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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.03.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

CrI.RC (MD) No.216 of 2015

Muthuraju

..Petitioner/Appellant/Accused

Vs.

State represented by its
Sub Inspector of Police,
Thenkarai Police Station,
Periyakulam.

(Crime No.337 of 2009)

..Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of the Criminal Procedure against the judgment, dated 09.12.2014 passed by the Additional District and Sessions Judge, Periyakulam, in C.A.No.39 of 2014, confirming the judgment of the Judicial Magistrate, Periyakulam, dated 16.07.2014, in C.C.No.15 of 2010.

For Petitioner

: Mr.K.Baalasundraam

For Respondent

: Mr.A.P.G.Ohm Chairma Prabhu

Government Advocate(Criminal side)

JUDGMENT

This Criminal Revision is filed against the judgment, dated 09.12.2014 passed by the Additional District and Sessions Judge, Periyakulam, in C.A.No.39 of 2014, confirming the judgment of the Judicial Magistrate, Periyakulam, dated 16.07.2014, in C.C.No.15 of 2010.

2.According to the prosecution, on 17.07.2009 at 8.30 am when the deceased Priyadharshini was proceeding in her bicycle to Renuka school situated at Lakshmipuram, the accused drove the van TN-60-D-0223 belonging to ATK Mill and at that time, one Murugan drove the tractor TN-49-Z-4828 in a rash manner and since the accused wanted to avoid unnecessary accident, he jumped from the van, as a result of which the van hit against Priyadharshini and due to which, she died on the spot and then van hit against one Tamilarasi, Yoga Ranjana and Sundaravalli, who brought their children to the school and they were suffered grievous injury and subsequently, the said Tamilarasi was taken to Madurai Rajaji Hospital for further treatment, but she died on 20.07.2009 and in the accident, the driver of the tractor Murugan also sustained simple injuries. The Sub Inspector of Police attached to Thenkarai Police Station, Periyakulam has filed a final report against the accused examining the witnesses.

3.The trial court, after appreciation of the entire materials available on record, convicted the petitioner/accused for the offence under sections 279, 337 and 304(A) IPC and sentenced him to undergo 6 months each rigorous imprisonment and for the offence under section 304(A) IPC, sentenced him to undergo one year rigorous imprisonment. Challenging the same, the petitioner preferred appeal. The first appellate court had also confirmed the findings of the trial court. Against which, the petitioner is before this court.

4.Heard both sides and perused the materials available on record.

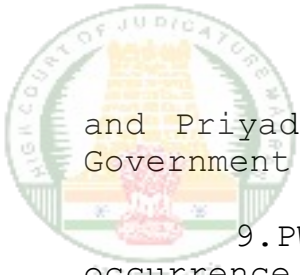
5.The learned counsel appearing for the petitioner/accused argued that PW1 during his cross examination stated that he saw the occurrence half furlong from the place of occurrence and hence, it is not possible to him to see the occurrence and PW1 is a chance witness and he is not an eye witness and hence, PW1's evidence cannot be accepted.

6.PW1 is the complainant and Uncle of the deceased Priyadharshini. PW1 in his complainant and evidence stated that on 17.07.2009, he and his friend Dhayalan went behind the bicycle of the deceased Priyadharshini, who proceeded to her school and when they reached near the school, at that time, one tractor and trailer bearing registration No.TN-49-Z-4878 came out of the school and turned towards Theni road and at that time, the accused drove his van in a rash and negligent manner and dashed against the tractor and then the accused jumped from his van and then the van without control dashed against his brother's daughter Priyadharshini and then dashed against one Tamilarasi, Murugan, Sundaravalli, Yoga Ranjana and Priyadharshini died on the spot and other injured were taken to the Government Hospital and he gave the complaint to the police. PW1 during his cross examination stated as follows:-

"சம்பவம் நடந்த இடத்தில் இருந்து அரை பர்லாங்கு தள்ளி நானும் என் நண்பரும் இருந்தோம் தயாளன் என்னுடன் பேசிக்கொண்டே என்னுடன் வந்தார் நான் சம்பவம் நடந்த போது அந்த இடத்தில் கிடையாது என்றால் சம்பவம் நடந்த இடத்தில் ஆக்சிடண்ட் ஆனது நான் இங்கிருந்து ஓடிச் சென்று பார்த்தேன்.

7.On perusal of the cross examination of PW1, it reveals that he saw the occurrence. The evidence of PW1 is corroborated with the contents found in Ex.P1 complaint. Hence, the argument put forth on the side of the petitioner that PW1 has not seen the occurrence directly is not at all acceptable.

