

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020

CORAM:

THE HON`BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.CNO.1174 OF 2020

AND

CRL.MP.NOS.8182 AND 8183 OF 2020

C.Mahesh

...Petitioner/Appellant/Accused

Vs

The State represented by
The Inspector of Police,
Erode South Police Station,
Erode District.

[Crime No.825 of 2011] ...Respondent /Respondent/Complainant

PRAYER:

Criminal Revision Cases have been filed under Section 397 r/w 401 r/w 482 of the Criminal Procedure Code, to set aside the order passed by the learned I Additional District and Sessions Judge, Erode in C.A.No.261 of 2018 by its order dated 29.01.2020, confirming the judgment of the learned Judicial Magistrate No.III, Erode in C.C.No.291 of 2011 by an order dated 18.07.2018.

For petitioner : Mr.S.Suresh

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

ORDER

The petitioner, accused in C.C.No.291 of 2011 on the file of the learned Judicial Magistrate, Erode was convicted by order dated 18.07.2018, for the offence punishable under Section 304A and sentenced to undergo simple imprisonment for a period of six months with a fine of Rs.5,000/-, in default of payment of fine, to undergo one month simple imprisonment. Against the conviction and sentence, the petitioner had preferred an appeal before the Court of Sessions, Erode and it was taken on file in C.A.No.261 of 2018 by the learned I Additional District and Sessions Judge, Erode and the appellate Court, by its judgment 29.01.2020, dismissed the appeal by confirming the order of the trial Court. Against the judgment of the appellate Court, this Criminal Revision Case is filed by the petitioner.

2.The learned Counsel for the petitioner and the learned Public Prosecutor consented to take up the revision case for final disposal, since this revision lies on a short point. In view of the consent given by either side, this revision is taken up for final disposal at the admission stage itself.

3.The case of the prosecution is that on 14.06.2011 about 3.00pm, the de facto complainant [PW1] and his wife Lakshmi [deceased] were returning home in a bicycle in Karur Road, near Jeevanantham street. At that time, his wife's saree got entangled in the wheel and hence, they have stopped the bicycle and was retrieving her saree. While so, a car driven by the petitioner in a rash and negligent manner, dashed against the said Lakshmi and fled away. Due to which, she fell on the road and sustained grievous injuries. Immediately, PW1 called his brother-in-law [PW3], who came there and they have taken the injured in an ambulance to Erode Government Hospital and thereafter, for better treatment, she was referred to the Government Hospital at Coimbatore. However, two days later, i.e., on 16.06.2011 she succumbed to injuries in the hospital.

4.Later PW1 came to the respondent Police Station and lodged a complaint Ex.P1 to PW6, who received the complaint and registered an FIR in ExP3. Thereafter, he had prepared an observation mahazar in ExP4, examined the witnesses and placed the records before the Investigating Officer [PW7] for further investigation. PW7 on the information of the death of the victim, filed an alteration report in ExP5, visited the place of occurrence, prepared a rough sketch in ExP4 and an observation mahazar in ExP2. PW2 and PW4 are the eye witnesses to the occurrence. PW5 is the witness for the observation mahazar ExP2. The Motor Vehicle Inspector Krishnamoorthy was examined and his report Ex.P7 was obtained. Dr.Sasireka, who treated the victim at Erode Government Hospital was examined and Dr.Raguramaiya, who treated the victim at Coimbatore Government Hospital was examined. Dr.Kuzhandaivel, who conducted the postmortem was examined and the postmortem report was obtained and marked as ExP8.

5.Before the trial Court on the side of the prosecution PW1 to PW7 were examined and ExP1 to ExP7 were marked. On the side of the petitioner no witness was examined and no document marked.

6.On conclusion of the trial, the trial Court found the petitioner guilty, convicted and sentenced him as stated supra. The appeal filed by the petitioner, as against the order of the trial Court was also dismissed by the appellate Court. Aggrieved over the same, the present appeal has been filed.

7.The contention of the petitioner is that in this case, PW1

admits that the road in which, they were riding their bicycles was dug up for sewage work and therefore, there is no possibility of any vehicle proceeding in a rash and negligent manner. Further, PW1 admits that he is a professional Driver and he has stated that Innova car dashed against the victim. Likewise, PW2 and PW4 also stated that it is an innova car, which caused the accident. On the other hand, from Exp7 it is seen that it is Ford Figo Car, which caused the accident and not innova car as claimed by PW1. The presence of PW1 itself is highly doubtful in the place of occurrence, since he had not taken the injured wife to the hospital. On the other hand, it is PW1's brother-in-law, who had taken the injured to the hospital. PW2 and PW4, who were projected as eye witnesses, admitted that they are friends of PW1. PW1 does not mention about the presence of PW2. PW2 does not state anything about PW3 coming to the scene of occurrence and taking the injured to the hospital in an ambulance. PW3 does not mention about the presence of PW2 and PW4. PW4 though states that he along with PW1 chased the car, no other witness stated anything about the same. But PW2 does not say so. PW5 is the observation mahazar witness, who admits that he had simply signed the same without knowing the contents of it.

