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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2021

PRONOUNCED ON : 01.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.475 of 2017

Natesan

...Petitioner/Accused

Vs.

The State represented by,
The Inspector of Police,
Jalakandapuram Circle,
Nangavalli Police Station,
Salem District.

...Respondent/Complainant

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., to call for the records and to set aside the order passed in Crl.A.No.9 of 2017, on the file of the learned III Additional Sessions Judge, Salem, dated 09.03.2017, which upheld the order passed by the Judicial Magistrate-I, Mettur, in C.C.No.76 of 2014.

For Petitioner : Mr.N.R.Elango, Senior Advocate
for Mr.R.Vivekananthan

For Respondent : Mr.S.Vinoth Kumar
Public Prosecutor

JUDGMENT

The convicted accused is the revision petitioner herein.

2(a).The respondent police has filed a charge sheet for the alleged offence under Section 304(a) of IPC and 279 of IPC against the accused in Crime No. 43 of 2014 and the same was taken up on file as C.C.No.76 of 2014 by the learned Judicial Magistrate No.I, Mettur. After the trial the learned Magistrate has convicted the accused in C.C.No.76 of 2014 for the offence under Sections 279 and 304(a) of IPC and sentenced him as under:

(i)For the offence under Section 279 of IPC, the learned Judge has sentenced the accused to pay a fine of Rs.500/- and in default to undergo one month simple imprisonment



(ii) For the offence under Section 304(a) IPC, the learned Judge has sentenced the accused to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- and in default to undergo three months simple imprisonment.

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2(b). Aggrieved against the said conviction and sentence, the revision petitioner/accused has preferred an appeal in CrI.A.No.9 of 2017, before the learned III Additional Session Judge, Salem and by an order dated 09.03.2017, the learned Judge has dismissed the appeal and confirmed the order of conviction and sentence passed by the Trial Court. Hence, the Criminal Revision Case.

3. Heard Mr.N.R.Elango, learned Senior Advocate, appearing for Mr.R.Vivekananthan, learned counsel for the revision petitioner/accused and Mr.S.Vinoth Kumar, learned Public Prosecutor for the respondent and perused the materials placed on record.

4. The learned Senior Advocate would contend that there is a lot of alteration regarding the date of the occurrence in all vital documents. The prosecution has not proved the actual date of accident and the adoption of Doctrine Res IPSA Laquitor is not applicable to criminal proceedings but both the Courts below have erred in applying the same. None of the prosecution witnesses are occurrence witness and hence prayed for acquittal of the accused from the charges framed.

5. The points for consideration are:

(i) Whether the prosecution has proved the charge under Sections 304(a) and 279 of IPC.

(ii) Whether the order of conviction passed by both the Courts below is sustainable in law.

6(i). On a perusal of the records it is seen that PW1/defacto complainant and his wife viz., Chinnapillai (deceased) are the residents of Kullanur village and the said village is situated about 3 km East of Nagavalli on Nagavalli-Tharamangalam road and the house of the defacto complainant is situated on the South abutting the road. The defacto complainant and his wife Chinnapillai (deceased) were having a petty shop in front of their house and they used to keep the vegetables for sale on a cot in front of the petty shop.

6(ii). While so, on 04.04.2014 at about 2.30 p.m., the deceased was arranging tomatoes on the cot and at that time, the revision petitioner/accused drove a Maruthi Swift car bearing Registration No.TN52-Y-7106 in a rash and negligent manner. The said vehicle came extreme right side of the road and colluded with the signal post and thereafter hit the cot which was placed



in front of the deceased house, whereby the said vehicle hit the deceased and dragged her till the bathroom wall of their house. Due to the said mishap, the deceased sustained severe injuries and died on the way. The deceased was declared brought dead by Government Hospital, Omalur.

6(iii).Thereafter, the defacto complainant has preferred a written complaint before the respondent police and the same was taken on file in Crime No.43 of 2014 for the offence under Sections 279 & 304(A) of IPC. The respondent police filed a final report before the learned Judicial Magistrate No.I, Mettur and the same was taken on file in C.C.No.76 of 2014.

