

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.97 of 2021

K.Arjunan

... Petitioner

Vs.

State rep.by the
Inspector of Police,
Police Station,
Kavundapadi Police Station,
Erode District.

... Respondent

(Crime No.336 of 2013)

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the Judgment dated 04.07.2020 made in C.A.No.38 of 2019, on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam and confirming the Judgment in C.C.No.108 of 2013, dated 09.07.2019, on the file of the Judicial Magistrate No.II, Gobichettipalayam.

For Petitioner : Mr.N.Chinnaraj

For Respondent : Mr.K.Mathan
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision has been filed challenging the judgment passed in C.A.No.38 of 2019, on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam, dated 04.07.2020, confirming the Judgment passed by the learned Judicial Magistrate No.II, Gobichettipalayam, in C.C.No.108 of 2013, dated 09.07.2019.

2. The case of the prosecution is that on 25.08.2013, at about 08.15 p.m., when the defacto complainant with his cousin were proceeded from Erode to their residence after their work by motorcycle, the deceased also proceeded in the same direction in his motorcycle bearing Registration No.TN-33-AH-2904 on the left side of the road and at that time, the petitioner/accused who

was driving the lorry bearing Registration No.TN-34-L-2974 on the same direction, i.e., east to west with granite stones load for the purpose of off loading the same at G.V.Ceramics. During the course of his driving, the petitioner/accused passed G.V.Ceramics and proceeded to some extent. After realizing the same, the petitioner/accused suddenly driven his lorry towards west to east by reverse and dashed against the deceased the vehicle. In that process, the the deceased sustained grievous injury and he was taken to K.M.C.H.Hospital, Erode, where he was reported dead.

3. Before the trial Court, 11 witnesses were examined as Exs.P1 to P11 and 8 documents were marked as Exs.P1 to P8, and no material object was exhibited. When the accused was questioned about the incriminating circumstances, he denied the same. On behalf of the accused, no witness was examined nor any document marked. The trial Court, after hearing the arguments advanced by the learned counsel on either side, convicted the revision petitioner/sole accused for the offence under Section 279 of IPC and imposed a fine of Rs.1,000/- in default, to undergo one month simple imprisonment and also convicted the revision petitioner for the offence under Section 304 (A) of IPC, and sentenced him to undergo one year simple imprisonment. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioner filed an appeal in CrI.A.No.38 of 2019, which was heard by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam. The first appellate Court confirmed the conviction and sentence of the trial court. Challenging the Judgment of the courts below, the revision petitioner/accused is before this court.

4. The learned counsel for the petitioner would submit that the eyewitnesses/P.W.1 and P.W.2 are close relatives of the deceased and they are interested witnesses and during the cross examination, they have admitted that they have not directly seen the occurrence. It is further submitted that the deceased had ridden the vehicle in a rash and negligent manner and hit back side of the stationed lorry and due to which, the accident had occurred and as such, the petitioner is no way responsible for the accident. P.W.1 has admitted during the cross examination that he has not filed the complaint on the same day and obtained the signature on the next day, which clearly show that P.W.1 is not the author of the complaint and therefore, it is highly doubtful. However, the Courts below failed to appreciate the evidence and wrongly convicted the appellant on sympathy ground, and therefore, prays for setting aside the orders of the Courts below.

5. The learned Government Advocate (Criminal Side) would submit that both the courts below appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offence, convicted the revision petitioner for rash and negligent driving of the vehicle and passed proper sentence, which do not require any interference by this court and the petitioner / accused is not entitled for acquittal and prays that the criminal revision may be dismissed.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent and perused the materials placed on record.