8.PW2, PW5, PW6, PW7 and PW11 are cited as eye witnesses. PW2 during his evidence stated that on 17.07.2009 at 8.30 am, he and PW1 dropped the deceased Priyadharshini in her school and when they reached near the school, at that time one tractor came from the school and proceeded towards south and at that time, the accused drove the van in a speedy manner and dashed against the tractor and the accused jumped from his van and then the van without control dashed against Priyadharshini, Tamilarasi, Yoga Rajana and others



and Priyadharshini died on the spot and others were taken to the Government Hospital.

9.PW2 during his chief examination stated that he saw the occurrence, when he went along with PW1. But during his cross examination, PW2 stated as follows:-

“என் வீடு லட்சுமிபுரத்தில் உள்ளது நான் லட்சுமிபுரத்தில் உள்ள என் வீட்டில் இருந்து காமப்பளக்கிற்கு செல்லும்போது விபத்து நடந்தது நான் செல்லும் போது அந்த இடத்தில் கூட்டமாக கூடியிருந்தார்கள் காமாட்சி அ.சா.1 என் நண்பரா என்றால் அந்த இடத்தில் பார்த்தேன் நண்பர் இல்லை சம்பவம் பற்றி எனக்கு நேரடியாக தெரியாது.”

Hence, on careful perusal of the cross examination of PW2, it reveals that he has not directly seen the occurrence.

10.PW5 to PW7 and PW11 are the eye witnesses. PW5 to PW7 and PW11 deposed that on 17.07.2009 at 8.30 am, when they attempted to enter in the school, at that time, one tractor came from the school and it proceeded towards Theni and at that time, the accused drove his van in a speedy manner and without sounding the horn dashed against the tractor and then dashed against the deceased Priyadharshini, Tamilarasi and another injured and Priyadharshini died on the spot and Tamilarasi was admitted in the Government Hospital and after sometime, Tamilarasi died and PW1 gave complaint to the police.

11.PW5 categorically stated during her evidence that the accused drove his van in a speedy manner and without sounding the horn. Hence, it shows the negligent on the part of the accused. PW6 during his chief examination stated that he saw the occurrence. But during his cross examination, he has stated that “டம் என்று சத்தம் கேட்டது நான் லேட்டாக திரும்பி பார்த்தேன் நேரடியாக பார்க்கவில்லை.” Hence, from the evidence of PW6, it reveals that he has not seen the occurrence.

12.PW11 deposed that prior to two years at 9.00 am, when he proceeded to his garden, at that time one tractor came out from Renuka school and at that time, the accused drove his vehicle in a speedy manner and dashed against the tractor and then without control dashed against Priyadharshini, Tamilarasi, Yoga Ranjana and Priyadharshini died on the spot and Tamilarasi and other injured were taken to the Government Hospital, Theni and after some time, Tamilarasi died in the hospital. Further, PW11 during his cross examination stated that he proceeded to his garden and he saw that the occurrence in 20 meter away. On careful perusal of the evidence of PW11, it reveals that his evidence is reliable and trustworthy. Further, from the evidence of PW11, it reveals that the accused drove his vehicle in a rash and negligent manner and without control the offending vehicle dashed against Priyadharshini, Tamilarasi and other injured and Priyadharshini died on the spot and Tamilarasi died in the Government Hospital. Hence, the evidence of PW1 is corroborated with the evidence of PW11.



13. For all the reasons stated above, the both the courts below have concurrently given correct findings, which do not require interference by this court. However, considering the facts and circumstances of the case and also considering the family circumstances of the petitioner, the punishment imposed on the petitioner requires modification.

14. In the result, the criminal revision is **partly allowed**. The punishment imposed on the revision petitioner for the offence under Section 304(A) IPC is reduced to 4 **months RI**. In other aspects, the findings of the Courts below are confirmed. The period of sentence, if any, already undergone by the revision petitioner/Accused shall be given set off under Section 428 of Cr.P.C. The petitioner/Accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

To

1. The Additional District and Sessions Judge, Periyakulam.
2. The Principal District and Sessions Judge, Theni.
3. The Judicial Magistrate, Periyakulam.
4. The Chief Judicial Magistrate, Theni.
5. The Sub Inspector of Police,
Thenkarai Police Station, Periyakulam.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to : The Record Keeper, Criminal Section(Records)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Baalasundraam, Advocate SR.No.10473

AKM/19.05.2020 /4P-9C/

Cr1.RC(MD) No.216 of 2015
06.02.2020