



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.514 OF 2021

AND

CRL.M.P.NOS.8396 AND 8397 OF 2021

MANICKAM @ THOMAS

... Petitioner/Appellant

Vs.

The State Rep. by
The Inspector of Police
Kothagiri Circle,
Solurmattam Police Station

Nilgiris District (Crime No.43 of 2012) ...Respondent/Complainant

Criminal Revision Case filed under Section 397(1) and 401 Cr.P.C, praying to set aside the sentence and conviction dated 29.04.2021 in C.A.No.169 of 2017 passed against the Revision Petitioner by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Udthagamandalam at Nilgiris, confirming the Judgment and sentence in C.C.No.20 of 2012 on the file of the Judicial Magistrate Court, Kothagiri dated 23.11.2017.

For Petitioner : Mr.K.Madhan

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

(The case has been heard through video conference)

The Criminal Revision Case has been filed against the Judgment dated 29.04.2021 in C.A.No.169 of 2017 passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Udthagamandalam at Nilgiris, confirming the conviction and sentence passed in C.C.No.20 of 2012 dated 23.11.2017 by the Judicial Magistrate Court, Kothagiri, Nilgiris District.

2. The respondent police registered a case against the petitioner in Crime No.43 of 2012 and after investigation, laid charge sheet for the offences punishable under Sections 279 and 304 (A) IPC before the learned Judicial Magistrate, Kothagiri,



Nilgiris District, and the learned Magistrate taken up the charge sheet on file in C.C.No.20 of 2012. After completion of trial, the learned Magistrate by order dated 23.11.2017, convicted the petitioner for the offences punishable under Sections 279 and 304 (A) IPC and sentenced to undergo one year rigorous imprisonment for the offence punishable under Section 304(A) IPC and to pay fine of Rs.3000/- in default to undergo one month simple imprisonment and no separate sentence was imposed for the offence under Section 279 IPC.

3. Challenging the said Judgment of conviction and sentence, the petitioner/accused had filed a criminal appeal before the Principal Sessions Judge, Nilgiris, and the learned Principal Sessions Judge had taken up the appeal on file in C.A.No.169 of 2017 and made over the appeal to the Sessions Judge, Magalir Neethimandam (Fast Track Mahila Court), Udthagamandalam, Nilgiris. The learned Sessions Judge, after hearing of the arguments and considering the materials on record, dismissed the appeal and confirmed the conviction and sentence passed by the learned Magistrate. Challenging the said Judgment of dismissal of appeal, the petitioner/accused has filed the present revision before this Court.

4. The case of the prosecution is that the petitioner is the driver of the lorry bearing Regn.No.TN 10 47 500. On the date of occurrence, when the lorry was climbing up a hill road near Moonkarai Road, Kalmukkai Junction, the lorry got capsized on its left side resulting in the death of one Guru @ Durai who was traveling in the lorry.

5. Mr.K.Madhan, the learned Counsel for the petitioner would submit that there is no eyewitness in this case. Though, P.W.1 is stated to be the eyewitness and complainant of this, he has clearly deposed that he does not know what has been written in the complaint and also stated that at the time of accident he was traveling in the lorry and he was sleeping on the top of the lorry and only on hearing the noise, he work up and saw one of the Load Man who was a co-traveller died. Thereafter, the police got his statement and registered the case. P.W.2 has also stated that at the time of accident, he was sleeping and after hearing the noise, he woke up and saw the vehicle which fell upside down which corroborated with the evidence of P.W.1. The learned Counsel would submit that before the trial Court, the main defence taken by the defence counsel was that the lorry got to brake down and the accident had not happened due to the rash and negligence on the part of the petitioner. He would further submit that the Motor Vehicle Inspector has issued a certificate that the break was intact whereas, immediately after the accident, the vehicle was recovered and kept in the police



station. However, the vehicle was inspected by the Motor Vehicle Inspector only after 10 days from the date of accident. Therefore, there is every possibility that they would have set right the defect in the meantime. Further, except P.W.1 and P.W.2, the other witnesses are hearsay witnesses and they are relative and interested witnesses. Except P.W.1 and P.W.2, no one has spoken anything about the accident. The learned Magistrate failed to appreciate the same. Even the prosecution witnesses have stated nothing about the rash and negligence driving on the part of the petitioner. Thereby, the prosecution failed to prove the case beyond all reasonable doubt. However, the learned Magistrate convicted the petitioner only based on assumption and sympathy. Therefore, the petitioner approached the appellate Court whereas, the learned Sessions Judge without appreciating the evidence independently as a fact finding Court, simply endorsed the views of the Magistrate and dismissed the appeal. Therefore, there are perversities in the Judgments of both the Courts below. In the absence of any specific material evidence, the conviction recorded by both the Courts below are perverse and the same is liable to be set aside and he prays for the dismissal of the same.

6. Mr.S.Sugendran, learned Government Advocate (Crl. Side) fairly conceded that except P.W.1 and P.W.2 there is no other eyewitness to the accident.

7. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent police and perused the materials on record.

8. In the evidence of P.W.1 and P.W.2, they have not stated that they had seen the accident. Further, they have admitted that they were sleeping on the top of the lorry and only after hearing the noise they woke up and saw the vehicle. Except this, the witnesses have not spoken anything about the accident.

9. A careful reading of the evidence of P.W.1 and P.W.2, this Court come to the conclusion that the evidence of P.W.1 and P.W.2 is no way helpful to the case of the prosecution and there are perversities in the appreciation of evidence by the Courts below. They have given findings that only due to the rash and negligence on the part of the petitioner, the accident might have taken place since there is no other vehicle in the opposite side, which is purely based on presumption.

10. It is settled proposition of law that the prosecution has to prove the case beyond all reasonable doubt and they cannot take advantage of the weakness of the defence. In this case, no eyewitnesses have spoken about the manner of accident. In the absence of the same, the petitioner has been convicted



which warrants interference and the appreciation of evidence by both the Courts below is perverse. In this circumstance, the orders of both the Courts below are liable to be set aside.

11. Accordingly, in the interest of justice the Criminal Revision case is allowed. The Judgment dated 29.04.2021 in C.A.No.169 of 2017 passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Udthagamandalam at Nilgiris, confirming the conviction and sentence in C.C.No.20 of 2012 dated 23.11.2017 on the file of the Judicial Magistrate Court, Kothagiri, Nilgiris District, is set aside. Consequently, connected Miscellaneous Petitions are closed.

12. Bail bond, if any, executed by the petitioner shall stand cancelled and fine amount if any paid by the petitioner shall be returned to the petitioner.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court, Kothagiri
2. The Sessions Judge,
Magalir Neethimandram, (Fast Track Mahila Court), Udthagamandalam at Nilgiris.
3. The Inspector of Police
Kothagiri Circle,
Solurmattam Police Station
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Madhan, Advocate, S.R.No.43431

Cr1.R.C.No.514 of 2021

MG(CO)
PM/14/09/2021