



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.R.C(MD)No.101 of 2017

Chellappan

... Petitioner

Vs

State of Tamilnadu,
Rep. by the Inspector of Police,
Traffic Investigation,
Kottar, Nagercoil (Crime No.69/2007)
Kanyakumari District.

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order passed by the Fast Track Mahila Court, Nagercoil in Crl.A.No.143 of 2008 on 04.11.2016 in S.T.C.No.3140 of 2007 order passed by the Judicial Magistrate No.3, Nagercoil and allow this criminal revision petition.

For Petitioner : Mr.H.Velavadhas

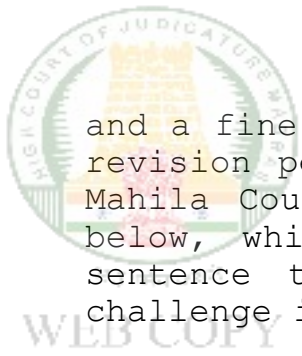
For Respondent : Mr.A.Robinson

Government Advocate (Crl.side)

ORDER

Heard the learned counsel appearing for the revision petitioner and the learned Government Advocate(Crl.side) appearing for the respondent.

2.The petitioner is a driver in the Tamilnadu State Transport Corporation. He was driving the bus bearing Registration No.TN74N0225 on 14.07.2007, at about 9.30 p.m. When the accident in question took place, the bus was proceeding from Vadaseri to Kottar. When it had hit the deceased Nagarajan from behind, the deceased Nagarajan was riding a bicycle. In this regard, Crime No.69 of 2007 was registered on the file of the respondent police station. The case was taken up for investigation and final report was filed before the Judicial Magistrate No.3, Nagercoil. The learned trial Magistrate took cognizance of the offence under Section 304(A) of IPC and issued summons to the petitioner herein. Charge was framed against the petitioner. He denied the same and claimed to be tried. The prosecution to establish its case examined P.W.1 to P.W.12 and marked Ex.P1 to Ex.P6 and M.O.1 bicycle was also marked. On the side of the accused, no evidence was adduced. The learned trial Magistrate considered the evidence on record and came to the conclusion that the accused is guilty of the offence under Section 304(A) of IPC and sentenced him to three months simple imprisonment.



and a fine of Rs.1,000 was also imposed. Questioning the same, the revision petitioner filed C.A.No.143 of 2008 before the Fast Track Mahila Court, Nagercoil. By Judgment dated 04.11.2016, the Court below, while confirming the conviction, modified and reduced the sentence to one month simple imprisonment. The same is under challenge in this revision case.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned Judgment and acquit the accused.

4.Per contra, the learned Government Advocate (Crl.side) states that the impugned Judgments do not call for any interference .

5.I carefully considered the rival contentions and went through the evidence on record.

6.Ex.P6 is the rough sketch. It is seen that the accident had taken place in Kottar to Vadaseri road which runs from south to north. The bus driven by the petitioner was coming from north to south. The accident had taken place on the extreme left end of the road. That indicates that the deceased Nagarajan was very much going on the correct side. The deceased was riding the bicycle.

7. A perusal of the deposition of P.W.12-Investigation Officer would show that the deceased bicycle was recovered under Ex.P7-Athatchi. But in the index annexed to the Judgment, Ex.P7-Athatchi is not mentioned. But then, the testimony of P.W.12 clearly talks about the recovery of the vehicle as well as the preparation of Ex.P7. The bicycle had been marked as M.O.1. It is seen from Ex.P7 that the carrier of the bicycle had suffered damage. P.W.1 is the eye witness and it was he who lodged the complaint before the respondent. He had clearly stated that the bus in question hit the bicycle from behind and that the left side front wheel ran over the deceased. The defence had suggested that the bicycle hit the bus from behind and that the bus suffered damage in the process. The inspection report of the motor vehicle inspector was marked as Ex.P3. It is seen therefrom that the bus did not suffer any damage. The prosecution had examined as many as three witnesses to speak about the occurrence. The fact that M.O.1-bicycle had suffered damage indicates it is the bus that hit the vehicle from behind. The theory that it was only the back wheel of the bus that run over the deceased cannot be believed because the defence has not explained the damage suffered by M.O.1 bicycle. The learned trial Magistrate had found the evidence of the eye witnesses convincing. The finding of guilt has been confirmed by the Appellate Court also. Exercising my revisional jurisdiction, I am not persuaded by the contentions of the petitioner's counsel to hold that the findings of the Court below suffer from material



irregularity. The Appellate Court had been extremely indulgent and reduced the substantive sentence only to a month's simple imprisonment. It does not warrant any interference.

8.I confirm the impugned Judgment passed by the Appellate Court. I find no merit in the revision case. This Criminal Revision Case stands dismissed. The period of incarceration already undergone by the petitioner shall be set off. The Court below shall take steps to enforce this order.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.3, Nagercoil.

2. The Fast Track Mahila Court, Nagercoil

3.The Inspector of Police,
Traffic Investigation,
Kottar, Nagercoil.
Kanyakumari District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H.VELAVADHAS, Advocate (SR-25368[F] dated 14/12/2020)

Cr1.R.C (MD) No.101 of 2017
11.12.2020

KVN (CO)
KK (23.12.2020) 3P 6C