

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.513 of 2014

Rajendran
S/o. Veeran

... Petitioner/Accused

Vs

The State represented by the Inspector of Police
Transport and Investigation Wing
Salem City
(Crime No.84 of 2012)

... Respondent/Complainant

Prayer: This Criminal Revision Case filed, under Section 397 r/w Section 401 Cr.PC, to set aside the Judgment dated 26.09.2013 in C.A.No.58 of 2013 on the file of the learned III Additional District and Sessions Judge, Salem, modifying the fine amount imposed in the Judgment dated 23.05.2013 in S.T.C.No.382 of 2012 on the file of the learned Judicial Magistrate No.III, Salem and to allow the above Criminal Revision.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.T.Shunmugarajeswaran,
Government Advocate (Crl.Side)

ORDER

The Criminal Revision Case has been filed by the Petitioner/Accused, seeking to set aside the Judgment dated 26.09.2013 in C.A.No.58 of 2013 on the file of the learned III Additional District and Sessions Judge, Salem, modifying the fine amount imposed in the Judgment dated 23.05.2013 in S.T.C.No.382 of 2012 on the file of the learned Judicial Magistrate No.III, Salem and to allow the Criminal Revision Case.

2.The case of the prosecution is that on 05.02.2012 at about 13.30 hours at Salem City, four roads to New bus stand Main Road in the Periyar Over bridge within the limit of Hasthampatti Police Station, when the defacto complainant along with his two sons was riding his two wheeler Hero Honda Pleasure, vehicle bearing Registration No.TN.30D1687, the

accused / petitioner who had driven his Innova car bearing Registration No.TN.30G0313 by overtaking the another vehicle had come in a rash and negligent manner and hit against the two wheeler driven by the defacto complainant, due to the impact, the defacto complainant and his two sons fell down and sustained injuries.

3.On the complaint given by P.W.1 / defacto complainant, the respondent police registered a case in Crime No.84 of 2012 for the offences under Section 279, 337(2) and 338 IPC against the Revision Petitioner / accused. After completion of investigation, final report was filed. On receipt of the Final Report along with the relevant documents, the case was taken cognizance in S.T.C.No.382 of 2012, on the file of the learned Judicial Magistrate No.III, Salem and summons were issued to the accused / Revision Petitioner.

4.On appearance of the Petitioner/Accused, he was furnished copies of the relevant documents and the final report under Section 207 Cr.P.C. When the petitioner / accused was questioned about the charge, he denied the same and pleaded not guilty.

5.After giving sufficient time and upon considering the police report and documents sent along with it under Section 173 Cr.P.C., the Trial Court finding that these grounds for presuming that the accused / petitioner had committed the offence questioned the accused. The accused pleaded not guilty and claimed to be tried.

6.During the trial, the prosecution in order to prove the guilt of the Petitioner/Accused, had examined P.W1 to PW8 on its side and marked documents Ex.P1 to Ex.P10. No material object was produced. On the side of the defence, no oral or documentary evidence were adduced. The Trial Court found the Petitioner/Accused not guilty for the offence under Section 279 of IPC and acquitted the accused as per Section 255(1) Cr.P.C., whereas found that the accused / petitioner guilty for the offences under Section 337 (2 counts) IPC and convicted and imposed a fine of Rs.300/- for each count and found the accused / petitioner guilty for offence under Section 338 IPC and imposed a fine of Rs.600/- and in default to pay the fine amount, the accused was ordered to undergo simple imprisonment for two weeks for each count.

7.Aggrieved by the said conviction order, the petitioner / accused preferred an appeal in C.A.No.58 of 2013 on the file of the learned III Additional District and Sessions Judge, Salem. The Appellate Court confirmed the Judgment and Order passed by the learned Judicial Magistrate No.III, Salem in S.T.C.No.382

of 2012. Against which, the present Criminal Revision has been filed.

8.Mr.R.Nalliyappan, learned counsel appearing for the Petitioner/Accused while assailing the Judgment of both Courts below would restrict his arguments to only one point. He would submit that in this case, the petitioner was charged and tried for the offence under Sections 279, 337(2 counts) and 338 IPC. The Trial Court finding that the rash and negligent manner is not proved by the prosecution beyond all reasonable doubts found the accused not guilty for offence under Section 279 IPC and acquitted the petitioner. When the Trial Court having held that the prosecution has not proved that the accused had acted in a rash and negligent manner and having acquitted the accused for the offence under Section 279 IPC, erred in finding the accused guilty for offence under Sections 337(2 counts) and 338 IPC on the same set of evidence. Since the necessary ingredient required for proving the charge under all the offences is rashness and negligence. The Appellate Court also had erred in confirming the conviction and sentence, thereby, he would seek to set aside the order passed by the Courts below.