7. It is not in dispute that the offending vehicle bearing registration No.TN-34-L-2974 was driven by the revision petitioner and the deceased was riding the motorcycle bearing the registration No.TN-33-AH-2904. It is to be noted that the accused after passing the correct place where the granites will off loaded, realized the same and immediately driven his vehicle in reverse manner without any signal and in a rash and negligent manner, and at that time, the deceased who was following the lorry, dashed against the lorry and due to which, he sustained injury and died. P.W.1 and P.W.2 who have seen the occurrence with the distance of 100 feet have clearly deposed that at the time of accident they were also proceeding on the same direction and they deposed that the driver of the vehicle with granite load proceeded to G.V.C.Ceramics unfortunately, he has passed the place then to reach the correct destination on reverse direction, the vehicle was moved in a rash and negligent manner, in the result the accident had happened.

8. Though the learned counsel for the petitioner would submit that P.W.1 and P.W.2 have deposed that in their cross examination that the signature obtained from him only on the next day of the accident, the fact remains that the accident had occurred on 25.08.2013 and the deceased was also brought to the Hospital on the same day i.e., on 25.08.2013 and therefore, the accident is not disputed. The only dispute raised by the learned counsel for the petitioner that the accident was not occurred due to the rash and negligent driving of the driver of the offending vehicle.

9. P.W.1 and P.W.2 have deposed that when they were proceeding on the east to west direction, the accused with granite load proceeded to G.V.Ceramics unfortunately he has passed the place then to reach the correct destination on reverse direction without any signal, in a rash and negligent manner, due to which, the deceased who was following the offending vehicle dashed against the vehicle and in the result,

the accident has happened. Though the learned counsel for the petitioner would contend that P.W.1 and P.W.2 are relatives to the deceased and they are interested witnesses, but the petitioner has not stated in the evidence that P.W.1 and P.W.2 were not present at the time of accident.

10. It is to be noted that a perusal of rough sketch (Ex.P7) the place of occurrence has been marked in the southern side of the road. It is further to be noted that a perusal of Ex.P3, the Motor Vehicle Inspection Report, several scratch and dent marks found at rear most cross member centre portion for 1/2 feet, except the above damage no other damage was found in the lorry. From the above, it could be seen that the petitioner had driven the lorry in reverse direction i.e., from west to east. A perusal of the evidence of P.W.1 and P.W.2 it could be seen that the petitioner to reach the correct destination to unload the granites, came on the reverse direction without any signal in a rash and negligent manner, and due to which, the accident had occurred.

11. This Court has to decide whether the accident has occurred only due to the rash and negligent driving by driver of the vehicle. Both the courts below discussed the oral and documentary evidence and found that the accident had happened due to rash and negligent driving of the revision petitioner. Since this Court is a revisional Court, while exercising the revisional jurisdiction, cannot sit in the arm chair of the appellate Court and what has to see is as to whether the courts below have properly appreciated the evidence and whether there is any perversity in appreciating the evidence. On a reading of the entire evidence, everything is proved by the prosecution. Even on seeing the rough sketch and on going through the evidence of P.W.1 it is seen that the revision petitioner drove the vehicle in the reverse direction i.e., from west to east and due to which, the deceased who was following the vehicle dashed against it, and sustained injury and died.

12. This court, after going through the records, is of the considered view that the Courts below have not committed any mistake or error in rendering a finding to hold the revision petitioner/accused guilty of the offences with which he stood charged. However, considering the fact that the revision petitioner/accused is the breadwinner of the family and the accident had not occurred with an intention, this court finds that the sentence imposed on the revision petitioner/accused requires modification.

13. In the result, this criminal revision is dismissed. While confirming the conviction, sentence imposed on the revision petitioner is modified and the revision

petitioner/accused is sentenced to suffer six months SI for the offence under Section 304(A) IPC. The fine amount imposed by the trial court is confirmed. The period of sentence if any, already undergone by the revision petitioner/accused shall be set off under Section 428 Cr.P.C. The revision petitioner/accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Kavundapadi Police Station,
Erode District.
Crime No.336 of 2013
2. The III-rd Additional District and Sessions Judge,
Erode at Gobichettipalayam.
3. The Judicial Magistrate No.II,
Gobichettipalayam.
4. The Chief Judicial Magistrate,
Gobichettipalayam.
5. The Superintendent of Police,
Erode District.
6. The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.97 of 2021

PP(CO)
CS/01/07/2021

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