

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2021
PRONOUNCED ON : 17.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Cr1.RC.No.325 of 2014

(Through Video Conferencing)

Devendhiran

...Petitioner

Vs

State by Inspector of Police
Vanapuram Police Station
Tiruvannamalai

...Respondent

Prayer:- This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 20.02.2014, passed in CA.No.38 of 2009, by the Sessions Judge, Tiruvannamalai, confirming the judgement of conviction and sentence, dated 24.10.2008, passed in CC.No.587 of 2007, by the Judicial Magistrate I, Tiruvannamalai.

For Petitioner : Mr.N.Kannan

For Respondent : Mr.G.Ramar, GA

ORDER

- 1.This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 20.02.2014, passed in CA.No.38 of 2009, by the Sessions Judge, Tiruvannamalai, confirming the judgement of conviction and sentence, dated 24.10.2008 passed in CC.No.587 of 2007, by the Judicial Magistrate I, Tiruvannamalai, thereby convicting and sentencing the Petitioner/Accused for the offence under Section 304A of IPC to undergo Simple Imprisonment for one year.
- 2.The Petitioner/Accused was charge sheeted for the offences under Sections 279 and 304A of IPC in respect of the road accident took place on 22.09.2007 at 16.30 hours, alleging that at the relevant point of time, after attending the school, the deceased Naveen Kumar, aged 5 years, was travelling in the School Bus, bearing Reg.No.TTN 3345 and at Vanapuram Kunglianantham-Sarpapattu Road, Thenkarumbalor, Arunthathiyar

Colony, when the deceased child, after getting down from the said bus, crossed the road in front of the bus, the driver of the said bus, drove the vehicle in a rash and negligent manner and dashed against him, due to which, the right side front wheel of the bus ran over the head of the child and he died on the spot.

- 3.The case was taken on file in CC.No.587 of 2007, by the Judicial Magistrate I, Tiruvannamalai and necessary charges were framed. The accused had denied the charges and sought for trial. In order to prove the charges against the accused, the Prosecution had examined PW.1 to PW.14 and also marked Exs.P1 to P7 and Mos.1 to 3. On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial and stated that he had been falsely implicated in this case. Both the courts below, after hearing the arguments advanced on either side and also looking into the materials available on record, concurrently found the Petitioner/Accused guilty and awarded punishments as stated above. Hence, this Criminal Revision Case has been filed.
- 4.This court heard the submissions of the learned counsel on either side.
- 5.The learned counsel for the Petitioner would submit that when PW.1, who is the mother of the deceased child, is the interested witness and not an eye witness to the occurrence, when PW.2 also is not the eye witnesses to the occurrence, but only a hearsay witness, when there is no eye witness to the occurrence at all, when there is no corroborative evidence, when there is no evidence to show that the Petitioner/Accused was the driver of the bus belonged to the School and also to prove that the Petitioner was driving the vehicle at the relevant point of time, that too in a rash and negligent manner, thereby causing the accident, the courts below ought to have acquitted the Petitioner and pray for allowing this Criminal Revision Case.
- 6.On the other hand, the learned Government Advocate for the Respondent would submit that the Prosecution has proved its case, namely, the accident, the death of the deceased due to the injuries sustained by the victim in the accident and also the involvement of the accused in the crime, beyond all reasonable doubts, by adducing valid and cogent evidence and that both the courts below have considered the evidence both oral and documentary and concurrently held the Petitioner/Accused guilty of the offence and accordingly,

convicted and sentenced the Petitioner/Accused as stated above and there is no valid ground for acquitting the accused and hence, this Criminal Revision Case is liable to be dismissed.

7.I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement.

8.Ex.P1 is the complaint, dated 22.09.2007, given by PW.1, mother of the deceased child, alleging that her son, aged about 5 years, died in the road accident due to the rash and negligent driving of the Petitioner/Accused. Ex.P2 is the observation mahazar, dated 22.09.2007. Ex.P3 is the report of the Motor Vehicle Inspector, dated 24.09.2007. Ex.P4 is the post mortem report. Ex.P5 is the First Information Report. Ex.P6 is the sketch and Ex.P7 is the inquest report. MO.1 and MO.2 are negative and photos.