9.Per contra, learned Government Advocate (Crl. Side) would submit that the petitioner was charged for the offence under Sections 279, 337(2 counts) and 338 IPC. Since the Trial Court had found the accused guilty for the offence under Section 337 (2 counts) and 338 IPC, there is nothing wrong in acquitting the accused for offence under Section 279 IPC, since as per Section 71 of IPC no separate sentence is required to be passed in respect of lesser offence.

10.In reply, learned counsel for the petitioner would submit that it is not a case where the petitioner has been found guilty for offence under Section 279 IPC and convicted for the grave offence. In this case, the Trial Court has given a specific finding that the prosecution has not proved the rashness and negligence on the part of the petitioner / accused and the same evidence is applicable for all the offences.

11.Heard the counsels. Perused the materials placed on record.

12.In this case the petitioner has been charged and tried for the offence under Section 279, 337(2 counts) and 338 IPC. This Court feels it apposite to refer the Sections for which the petitioner / accused has been charged;

279. Rash driving or riding on a public way –

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any

other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

337. Causing hurt by act endangering life or personal safety of others –

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

338. Causing grievous hurt by act endangering life or personal safety of others –

Whoever causes grievous hurt to any person to doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

13. On analysing the sections above viz. Section 279, 337 & 338 IPC, it is seen that they are alike or similar offences. The similarity and common essential features in the offence being rashness and negligence of the accused, in Section 279 IPC, the essential elements are driving or riding of a vehicle by a person on a public way in a rash and negligent manner as to endanger human life or to be likely to cause hurt or injury to any other person. In Section 337 IPC, the essential elements are the offender by doing any act by rashness or negligence causes hurt to any person and in Section 338 IPC, the person by doing any act by rashness or negligence causes grievous hurt to any person. In all these three sections, as stated above, the essential element and the basic requirement which is needed to be proved is the rashness and the negligent act of the offender and thereby all the three offences fall within the category of cognate offences. However, with varying degrees of the result in all these offences, the prosecution is bound to prove the rashness and negligence on the part of the offender. It is relevant to refer to a relevant paragraph in Rafiq Ali @ Rafi Vs. State of U.P. Reported in 2011 SCC 3114;

"..... Alike or similar offences can be termed as 'cognate offence'. The word 'cognate' is a term primarily used in civil jurisprudence particularly with reference to the provisions of the Hindu Succession Act, 1956 where Section 3(c) has used this expression in relation to the descendants of a class of heirs and normally the term is used with reference to blood relations, Section 3(c) of

the Hindu Succession Act defines 'cognate' as follows:-

"one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males."

"This expression has also been recognized and applied to the criminal jurisprudence as well not only in the Indian system but even in other parts of the world. Such offences indicate the similarity, common essential features between the offences and they primarily being based on differences of degree have been understood to be 'cognate offences'. Black's Law Dictionary (Eighth Edition) defines the expression 'cognate offences' as follows:-

"cognate offences. A lesser offence that is related to the greater offense because it shares several of the elements of the greater offense and is of the same class or category for example, shoplifting is a cognate offence of larceny because both crimes require the element of taking property with the intent to deprive the rightful owner of that property."

10. Therefore, where the offences are cognate offences with commonality in their feature, duly supported by evidence on record, the Courts can always exercise its power to punish the accused for one or the other provided the accused does not suffer any prejudice as afore-indicated."

14. At the cost repetition, as stated above, the offence under Sections 279, 337 & 338 IPC are cognate offences and the basic and essential elements which are commonly required to be proved by the prosecution relating to the offences under Section 279, 337 & 338 IPC are rashness and negligence.

15. At this stage, this Court feels it necessary and apposite to refer to the relevant paragraph of the judgment of the Trial Court with regard to the finding relating to rashness and negligence.

"9. As such this Court is of considered view that, the rash and negligent manner is not proved by the prosecution beyond all reasonable doubts. At the time of cross of PW1, the photographs of the damaged car is marked as Ex.D1. PW3 in the evidence has stated that, on his inspection both the vehicles have got damaged and the inspection report were produced as Ex.P2 & P3. On a perusal of the reports this Court has come to know that both the vehicles have got damaged on

their right side. As such this Court is of the view that both the vehicles have colluded is proved. In the rough sketch it is shown that this accident is took place on the left side of the road. When the innova car is proceeding from East to West, it has travelled on the southern side of the road. On the accused side no documentary evidence or oral evidence has been adduced to state that the accident was not taken place on the northern side of the road. Hence this Court of the considered view that he accident is caused by the accused by his vehicle and the accused is liable for the offence U/s.337(2 counts) & 338 IPC.

