

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2021

PRONOUNCED ON : 23.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.RC.No.586 of 2014

(Through Video Conferencing)

T.Pandu

... Petitioner

Vs

State by Inspector of Police
Gudiyattam Town Police Station
Vellore

... Respondent

Prayer:- This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 21.04.2014, passed in CA.No.08 of 2013, by the Principal District and Sessions Judge, Vellore, modifying the judgement of conviction and sentence, dated 28.01.2013, passed in CC.No.19 of 2010, by the Judicial Magistrate, Gudiyattam, Vellore.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.G.Ramar, GA

ORDER

1.This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 21.04.2014, passed in CA.No.08 of 2013, by the Principal District and Sessions Judge, Vellore, modifying the judgement of conviction and sentence, dated 28.01.2013, passed in CC.No.19 of 2010, by the Judicial Magistrate, Gudiyattam, Vellore.

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 15.10.2009 at 08.45 a.m. alleging that at the relevant point of time, at Nellorpettai, Vallikuttai

Village, Gudiyatham Taluk, the Petitioner/Accused had driven the Van bearing Reg.No.TN 23 Q 2797, in a rash and negligent manner and hit against one Vigneshkumar, aged 1 ½ years, who is the son of PW.1, Gomathi and the child succumbed to fatal injuries.

- 3.The case was taken on file in CC.No.19 of 2010, by the Judicial Magistrate, Gudiyattam, Vellore 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 P9. 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.
- 4.The Trial Court found the Petitioner/Accused guilty for the offences under Sections 279 and 304A of IPC and convicted and sentenced the Petitioner/Accused for the offence under Section 279 of IPC to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for two months and for the offence under Section 304A of IPC to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.4,000/-, in default, to undergo Simple Imprisonment for three months. On the appeal, the lower appellate court modified the judgement of the Trial Court and while confirming the conviction for the offences under Sections 279 and 304A of, sentenced the Petitioner/Accused for the offence under Section 304A of IPC to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.4,000/-, in default to undergo Simple Imprisonment for one month. Hence, this Criminal Revision Case has been filed.
- 5.This court heard the submissions of the learned counsel on either side.
- 6.The learned counsel for the Petitioner would submit that when the ingredients of the offences under Sections 279 and 304A of IPC have not been made out, when none of the witnesses speaks about the rash and negligent driving of the Petitioner, when the evidence of the witnesses are contradictory to each other, when no independent witness has been examined, when there is contradictory evidence with regard to the lodging of the complaint and also the type of the vehicle involved in the occurrence and also the manner, in which the accident had occurred, when there is contra medical evidence, when PW.1 complainant is not an eye witness to the occurrence, benefit of doubt ought to have been given to the Petitioner and

consequently, the Petitioner ought to have been acquitted and this Criminal Revision Case is to be allowed.

7. 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 child 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 the lower appellate court had considered the evidence both oral and documentary and held the Petitioner/Accused guilty of the offences 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.
8. 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.
9. It is not in dispute that the deceased child died due to the head injuries sustained in the accident. The question that arises for consideration is as to whether the deceased child died due to the rash and negligent act of the Petitioner/Accused alone, while driving the offending vehicle and whether lower appellate court is justified in convicting the Petitioner/Accused for the offences under Sections 279 and 304A of IPC and sentencing him for the offence under Section 304A of IPC, based on reliable evidence or whether the Petitioner/Accused is entitled for acquittal for the reasons stated in the grounds of revision.
10. Ex.P1 is the complaint given by PW.1, mother of the deceased child, to PW.12, Sub Inspector of Police, who registered First Information Report Ex.P6 and conducted the investigation and went to the scene of occurrence and prepared observation mahazar Ex.P8 in the presence of the witnesses and Ex.P9 rough sketch. PW.12 also conducted inquest over the dead body in the presence of the witnesses and prepared inquest report Ex.P4 and sent the body of the deceased to the Hospital for port-mortem through PW.12 Head Constable.
11. PW.10 is the Doctor, who conducted post-mortem and issued Ex.P7 post mortem certificate. PW.11 is the Motor Vehicles Inspector, who inspected the offending vehicle and issued a report under Ex.P5. After completing investigation, the Investigating Officer had filed the final report.

