



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2021

Pronounced on : 18.11.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.1213 of 2014

Ganesh @ Ganesan

...Petitioner/Accused

Versus

The State rep. By its
The Inspector of Police,
Thalaignayar Police Station,
Nagappattinam District.
Crime No.258 of 2007

...Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to revise the judgment, dated 06.08.2014 in C.A.No.16 of 2013 passed by the District and Sessions Judge, Nagappattinam confirming the judgment dated 27.02.2013 in C.C.No.1075 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Vedaraniyam.

For Petitioner : Mr.J.Jayan
for Mr.Camlyes Gandhi

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)

ORDER

This Criminal Revision No.1213 of 2014 is filed by the petitioner/sole accused as against the Judgment of the Learned District Munsif -cum- Judicial Magistrate, Vedaranyam, dated 27.02.2013, finding him guilty for an offence under Section 304 (A) of IPC., and sentencing him to undergo Simple Imprisonment for three months and to pay fine of Rs.1,000/-, in default to undergo a Simple Imprisonment for one month and the same having been confirmed by the Judgment of the Learned District Sessions Judge, Nagapattinam, dated 06.08.2014.

2.On 25.05.2007, when PW.1/Ganesan, was walking along with his co-worker/the deceased Duraisamy, to get back to work after having lunch about 2.30 p.m., when they were walking on the leftern side of Vellapallam Main Road, from South to North, the petitioner herein, who was riding the Hero Honda Super Splendor Motorcycle, bearing Registration No. PY - 02 - B 0459 in a high speed and rash manner, without even sounding horn, dashed on the deceased Duraisamy from backside. He suffered



head injuries and other minor injuries. He was immediately taken to the Government Hospital, Nagapattinam by PW.1 and other witnesses to the incident in a Car. After first aid, he was referred for higher treatment to Government Medical College Hospital, Thanjavur. Upon information from the hospital, PW.7, took a statement from PW.1 since the deceased was unconscious and registered a case in Crime No.258 of 2007 for the offences under Sections 279 & 338 of IPC., and the case was taken up for investigation. However, Duraisamy the victim, who had suffered head injuries, succumbed to injuries at in the morning of 29.07.2007. As such, the case was altered as one into one under Section 304(A) of IPC., and PW.10, took up and completed the investigation and laid a charge sheet filing proposing the accused as guilty under Section 304(A) of IPC.,

3.The Trial Court took cognizance of the offence in C.C.No.1075 of 2008 and after due questioning, proceeded with the Trial. The prosecution examined PWs.1 to 10 and Exs. P1 to P7 were marked. There was no evidence let in on behalf of the defense side.

4.As a matter of fact, the first informant Ganesan(PW1), eyewitnesses to the incident namely Kaliappan(PW2) and Kailasam (PW3), one Marimuthu(PW4) who came to the spot after hearing about the incident, one Thangaraj(PW5) and Chandru (PW6), were mahazar witnesses. Kumarasamy(PW7), the Head Constable who recorded PW1's complaint, Vasanthi (PW8), wife of the deceased, one Senthilvelan(PW-9), Motor Vehicle Inspector and Gunasekaran, (PW-10) the Investigating Officer, were examined. The complaint was marked as Ex.P1, Observation Mahazar marked as Ex.P2, the First Information Report was marked as Ex.P3, Rough Sketch as Ex.P4, Motor Vehicle Inspection Report as Ex.P5, The Inquest Report as Ex.P6 and the Postmortem report as Ex.P7.

5.The Learned Magistrate considering the above evidence on record, had by Judgment dated 27.02.2003 found the accused guilty for the offence under Section 304(A) of IPC., and imposed a sentence of Simple Imprisonment for three months, and fine of Rs.1,000/-. The petitioner herein preferred CrI.A. No.16 of 2013 on the file of the Learned District and Sessions Judge, Nagapattinam, who after considering all the materials on record found the findings and sentence of the Learned Magistrate as correct and confirmed the conviction and sentence as against which the present revision is laid before this Court.

6.Mr.J.Jayan, Learned Counsel appearing for the petitioner would contend that there are basic flaws in the investigation and the prosecution didn't do well to prove the charge against the petitioner beyond reasonable doubt in as much as the Accident Register Copy was not marked and the postmortem Doctor was not examined. This apart, the Learned Counsel would contend that the version of PW.1 and PW.3 are contradictory, in as much as PW.1 would submit that he was walking in front of the deceased and only upon hearing the



sound, he turned and looked back. Whereas PW.3, the other eyewitnesses would make a contrary statement that both PW.1 and deceased were walking together side by side. This according to the Learned Counsel amounts to a very important material contradiction to create a doubt as to the manner of the accident.