In the result the accused found not guilty U/s.279 IPC. Acquitted as per Sec.255(1) Cr.P.C. The accused found guilty under Section 337 (2 counts) & 338 IPC. Convicted and imposed a fine of Rs.300/- for each two counts and a sum of Rs.600/- U/s.338 IPC. In default of fine the accused is ordered to undergo SI for 2 weeks for each. Total fine Rs.1,100/-.

16.In this case, placing reliance on the evidence let in by the prosecution, the Trial Court had rendered a categoric finding that the rash and negligent manner of driving is not proved by the prosecution beyond all reasonable doubts and the Trial Court has found that the petitioner is not guilty of the offence under Sections 279 IPC and had acquitted the petitioner as per Section 255 (1) Cr.P.C., whereas strangely on the very same set of facts the Trial Court, without proper application of mind and without proper appreciation of evidence and without properly analysing evidence relating to the offences for which the petitioner was charged for, had found the petitioner guilty under Section 337 (2 counts) & 338 IPC. It is not the case where the petitioner has been found guilty of rashness and negligence on the whole and convicted for graver offences and acquitted for lesser offence as per Section 71 of IPC. The Trial Court, thereby, committed an error in finding the petitioner guilty for offence under Sections 337 (2 counts) & 338 IPC on the very same set of evidence. Such being the case, the Appellate Court also committed an error by confirming the finding of conviction and sentence for offences under Section 337 (2 counts) & 338 IPC. Both the courts have failed to properly analyse the evidence and materials on record.

17.In view of the above, the Criminal Revision is allowed and the Judgment dated 26.09.2013 made in C.A.No.58 of 2013 by the learned III Additional District Sessions Judge, Salem, confirming the Judgment of conviction and sentence imposed by the learned Judicial Magistrate No.III, Salem, dated 23.05.2013 made in S.T.C.No.382 of 2012 is set aside. The

petitioner is acquitted from the charges framed against him. The fine amount if any paid by the petitioner to be refunded to him.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District and Sessions Judge,
Salem

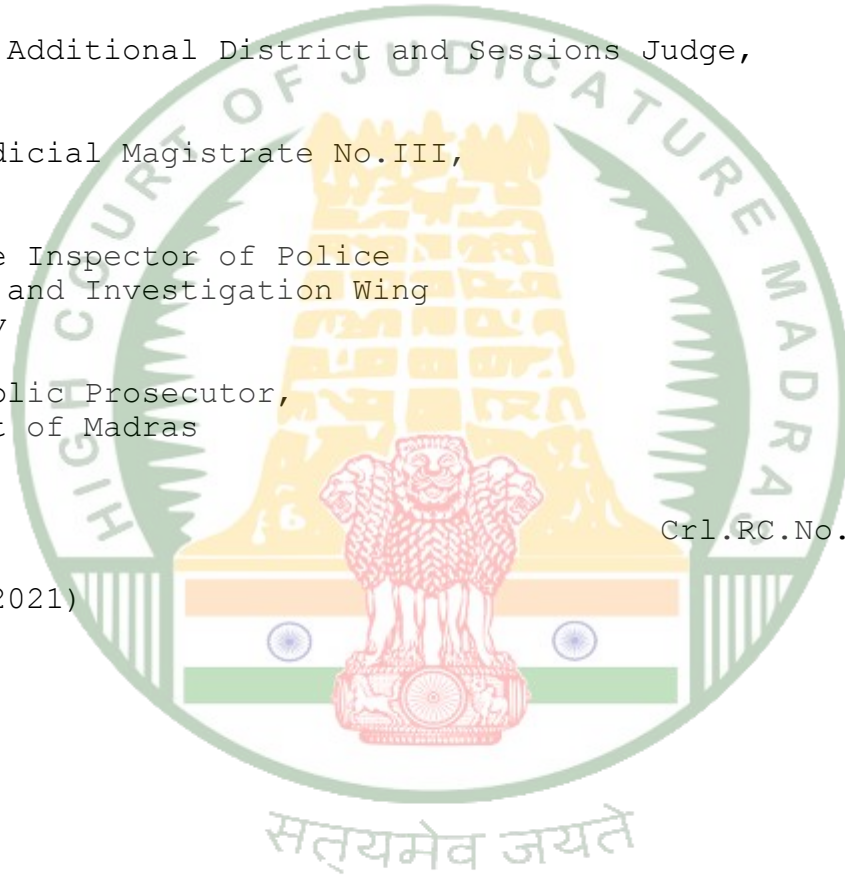
2. The Judicial Magistrate No.III,
Salem

3. The the Inspector of Police
Transport and Investigation Wing
Salem City

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

Cr1.RC.No.513 of 2014

AJB (CO)
CB(17/03/2021)



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