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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.1692 of 2016

Eswaran

... Petitioner/Accused

Vs.

State by
The Inspector of Police,
Tirupur Rural Police Station,
Tirupur.
(Crime No.112/2002)

... Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to call for the records and set aside the judgment of conviction dated 01.08.2016 made in C.A.No.85/2015 on the file of I Additional District and Sessions Court, Tirupur, which confirmed the conviction and sentence imposed in a judgment 10.08.2015 made in C.C.No.372 of 2002 on the file of the learned Judicial Magistrate No.II, Tirupur and acquit the petitioner.

For Petitioner : Mr.P.M.Duraiswamy

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been preferred challenging the judgment of the learned I Additional District and Sessions Judge, Tirupur dated 01.08.2016 made in C.A.No.85 of 2015, confirming the judgment of the learned Judicial Magistrate-II, Tirupur dated 10.08.2015 made in C.C.No.372 of 2002.

2. This case has arisen out of the traffic accident. On 17.02.2002 at about 12.15 hours, when the accused was driving his lorry bearing Registration No.TN 41 Y 750 at Tirupur-Palladam Road near Prem Dyeing, he drove the vehicle in a rash and negligent manner and hit against the boy, who was riding his bicycle and going on the left side of the road. Because of the accident, the boy fell down and the back wheel of the lorry ran over the boy and he died on the spot.

3. On the complaint given by PW7/Ramu, PW9/Ramasamy, Sub-Inspector of Police registered a case in Crime No.112 of 2002



of Tirupur Police Station under Sections 279 and 304(A) IPC.

4. PW10/Inspector of Police took up the case for investigation, went to the place of occurrence, prepared the observation mahazar (Ex.P1) and rough sketch (Ex.P6), conducted the inquest on the body of the deceased and sent the body for postmortem. He examined the witnesses and recorded their statements. He also sent the lorry for inspection of Motor Vehicle Inspector. He arrested the accused on 05.03.2002 at 12.00 hours and sent him for remand. He examined the Motor Vehicle Inspector, who examined the lorry and obtained the Motor Vehicle report. After completing the investigation, he laid the charge sheet against the accused for the offences under Sections 279 and 304(A) IPC. After the case was taken on file and on consideration of records, the learned trial Judge framed the charges against the accused for the offence under Sections 279 and 304(A) IPC. When the accused was questioned, he denied the charges and claimed to be tried. Hence, trial was conducted.

5. During the course of the trial, on the side of the prosecution, 10 witnesses have been examined as PW1 and PW10 and 7 documents were marked as Exs.P1 to P7. On the side of the defence, one witness was examined as DW1 and no document was marked.

6. At the conclusion of trial and on considering the materials available on record, the learned trial Judge found the accused guilty for the offence under Sections 279 & 304(A) IPC and convicted and sentenced him as under:-

Offence	Punishment
279 IPC	6 months Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for one month
304(A) IPC	One year Rigorous Imprisonment and to pay a fine of Rs.4000/- in default to undergo Rigorous Imprisonment for one month

7. The appeal preferred by the accused in C.A.No.85 of 2015 before the learned I Additional District and Sessions Judge, Tirupur was also dismissed. Aggrieved over that, the petitioner/accused has preferred this revision.

8. The learned counsel for the revision petitioner submitted that the Courts below have omitted to consider the contradiction in the evidence of PWs1, 2 and 7 and give the benefit of the doubt to the accused. He has further submitted that the prosecution did not prove that it was the accused, who drove the lorry involved in the accident at the time of the occurrence. But, the Courts below did not consider the said fact.



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9. The learned Government Advocate (Crl. Side) appearing for the respondent/complainant submitted that the learned Trial Judge, after due consideration of materials available on record, rightly found the accused guilty for the offence under Sections 279 and 304(A) IPC and convicted him and there is no reason to interfere with the judgements of the Courts below.

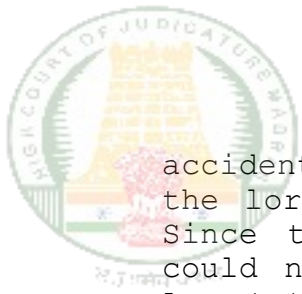
10. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent. Perused the entire materials available on record.

