam.

3.The conviction and sentence imposed on the petitioner by the learned Judicial Magistrate No.I, Gobichettipalayam in C.C.No.36 of 2015 is as follows:-

- For offence under Section 279 IPC, the petitioner to pay a fine of Rs.1,000/-, in default, to undergo one week Simple Imprisonment.
- For offence under Section 337 IPC, the petitioner to pay a fine of Rs.500/-, in default, to undergo one week Simple Imprisonment.
- For offence under Section 338 IPC, the petitioner to pay a fine of Rs.1,000/-, in default, to undergo one week Simple Imprisonment.
- For offence under Section 304(A) IPC, the petitioner to undergo one year Rigorous Imprisonment.

4.The case of the prosecution is that on 05.06.2014, at about 08.30 p.m., in Sathy-Athani main road near Arrakankottai bus stop, the motor bike viz.,

Hero Pro TN 36 AB 0992 was driven by the petitioner with pillion Karuppusamy from east-west direction in rash and negligent manner. On the opposite side, PW1-Ranjith Kumar driven the motor bike FZS TN 66 K 6039 with pillion Prakash (deceased). Due to rash and negligence driving of the petitioner, the bike dashed against the bike driven by PW1 and caused accident. All the four fell down on the road. PW1 sustained simple injuries, his pillion rider sustained serious injuries. The petitioner sustained serious injuries as well his pillion Karuppusamy. All the injured were sent to the Government Hospital, Sathy and from there, information was sent to PW7, the Sub Inspector of Police. PW7 received the complaint [Ex.P1], registered an FIR [Ex.P3] in Crime No.149 of 2014, for offence under Section 279 and 337 IPC. On getting information of death of Prakash, pillion of PW1, the offence altered to Section 279, 337 and 304(A) IPC. Thereafter, the investigation was taken over by Muthuswamy, who visited the scene of occurrence, prepared Observation Mahazar [Ex.P2], Rough Sketch [Ex.P5], conducted inquest on the body of the deceased Prakash. PW8 took up the investigation produced both the vehicle before the Motor Vehicle Inspector for examination, received Motor Vehicle Reports [Exs.P8 & P9], examined the Doctors, obtained Accident Register, Wound Certificates and Postmortem Certificates [Exs.P6,

P10 to P16] and on completion of investigation, charge sheet came to be filed before the Court below.

5. During trial, the prosecution examined 8 witnesses and marked 16 documents. On the side of the defence, no witnesses were examined and no document was marked. On appreciation of evidence and materials, the trial Court convicted the petitioner as stated above and the same was confirmed by the lower appellate Court. Aggrieved over the same, the present revision has been filed.

6. The learned counsel for the petitioner submitted that though the respondent Police listed LW1 to LW17 during investigation, LW4, LW7, PW8, LW11 to LW14 & LW16 were not examined and only 8 witnesses were examined and 16 documents marked. PW1 is the rider of Yamaha FZS bike, who colluded with the bike of the petitioner. The learned counsel further submitted that the eye witnesses viz., PW4 and PW5 have not supported the case of the prosecution and treated hostile. The evidence of PW2 and PW3 are in the nature of hearsay, who enquired the injured persons in the hospital about the injuries and the accident. PW6 is the witness to the Observation

Mahazar [Ex.P2]. PW7 is the Sub Inspector of Police, who received the complaint [Ex.P1], registered FIR [Ex.P3] and handed over the investigation to Muthuswamy, who was not examined in this case. The further investigation was taken over by PW8 and through whom almost all the documents Exs.P8 to P16 were marked, more specifically, the Motor Vehicle Reports [Exs.P8 & P9] and Accident Registers [Exs.P10, P12 to P14], the Death Report [Ex.P11], the Wound Certificate [Ex.P15] and the Postmortem Certificate [Ex.P16] were marked. In this case, the Doctors who treated PW1-Ranjith Kumar, the deceased Prakash, the petitioner and Karrupusamy, including the Postmortem Doctors were not examined, as also the Motor Vehicle Inspector not examined in this case. These vital witnesses have not been examined and the documents [Exs.P8 to P16] have been marked through the Investigating Officer/PW8. The examination of witnesses and marking of documents have not been done in the manner known to law and hence, these documents cannot be relied upon. Despite the same, the trial Court believing the evidence PW1, had convicted the petitioner for the reason that PW1 got injured in the accident. The trial Court gave a finding that there was presence of alcoholic smell in Accident Register [Ex.P12] of the petitioner is not proper and the petitioner was not subjected to blood test to prove the same. The trial Court had merely

gone on the surmises and conjectures and failed to look into the fact that there was no evidence and materials against the petitioner. Based on the evidence of PW1 and the Accident Register [Ex.P12] of the petitioner, the trial Court convicted the petitioner, which is not proper and sustainable in law.

7.It is admitted by the prosecution that the accident took place on a highway and it was S-bend road and the accident took place in the middle of the road. There is no evidence and material to show, which bike treaded and dashed against the other bike. From the Rough Sketch, it cannot be seen which bike caused accident. The alteration report [Ex.P4] marked through the Sub Inspector of Police/PW7 without any material and justification. Thus, looking at the case in any angle, it cannot be held that the petitioner drove the bike in a rash and negligent manner and he is the cause for the accident. Further, the occurrence took place in the dark at night hours 07.00 p.m., and no witnesses have spoken about availability of light. The lower appellate Court failed to independently consider the evidence and materials, on the other hand, mechanically confirmed the judgment of the trial Court.

8.The petitioner voluntarily came forward to handover a sum of Rs.25,000/- to the family member of the deceased Prakash by way of demand draft. It is made clear that the petitioner depositing the amount is only on humanitarian consideration and it is not construed as admission of the guilt of the petitioner and no way affect his rights.