8. In this case, admittedly, Dr. Sasireka and Dr. Raguramaiya and Dr. Kuzhandaivel were not examined as witnesses during the trial. Likewise, Motor Vehicle Inspector Mr. Ganeshmoorthy was not examined as a witness. Hence, Exp7, Exp8 and Exp9 were not proved in the manner known to law.

9. The learned Additional Public Prosecutor submits that in this case, PW1 husband of the deceased was riding the bicycle along with his wife Lakshmi, both were proceeding in the left side of the road and at that time, the petitioner came in car in a rash and negligent manner and dashed against the victim, due to which, she sustained injuries and died in the hospital. Though the occurrence has taken place on 14.06.2011, the complaint was lodged only on 16.06.2011, since PW1 had to take care of her wife, who was taking treatment in the hospital. Thereafter, on receipt of the complaint, PW6 had registered the FIR, visited the place of occurrence, recorded the statement of the witnesses and prepared the observation mahazar. Thereafter, the investigation was handed over to PW7, who examined the witnesses including the Motor Vehicle Inspector and the Doctors, who had treated the injured and the Doctor, who conducted postmortem and PW7, after concluding the investigation filed the final report.

10. The learned Additional Public Prosecutor further submitted that the above contentions of the petitioner were

raised even during the trial and the trial Court had given elaborate reasons and negated the contentions of the petitioner and convicted him. In this case, PW1, PW2 and PW4 are the eye witnesses, who were present at the place of occurrence and deposed about the car hitting the victim. PW2 and PW4 are not so literate to differentiate Innova car and Ford car, but they have stated about a car hitting the victim. The victim had died due to the accident is proved by Exp8 postmortem certificate. The lower appellate Court had considered the materials and convicted the petitioner and there is no infirmity.

11. Considering the submissions and the materials placed on record, it is admitted that the accident has taken place on 14.06.2011 and a complaint came to be lodged only on 16.06.2011. PW1 is the Driver by profession and he has specifically stated that it is the Innova car, which caused accident and PW2 also deposed so. In this case car involved in the accident is Ford Figo. PW1 being a professional Driver, cannot make such a contrary statement. The presence of PW2 and PW4 is not spoken by PW1. PW2 and PW4 admittedly they are friends of PW1. PW3 the brother-in-law of PW1, who had taken the victim to the hospital. From the Accident Register, it is seen that it is mentioned that the victim girl sustained injury, while she was retrieving her saree from the cycle wheel. Further PW2 does not mention about the presence of PW3 and PW4. Though PW4 would state that he was present along with PW2 and PW3, who chased the car, this fact has not been stated by any of the witnesses. Thus all the witnesses to the occurrence, viz., PW1, PW2 and PW4 are highly contrary to each other and therefore, it raises serious doubt about their presence.

12. It is seen that in this case, the Motor Vehicle Inspector Krishnamoorthy, the Doctors at the Erode Government Hospital and Coimbatore Government Hospital, who treated the victim have not been examined as well the postmortem Doctor. The Motor Vehicle Inspector's report Exp7 and the Postmortem report Exp8 were marked though the investigating officer, is not the author. Thus, I find there are serious infirmities and the prosecution has failed to prove its case beyond reasonable doubt. Therefore, this Court is inclined to allow this revision case.

13. Accordingly,

- The revision case is allowed;
- The judgment passed by the learned I Additional District and Sessions Judge, Erode in C.A.No.261 of 2018, dated 29.01.2020, confirming the judgment of the learned Judicial Magistrate No.III, Erode in C.C.No.291 of 2011, dated 18.07.2018 are set aside;
- The petitioner is acquitted of the charge framed against him;

- Fine amount, if any, paid by the petitioner shall be refunded and
- Bail bonds, if any executed by the petitioner, shall stand terminated and consequently, connected miscellaneous petitions are closed.

13. Without prejudice to the rights of the petitioner, the petitioner had voluntarily paid a sum of Rupees 75,000/- [Rupees Seventy Five Thousand Only] each to the husband of the deceased and two daughters and a son, the said amount has been received by them. It is made clear that this payment is made only on humanitarian considerations, which is not construed as admission of the guilt of the petitioner and no way affect the rights of the petitioner.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dsk

To

1. The I Additional District and Sessions Judge,
Erode.
2. The Judicial Magistrate No.III,
Erode.
3. The Inspector of Police,
Erode South Police Station,
Erode District.
4. The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.Suresh, Advocate in Sr.No.42072

Cr1.R.CNo.1174 of 2020

MG(CO)
CS/11/02/2021