- 12.PW.1, who is the mother of the deceased child, in her evidence in chief, while identifying the Petitioner/Accused as the person, who drove the vehicle and caused the accident, has deposed that when her son was playing on the road, the offending vehicle came in a rash and negligent manner and hit against her son and that due to such hit, the deceased child sustained injuries on his head and his ear and nose were bleeding and that the vehicle was bearing Reg.No.2797. In her cross, she has deposed that the offending vehicle was a four wheeler Kuttiyanai and that she saw the left tyre of the offending vehicle ran over the head of the child.
- 13.PW.2, who is the father of the deceased child, has deposed that on receipt of the information about the accident over phone, he went to the hospital and saw the child dead and thereafter, he accompanied PW.1 and others to the Police Station and gave the complaint Ex.P1.
- 14.PW.3 is the eye witness to the occurrence and she has deposed that on the day of occurrence, when she was talking with another regarding a job for her husband, on seeing that under the front tyre of the van, the head of the child was struck, she shouted to stop the vehicle and immediately, the Petitioner/Accused stopped the offending vehicle and by that time, the front wheel ran over the head of the deceased child, due to which, the ear and noses of the child were bleeding and immediately, PW.1 along with others took the child to the hospital.
- 15.PW.4 has deposed that he was talking with others at a distance of 30 to 40 ft. from the place of occurrence and that on hearing the noise raised by others, he went to place of occurrence and saw the offending vehicle which caused the accident and the ear and nose of the child were bleeding and immediately, the child was taken to the hospital and that thereafter, he came to know about the death of child.
- 16.PW.5 has deposed that when she was drawing water from the water pipeline, outside the house, near the place of occurrence, she saw the offending vehicle hitting the deceased child and that the head of the child was bleeding and the child was taken to the hospital and thereafter, she came to know that the child died. However, she has deposed in cross that by the time she came to the place of occurrence, the offending vehicle hit the child.
- 17.PW.6 has deposed that when she was standing and talking near the water pipe line along with her neighbour, PW.1 along with the deceased child was also talking with her and at that time,

the offending vehicle driven by the Petitioner/Accused in a rash and negligent manner, hit the child and the ran over the head of the child and that the nose and ear of the child were bleeding and that the child was taken to the hospital.

18.PW.7 has deposed that on the day of occurrence, when he along with his wife was standing outside their house, the offending vehicle driven by the Petitioner/Accused in a rash and negligent manner, hit the child and the ran over the head of the child and that the nose and ear of the child were bleeding and that he along with his wife and PW.1 took child to the hospital.

19.PW.8 and PW.9 are mahazar witnesses and they deposed that at the time of occurrence, the Petitioner/Accused was present at the place of occurrence.

20.PW.10 Doctor has deposed that he conducted autopsy on the body of the deceased and issued post mortem certificate under Ex.P4, opining that the deceased child would have died of haemorrhage in skull and the injuries sustained on the head.

21.PW.11, is the Motor Vehicles Inspector, who inspected the offending vehicle and issued the report under Ex.P5. As per Ex.P5, the accident would not have occurred due to any mechanical defects and that the offending vehicle was a three wheeler.

22.A cursory perusal of the entire evidence, it reveals that the evidence of PW.1 is corroborated by the evidence of the ocular witnesses, PW.3, PW.6 and PW.7, which are found to be convincing and reliable and that on the day of occurrence, the accident had occurred, in which the deceased child succumbed to the injuries and that the Petitioner/Accused was the person, who drove the offending vehicle in a rash and negligent manner and thus, he was responsible for the accident.

23.In so far as the contradictions in the evidence of PW.1 and the author of the First Information Report, regarding the type of the offending, namely four wheeler or three wheeler, pointed out by the learned counsel for the Petitioner/Accused, is concerned, it is established by the other evidence on record that the Petitioner/Accused himself admitted that the vehicle involved in the case was driven by him on the day of occurrence and as such, the question of discrepancy with regard to the type and nature of the vehicle does not arise and further, whether it was a four wheeler or three wheeler will not absolve the criminal liability of the Petitioner/Accused in the

offence and in view of the same, the said discrepancies are not fatal to the case of the Prosecution to base conviction on the accused.

24.The evidence of PW.1, PW.3, PW.6 and PW.7, coupled with the medical evidence, are cogent, consistent and convincing. Hence, it can be safely concluded that in the light of the evidence of the said eye witnesses, which are in unequivocal terms, coupled with the medical evidence, the lower appellate court is justified in holding that the Petitioner/Accused had driven the offending vehicle in a rash and negligent manner and caused the accident, in which, the deceased child succumbed to fatal injuries and accordingly, convicting and sentencing him, as stated above.

25.The discrepancies pointed out by the learned counsel for the Petitioner/Accused, in the opinion of this Court, would not affect the veracity of the case of the Prosecution and the evidence available on record are sufficient to base conviction on the Petitioner/Accused, as imposed by the lower appellate court.

26.On an overall analysis of the entire materials placed before this Court, this Court is of the view that the evidence available on record are sufficient to point out the guilt of the Petitioner/Accused and accordingly, the Petitioner/Accused was rightly convicted for the offences under Sections 279 and 304A of IPC, by the lower appellate court and sentenced for offence under Section 304A of IPC, as stated above and there is no illegality or perversity in the findings of the lower appellate court.

27.In the result, this Criminal Revision Case is dismissed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Srcm
To

1.The Inspector of Police,
Gudiyattam Town Police Station,
Vellore.

2.The Principal District and Sessions Judge,
Vellore.

3.The Judicial Magistrate,
Gudiyattam, Vellore.

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

+lcc to Mr.R.Karthikeyan, Advocate Sr.25076

Cr1.RC.No.586 of 2014

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srg 09/06/2021



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