6(iv).On the side of the prosecution PW1 to PW19 were examined and Exs.P1 to P8 were marked. On the side of the defence no witness was examined and no exhibits were marked.

6(v).After going through the oral and documentary evidences, the learned Judicial Magistrate No.I has convicted the revision petitioner/accused for the offence under Sections 279 & 304(A) of IPC and sentenced him as stated supra. Aggrieved against the said order of conviction and sentence, the revision petitioner/accused has preferred the appeal before the learned III Additional Session Judge, Salem in CrI.A.No.9 of 2017 and the learned Judge was pleased to confirm the order conviction and sentence passed by the Trial Court.

7.At the outset, I find that in the vital documents viz., Ex.P1/Complaint, Ex.P6/FIR and Final Report there is a material alteration as to the theory of the prosecution.

8.The records reveal that as per Ex.P1/complaint date of the occurrence is shown as 04.02.2014; while as per Ex.P6/FIR, it is mentioned as 14.02.2014, but in original FIR it was written as 14.01.2014 and thereafter altered as 14.02.2014. This Court perused the lower Court records and in the final report, the accident said to have been taken place on 04.04.2014; a perusal of the Statement recorded under Section 161 of Cr.P.C from the witnesses, the alleged date of accident is mentioned as 04.04.2014 and hence, I find that the point raised by the learned Senior Advocate is found to have force.

9.Further, it is seen that the learned Magistrate has followed the doctrine Res IPSA Liquitor. In the decision reported in AIR 1979 SC 1848- Syad Akbar Vs. State of Karnataka, the Hon'ble Apex Court has held that doctrine Res IPSA Liquitor is not applicable to Criminal proceedings and hence, the finding rendered by the both the Courts below on the above said principle stands vacated.



10. On a perusal of the evidence of PW1, I find that he came to the scene of occurrence after the accident and so also PW2/Dharmaraja, who came to the spot after five minutes of the accident. PW3 in the cross-examination has categorically admitted that he does not know the incident directly and he came to know from others. PW4/Perumal, in the cross examination has categorically admitted that he did not know how the accident has taken place since he has not witnessed the scene. PW5/Shanmugam, deposed manner of the accident it is discussed infra. PW6/Krishnan, came to the scene of occurrence only after hearing about the accident and thus, the alleged occurrence witnesses, except PW5, have come to the scene of occurrence only after the accident.

11. Hence, I find that the submission made by the learned Senior Advocate that none of the occurrence witnesses have witnessed the scene and the Lower Appellate Court had committed the error in relying upon those witnesses, who came to the scene after the accident and hence, they cannot be termed as occurrence witnesses and thus, PW1, PW2, PW3 & PW9 are not the occurrence witnesses and the answer elicited in the cross examination of the private prosecution witnesses has some force and the same was not considered by the Lower Appellate Court and hence, I find that none of those private prosecution witnesses except PW5 advanced the case of the prosecution.

12. In the decision reported in 2015 (2) MLN (Cr1) 628 - Periyasami and others Vs. State, this Court has held that admission made by the witnesses in the cross examination is relevant factor in evaluating the evidential value of the said prosecution witnesses.

13. PW1/Palanisamy, in the cross examination has admitted that he has not given any written complaint and he has given the complaint only in the blank white sheet and hence, this Court finds that the non examination of the person, who said to have issued Ex.P1/complaint is fatal to the prosecution case, especially when there are lot of material alteration of the material particulars in the material documents as discussed supra. Thus, this Court finds that coming into the existence of Ex.P1/complaint is highly doubtful on the date and the manner as projected by the prosecution.

14. On a perusal of the evidence of PW13/Sivakumar, Motor Vehicle Inspector, it is seen that he had noted the damages caused to the front side of the Maruthi Car and had issued Ex.P4/Motor Vehicle Inspection Report to the effect that the accident has not taken due to the any mechanical defect.

15. It remains to be stated that PW5/Shanmugam in his



evidence with regard to the seizure of the car on the scene of crime, he has stated that the motor of the car was still running, he went and switched off the car and thereafter, handed over the keys to the accused, also assumes significance.