7.This apart, it is further contention of the Learned Counsel that in the cross-examination of PW.9/Motor Vehicle Inspector, he categorically admitted that he was unable to tell as to the manner of the accident or about the negligence on the part of the petitioner, upon specific cross-examination in this regard. Therefore, he claims that this is a fit case to this Court should exercise its extra-ordinary revisional jurisdiction and acquit the accused from the charge. Alternatively, he would submit in the event of this Court coming to the conclusion that the petitioner is liable to be convicted, he would pray that considering the age of the petitioner and the manner of the accident only fine alone may be imposed as sentence.

8.Mr.L.Bhaskaran, learned Government Advocate (Crl.side), appearing on behalf of the State would contend that there are no material contradictions to PW.1 and PW.3. PW.9/Motor Vehicle Inspector was examined only to establish that there was no mechanical defect in the vehicle and therefore he is not competent to depose about the manner in which accident could have occurred. He would further submit that considering the material evidence on record the Trial Court and Appellate Court have correctly found that the petitioner is guilty of the charge and he would further submit that already lenient view is taken and Simple Imprisonment of three months alone has been imposed.

9.This Court also perused the records. Ongoing through the evidence of record, from the evidence of PW.1, Ex.P6/Inquest report, Ex.P7/Postmortem report, it is clear that the deceased suffered grievous head injuries and he was unconscious from the time of the accident. Therefore, the alleged prejudice put forth on behalf of the defense that the non-marking of Accident Register copy, and non examination of Doctor who gave treatment and who conducted post-mortem is only for burking the fact that the deceased was conscious after the accident, is without any merits. The shortcomings in the investigation unless have caused prejudice to the accused cannot become the basis for acquittal. The next submission of the Learned Counsel that there are contradictions between the evidence of PW.1 and PW.3 is also not acceptable. On a careful reading of PW.1's evidence and PW.3's evidence would reveal that there were no contradictions. As a matter of fact, PW.1 says that he was walking along with the deceased at the moment of the accident, he was in front of the deceased and upon hearing the impact noise, he immediately turned back and witnessed the occurrence. PW.3 says they would walk together along side by side . Therefore, it can be easily understood that except for different styles of description and expression



of the walking together, there are no material contradictions and the submissions of the learned counsel for the petitioner in this regard, is without any merits.

10.The final contention about the cross-examination of PW.9/Motor Vehicle Inspector is concerned, this Court is of the view that PW.9 was examined for the purpose as rightly pointed out by the learned Government Advocate (crl.side), to dispel that there was any mechanical fault and nothing else. He is not competent to speak about the manner of the accident and the nature of the impact etc., and accordingly, this contention is also without any merits.

11.Under these circumstances, upon careful perusal of the oral and documentary evidence on record, I am of the view that no case is made out to upturn the finding of the Trial Court and the Lower Appellate Court in exercise of the revisional jurisdiction. Accordingly, the conviction of the petitioner under Section 304(A) of IPC., is confirmed.

12.The Learned Counsel for the petitioner would impress upon this Court to consider the facts of this case, manner of the accident, age of the accused etc., and pray only a fine alone may be imposed as punishment. The Hon'ble Supreme Court in State of Karnataka Vs. Krishna @ Raju (1987) CrL LW. 776 and subsequent judgments has repeatedly held that the imposition of only a fine would amount to undue sympathy where precious life is lost on account of the action of the accused and hence fine alone cannot be imposed as punishment.

13.Considering (i) the age of the accused, (ii) manner of the accident, (iii) the fact that the accused did not flee from the scene of occurrence, (iv) the injuries suffered by the deceased (that the head injury by falling down upon being hit by the motorcycle from behind), (v) the deceased struggled for life for about four days on account of head injuries and thereafter succumbed to the same, (vi) the correctional purpose of the sentence, I am inclined to modify and reduce the imprisonment sentence alone imposed by the Learned Trial Court and the First Appellate Court from three months Simple Imprisonment to that of Simple Imprisonment for a period of one month.

14.This Criminal Revision Petition is disposed of accordingly.

Sd/-

Assistant Registrar (CS-VIII)

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To

1.The District Munsif-cum-Judicial Magistrate,
Vedaraniyam.

2.The District and Sessions Judge,
Nagappattinam.

3.The Inspector of Police,
Thalaignayar Police Station,
Nagappattinam District.

4.The Public Prosecutor,
High Court of Madras.

Crl.R.C.No.1213 of 2014

MG (CO)
PR (02/12/2021)