9.PW.1 and PW.2 have deposed about the accident. PW.3 and PW.4 were examined as the eye witnesses to the occurrence. PW.12 is the Sub Inspector of Police, who registered the case in Cr.No.109 of 2007 for the offences under Sections 279 and 304A of IPC, under Ex.P5. PW.13 is the Inspector of Police concerned, who conducted investigation and prepared observation mahazar Ex.P2 and Ex.P6 rough sketch in the presence of the witnesses, PW.6 and PW.7 and took photographs of the occurrence through PW.8 and prepared inquest report under Ex.P7 and sent the dead body of the deceased for autopsy through PW.11, Head Constable and examined the witnesses and recorded their statements.

10.PW.10 is the Doctor, who conducted autopsy on the body of the deceased child and issued an autopsy report under Ex.P4. PW.14 is the Inspector of Police, who took up case for further investigation and arrested the accused and sent him to the Court. PW.9 is the concerned Motor Vehicle Inspector, who examined the offending vehicle and issued the motor vehicles report under Ex.P3. After completing investigation, PW.14 had laid the final report against the Petitioner/Accused. After analysing the evidence on record, the courts below had concurrently found the Petitioner/Accused guilty and awarded punishments as stated above.

11.Now, the question that arises for consideration is as to whether the Prosecution has proved its case beyond all reasonable doubts, by letting in valid and cogent evidence, for upholding the impugned judgement of the courts below or whether the Petitioner/Accused is entitled for acquittal for the reasons stated in the grounds of revision.

12. On perusal of the entire evidence, it is seen that PW.1 and PW.2 have deposed about the accident and that the evidence of PW.3 and PW.4, who are the eye witnesses to the occurrence, in categorical terms clearly proves the case of the Prosecution, namely, at the relevant point of time, when the offending bus stopped at the bus stop, the deceased child got down from the bus and when the victim crossed the road to go to his house, the driver of the offending bus, without looking into the front side of the bus, drove the bus in a rash and negligent manner and ran over the deceased child and thus, the accident had occurred, in which the deceased child died on the spot due to head injuries.

13. In so far as the contention of the learned counsel for the Petitioner/Accused that non-identification of the driver of the offending bus would entitle the Petitioner/Accused for acquittal, is concerned, on scrutiny of the evidence of PW.4, it is seen that he had adduced both in chief and cross that the Petitioner/Accused was the person, who drove the offending vehicle at the relevant point of time and he was alone responsible for the accident, in which, the deceased child died on the spot and even the lower appellate court has also observed that in Ex.P3, the report of the MVI, the names of the owner and the driver of the offending bus are clearly mentioned. Hence, the said contention cannot be accepted.

14. Further, it is pertinent to point out that it is not the case of the Petitioner/Accused that while the bus was running, the deceased child suddenly crossed the road, but on the other hand, it is proved by valid evidence as discussed above that the bus was stopped at the bus stop and thereafter, the deceased child got down from the bus and crossed the road to go to his house and without seeing the front side of the bus and without seeing the child crossing the road, the Petitioner/Accused drove the vehicle rashly and negligently and ran over the child. Thus, the Petitioner/Accused was the person, who was responsible for the accident and the death of the child. Further, this Court finds no contra evidence in support of the Petitioner/Accused.

15. PW.10, Doctor, who conducted autopsy on the body of the deceased child, found rigor mortis on the legs and neck and the head smashed on the side and the tissues of brain scene out and opined in Ex.P4 autopsy report that the victim died due to shock and bleeding due to the injuries sustained by him from 8 to 24 hours before autopsy.

16. In the light of the entire evidence, both oral and documentary, this Court is of the considered view that the

accident had happened due to the rash and negligent driving of the accused driver of the offending vehicle, in which, the deceased died on the spot and accordingly, both the courts below had rightly convicted and sentenced the Petitioner/Accused, as stated above, by the impugned judgements and there is no illegality or perversity in the findings of both the courts below. However, in so far as the sentence of imprisonment is concerned, considering the age of the Petitioner/Accused and taking into consideration the totality of the circumstances of the case, it needs to be modified.

17. In the result, this Criminal Revision Case is dismissed, confirming the conviction imposed under Section 304A of IPC, but modifying the sentence of imprisonment alone to the effect that the Petitioner/Accused shall undergo Simple Imprisonment for six months. No costs.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Tiruvannamalai

2. The Judicial Magistrate I, Tiruvannamalai

3. The Inspector of Police, Vanapuram Police Station, Tiruvannamalai

4. The Public Prosecutor, Madras High Court, Madras

Pre-Delivery Order in
Crl.RC.No.325 of 2014

SMI (CO)
baf 10/05/2021

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