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16. In the accident, the wife of PW1/complainant died and as per Ex.P5/post mortem certificate, which was issued by PW7/Dr.Prabhu to the effect that the deceased died due to the accidental injuries and hence, the charge is framed under Section 304(A) of IPC. Except PW5/Shanmugam, all other private prosecution witnesses have come to the scene of occurrence only after the incident and thus, except PW5 none are witnessed the incident to depose about the manner of the accident viz., whether the accused drove the vehicle on that day in a rash and negligent manner so as to satisfy the essential ingredients of Section 304(A) of IPC.

17. PW5 in the chief examination have narrated that while he was walking on the road, he had witnessed the scene and also narrated how the accident has taken place. At this juncture, it remains to be stated that PW19/Investigating Officer has marked Ex.P7/observation mahazar and also prepared Ex.P8/rough sketch and going by the statement of PW5 that the accused should have first colluded with the car placed before the house then hit against signal post. But, the case of the prosecution is found to vice-versa.

18. As stated supra, the car driven by the accused ran on the extreme side of the road and colluded with the signal post and thereafter hit the cot which was placed in front of the house of the deceased. But the description as found in Ex.P8/rough sketch is in the vice-versa, which is categorically admitted by PW19/Investigating Officer in the cross examination and thus, it caused serious doubt as to the presence of PW5/Shanmugam. Hence, whether he has witnessed the said occurrence is found to be doubtful.

19. Even in the evidence of PW5/Shanmugam, he has not deposed that the revision petitioner/accused has driven the car in rash and negligent manner except by saying that he came with speed. The manner of the accident as spoken to by PW5/Shanmugam is found to be in material contradiction with the case of the prosecution as admitted by PW19/Investigating Officer.

20. As per the evidence of PW6/Krishnan, after hitting the signal post, the car hit against the deceased, whereas the case of the prosecution is otherwise.

21. As per the evidence of PW5/Shanmyugam, Maruthi Car driven by the accused change the direction on the right hand side and



hit against the cot and thereafter against the deceased and then it went and dashed against the signal post and thereafter hit against the deceased. While the case of the prosecution is totally different as narrated supra. Hence, I find that the manner of the accident as spoken to by PW5/Shanmugam in the witness box is found to be at the material contradiction with the prosecution theory so also PW19/Investigating Officer and besides PW5/Shanmugam has not spoken about any rash or negligence driving on the part of the accused in causing the accident. Since the essential ingredients of rash and negligence was not whispered by any one of the private prosecution witnesses, besides presence of the prosecution witnesses appears to be doubtful.

22. In view of the answer elicited in the cross examination and the evidence of PW5 found to be at material contradiction on vital factors with PW19/Investigating Officer, I find that the prosecution has not let in any positive evidence in support of the charge under Section 279 and 304(a) of IPC and hence, in this view of the matter, the finding rendered by both the Courts below on the footing doctrine Res Ipsa Liquitor is hereby vacated and the prosecution having failed to let in positive evidence to demonstrate or to show the rash and negligence on the part of the accident, this Court holds that the prosecution has failed to prove the charge beyond reasonable doubt. By operation of law, benefit of doubt goes to the accused. Giving benefit of doubt to the accused, he is acquitted of the charge. Consequently, the judgment of conviction and sentence passed by both the Courts below is set aside.

23. Accordingly, this Criminal Revision Case is allowed and the order passed in Crl.A.No.9 of 2017, by the learned III Additional Sessions Judge, Salem, dated 09.03.2017, which upheld the order passed by the Judicial Magistrate-I, Mettur, in C.C.No.76 of 2012, is hereby set aside. The revision petitioner/accused acquitted from the charge and the fine amount is ordered to be refunded. Bail bonds stands cancelled.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Judicial Magistrate-I,
Mettur.



2. The III Additional Session Judge,
Salem.

3. The Inspector of Police,
Jalakandapuram Circle,
Nangavalli Police Station,
Salem District.

4. The Public Prosecutor,
High Court, Madras.

Crl.RC.No.475 of 2017

VSN-II (CO)
RGA (17/11/2021)