9.The learned Additional Public Prosecutor appearing for the State submitted that the accident in this case is head-on collusion. The petitioner drove the bike viz., Hero Pro TN 36 AB 0992, in which, Karuppusamy was pillion. PW1 was riding a Yamaha bike FZS TN 66 K 6039, in which one Prakash was pillion. The accident had taken place in the highway at about 07.00 p.m., in the middle of S-bend road. The petitioner was found drunken at the time of occurrence as could be seen from the Accident Register [Ex.P12]. Due to head-on collusion, all the four got injured and took treatment in the Government Hospital, Sathy. From the hospital, intimation was received by PW7, who went to the hospital, received the complaint [Ex.P1] and registered FIR [Ex.P3]. In the meanwhile, Prakash, the pillion in PW1's bike died. Hence, Section was altered including Section 304(A) IPC by way of alteration report [Ex.P4]. Thereafter, the investigation was handed over to one

Muthuswamy, who visited the scene occurrence, examined the witnesses, prepared Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P5] and later, handed over the investigation to PW8. PW8 conducted further investigation, visited the scene of occurrence, examined the witnesses present in the scene of occurrence and Doctors, who treated PW1-Ranjith Kumar, deceased Prakash, the petitioner and Karupuswamy, conducted inquest, received Accident Register [Exs.P10 & P12 to P14], Wound Certificate [Ex.P15] and Postmortem Certificate [Ex.P16], sent the damaged bikes to the Motor Vehicle Inspector, received Motor Vehicle Reports [Exs.P8 & P9] and on conclusion of investigation filed charge sheet in this case. On conclusion of trial, the trial Court finding that the petitioner was in a drunken state and he is the cause for the accident, convicted the petitioner. The lower appellate Court confirmed the same. Hence, he prayed for dismissal of the revision.

10.This Court considered the rival submissions and perused the materials available on record.

11.It is seen that the accident had taken place in S-Bend highway road in dark at night hours about 07.00 p.m., is not in dispute. The petitioner was

driven the bike Hero Pro TN 36 AB 0992 and PW1 was driven the Yamaha bike FZS TN 66 K 6039. The accident took place in the middle of the road. Admittedly, in this case, there is no independent eye witness. The projected eye witnesses/PW4 and PW5 have not supported the case of the prosecution. PW2 and PW3 admitted that they had gone to the hospital to enquire the injured persons. The other witness PW6 is the witness for Observation Mahazar [Ex.P2]. PW7, the Sub Inspector of Police on receipt of information, received the complaint [Ex.P1] from hospital, visited the scene of occurrence and registered FIR [Ex.P3]. On getting information about the death of Prakash altered Section including Section 304(A) IPC and prepared alteration report [Ex.P4] and handed over the investigation to Muthuswamy. Muthuswamy conducted inquest, prepared Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P5], enquired the witnesses in the scene of occurrence and handed over the investigation to PW8. PW8 conducted further investigation, examined the witnesses, produced both the vehicle before the Motor Vehicle Inspector for examination, received Motor Vehicle Reports [Exs.P8 & P9], examined the Doctors, obtained Accident Register, Wound Certificates and Postmortem Certificates [Exs.P6, P10 to P16] and on completion of investigation, charge sheet came to be filed before the Court below.

12. Admittedly, in this case, PW1 is the only eye witness and there is no other eye witness. The accident had taken place on the middle of the S-Bend on a highway road. From the Rough Sketch [Ex.P5], it cannot be specifically held that which bike treaded its path and caused the accident. Admittedly, the Motor Vehicle Inspector were not examined to prove the damages caused and cause for damage of the motor bikes. Further, the Doctors, who treated the injured were not examined in this case as witnesses, even the Postmortem Doctor was not examined, which is fatal, cut the root of the prosecution case. The trial Court as well lower appellate Court heavily relied on the Accident Register [Ex.P12] of the petitioner, in which, the smell of Alcohol was found. The Accident Register [Ex.P12] was marked through PW8/Investigating Officer and not marked in the manner known to law. It is not only Ex.P12, but also Exs.P8 to P16, marked through the Investigating Officer/PW8. Thus, the prosecution did not follow the procedure while marking the above documents during the trial. The documents/Exs.P8 to P16 cannot be considered and it has not marked as per law. In view of the same, the Courts below placed reliance on these documents and convicted the petitioner is not proper.

13.In such circumstances, the Courts below should have been caution while placing reliance on these documents and convicting the petitioner and the infirmities in the case are not properly explained. In the absence of cogent materials and non corroboration of the evidence of PW1, it would not safe to confirm the conviction and sentence of the Courts below. The trial Court as well the lower appellate Court had glossed over the infirmities and lapses in the prosecution case.

14.In view of the above, this Court set aside the judgment in C.A.No.45 of 2020, dated 01.10.2020 passed by the learned Additional District and Sessions Judge, Erode at Gobichettipalayam and the judgment of the trial Court in C.C.No.36 of 2015, dated 17.12.2019. This Criminal Revision is, accordingly, allowed. The petitioner is acquitted of all the charges levelled against him. The Bail Bond, if any, executed stands cancelled. The petitioner is directed to be released forthwith unless their presence/custody is required in connection with any other case. Consequently, the connected Miscellaneous Petitions are closed.

16.12.2020

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M.NIRMAL KUMAR., J.

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Index: Yes/No
Internet: Yes/No

To

- 1.The III Additional District and Sessions Court,
Erode at Gobichettipalayam.
- 2.The Judicial Magistrate Court No.I,
Gobichettipalayam.
- 3.The Inspector of Police,
Bungalowpudur Police Station,
Gobichettipalayam, Erode District.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.1118 of 2020

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