11. Point for consideration:-

Whether the punishment of the accused for the offence under Sections 279 & 304(A) IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

12. It is the case in which, both the lorry driver and cyclist were proceeding on the same direction. The lorry came behind the cyclist and hit against the cycle. The cycle was driven by 18 years old boy, who was riding his bicycle only on the left side of the road. Had the driver of the lorry noticed the cyclist and slowed down his speed or kept at a safety distance from the cycle, he could have averted the accident. PW1, who is said to be the eye-witness of the accident has stated in his evidence that after hitting on the cycle, the lorry driver did not stop and the lorry was stopped a little far away. PW2 has also stated that the lorry had stopped a little far away from the place of the accident. PW7 has stated in his evidence that the lorry did not stop and went away. While PWs1 and 2 stated that the lorry has stopped a little far away, PW7 has stated that the lorry had gone away from the place of occurrence. The whole reading of the evidence of PW7 would show that the lorry, after hitting the cycle went away. There is no exclusive mention that the lorry had totally moved away from the place of occurrence. Since the above fact was spoken by the witnesses in an uniform manner, I do not find any material contradiction in the evidence of the eye-witnesses on this aspect. However, no motive has been attributed against the complaint for falsely implicating the accused in this case.

13. It is further submitted by the learned counsel for the petitioner that if the lorry had stopped a little far away, the Inspector could have arrested the accused there itself without any delay. It is seen that the accident had taken place on 17.02.2002. The accused was arrested only on 05.03.2002. It is to be noted that none of the witnesses had stated that the driver of the lorry was available at the place of occurrence. It is quiet common that subsequent to the accident, the drivers flew away from the place of accident apprehending any untowardness at the hands of the public. In this case also there is every possibility that the accused could have run away from the place of occurrence and hence, his arrest could be done only on 05.03.2002. From the evidence of PW1, other eyewitnesses and the rough sketch which shows the place of occurrence, it can be inferred that the



accident had occurred only due to the negligent handling of the lorry driver. Because of the accident, the cyclist died. Since the cycle was just proceeding the lorry, the cyclist could not have seen the lorry, which was coming behind him. As stated already, the lorry driver could have averted the accident, if he had maintained some distance or alerted the cyclist by giving horn.

14. From the evidence of DW1, I do not find anything strong, which is capable of demolishing the case of the prosecution. The Motor Vehicle Inspector has also ruled out any mechanical failure in the vehicle. Hence, I feel that there is no factual, legal infirmity in the judgments of the Courts below and in my opinion, it does not require any interference.

15. However, the learned counsel for the petitioner submitted that some indulgence should be shown in the matter of punishment considering the age and past conduct of the accused and that there is no other previous case has been registered against the accused. He further submitted that the accused is aged 54 years and he is working in a private company. The accused is said to have paid the fine amount also.

16. Considering the submissions of the learned counsel for the petitioner and other attending circumstances, I feel that the punishment alone can be reduced from one year Rigorous Imprisonment to Three(3) months Rigorous Imprisonment and the fine amount can be enhanced to Rs.10,000/-.

17. In the result, this Criminal Revision is Partly allowed and the judgment dated 01.08.2016 made in C.A.No.85 of 2015 on the file of I Additional District and Sessions Judge, Tirupur is hereby modified to the effect that the petitioner/accused shall undergo Three(3) months Rigorous Imprisonment and to pay a fine of Rs.10,000/- for the offence under Section 304(A) IPC. Rest of the punishment imposed for the rest of offence for which the accused was found guilty and convicted shall remain unaltered and will run concurrently.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The I Additional District and Sessions Judge,
Tiruppur.

2.The Judicial Magistrate No.II,
Tiruppur.

3.The Inspector of Police,

<https://hcservices.ecourts.gov.in/hcservices/>
Tirupur Rural Police Station, Tiruppur.



4.The Public Prosecutor,
High Court of Madras,
Chennai-104.

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Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

Cr1.R.C.No.1692 of 2016

SJ(CO)
A.SK(21.01.2022)