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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.805 of 2017

Sakthivel

... Petitioner

Vs.

State represented by
The Inspector of Police,
Vazhapadi police station,
Cr.No.495/2009

... Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C praying to set aside the judgment dated 28.03.2016 passed in C.A.No.85 of 2015 by the learned Principal Sessions Judge, Salem, confirming the conviction and sentence passed in C.C.No.169 of 2009, dated 13.05.2015 by the learned Judicial Magistrate No.6, Salem.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Mr.A.Gopinath
Govt.Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been preferred challenging the Judgment of the learned Principal Sessions Judge, Salem, dated 28.03.2016 made in C.A.No.85 of 2015 by confirming the Judgement of the learned Judicial Magistrate No.6, Salem, dated 13.05.2015 made in C.C.No.169 of 2009.

2. This case has arisen out of a traffic accident. The case of the prosecution is that on 20.06.2009, at about 10.15 a.m., when the son of the defacto complainant-PW.1 (Karuppannan) was playing on the left side of the road near PW.1 cycle shop, the two wheeler bearing registration No.TN-27P-8389 driven by the accused from Attur to Salem, East to West came in rash and negligent manner, hit against the boy. The boy was immediately



taken to the hospital, but he could not survive the injuries and died. A case was registered in Crime No.495 of 2009 for the offences under Sections 279 and 338 IPC (later it was altered into offence under Section 304(A) IPC) of Vazhapadi police station and a FIR was prepared by PW.13-Sub Inspector of police [Madaiyan]. He took the case for investigation and went to the place of occurrence. He prepared an Observation Mahazar and examined the witnesses and recorded their statements. On hearing the death of the deceased, he altered the charges from Sections 279 and 338 IPC to 279 and 304 (A) IPC. PW.14-Inspector of Police [Muralidharan] sent the alteration report to the Court and continued the investigation. He conducted inquest on the body of the deceased and prepared an inquest report. Thereafter, he sent the body for post-mortem and got the post-mortem certificate . He arrested the accused on 17.08.2009 at about 18.30 hrs and sent him for remand. He also sent the vehicle involved in the accident for inspection and got the Motor Vehicle Inspector's report. He also enquired the Motor Vehicle Inspector and completed his investigation. After the case was taken on file and on being satisfied with the materials produced before the Court, the learned trial Judge framed charges against the accused for offences under Sections 279 & 304 (A) IPC. The accused has been questioned. Since the accused pleaded innocence and claimed to be tried, trial was conducted.

3. During the course of trial, on the side of the prosecution 14 witnesses were examined as PWs.1 to 14 and 8 documents have been marked as Exs.1 to 8. On the side of the accused, no witness was examined and no document was marked.

4. After conclusion of the trial and after considering the materials available on record, the learned trial Judge found the accused guilty and convicted him for the offences under Sections 279 & 304(A) IPC and sentenced to undergo 6 months R.I for the offence under Section 279 IPC and to undergo 1 year R.I and to pay a fine of Rs.1,000/-; in default to undergo 3 months R.I for offence under Section 304(A) IPC.

5. Heard the learned counsel for the petitioner/accused and the learned Government Advocate (Crl.Side) for the State.

6. The learned counsel for the petitioner/accused submitted that the accident had not taken place due to the rash and negligent driving of the driver of the two wheeler; only because the boy crossed the road suddenly; the accident occurred; the witnesses, who were examined on the side of the prosecution, are not real eye witnesses for the occurrence and their cross examination would show the same; the doctor, who



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conducted the post-mortem, dealt with only the injury sustained by the deceased; therefore, the learned trial Judge cannot convict the accused based on the rough sketch alone; further, the learned lower appellate Judge had not appreciated the evidence in a correct perspective and convicted the accused. Hence the criminal revision case has to be allowed.

7. The learned Government Advocate (Crl.Side) for the State submitted that the witnesses had categorically explained the manner in which the accident occurred due to the negligence on the part of the accused driven the motorcycle; the post-mortem report contains all the details of the injury sustained by the deceased.

8. Points for consideration:

"Whether the sentence imposed by the lower Appellate Court confirming the judgment of the learned trial Judge is unfair, improper or not legal and in conformity with the offence proved to have committed by the accused?"

9. There is no dispute as to the factum of the accident and the place of occurrence. It is not in dispute that the boy Vigneshvaran, who is the son of PW.1, died due to head injury sustained by him in the accident. Despite it is claimed by the learned counsel for the petitioner that the doctor, who conducted post-mortem, has not noted the injury, the post-mortem certificate, which is marked as Ex.P3, would show the list of injuries noticed by the doctor at the time of conducting post-mortem. Even during his evidence, he has stated that Ex.P3-post-mortem would form part of the evidence. So, it cannot be contended that the doctor had failed to note down the injuries on the body of the deceased. Further, he also observed that the boy had died only due to the injury sustained by him.

10. With regard to the eye witnesses, it is seen from the evidence of Pws.1 to 5 and 7 and 8 that they had stated clearly about the manner in which the accident had taken place. They have stated that at the time of accident, the boy was playing near the cycle shop of PW.1. The motorcycle driven by the accused came in a rash and negligent manner and hit against the boy.

11. The learned counsel for the petitioner invited the attention of this Court that the witnesses have stated that they did not know how the accident had taken place. It is to be noted that these witnesses were examined in chief on 20.01.2009 and they have been cross examined after 4 years on 11.04.2012, despite the petitioner was present during the examination in



chief. But he frequently absented himself when the matter stood for cross examination. The petitioner has not chosen to cross examine the witnesses on the same day when examination-in-chief was done. Within four long years, there is every possibility for tampering the witnesses. PW.7 and PW.8 did not cross examine and their evidence remains unchallenged.

12. It is submitted by the learned counsel for the petitioner that some of the witnesses have stated that the boy was playing on the road. The boy was playing near his father's cycle shop during that time. The cycle shop is in the corner of the road and hence the boy could not have gone to the middle of the road or crossed the road, while playing near the cycle shop. The accident has taken place when the boy was playing near his father's cycle shop. Despite none of the witnesses and the complainant have stated that the accident has taken place while the boy was crossing the road. PW.13 Investigating Officer has stated during his cross examination that in the FIR, it is stated that the accident occurred when the boy was crossing the road. PW.13 has given the evidence in an irresponsible manner without perusing the records and in fact his evidence is against his own investigation. Neither FIR nor the charge sheet disclosed that the accident had taken place when the boy was crossing the road. The Motor Vehicle Inspector has given clear certificate that the accident was not due to the mechanical failure. Since the oral, documentary and medical evidence and other circumstances established before the Court cumulatively proved the guilt of the accused. Since the Courts below have appreciated the evidence in a correct perspective, I find no reason for interference.

13. The learned counsel for the petitioner requested that some indulgence has to be shown in the matter of sentence as he has a family of his own and he has not done any other accident. It is unfortunate that a small boy was killed in an accident. Considering the absence of any criminal records in the name of the petitioner/accused, I feel that some indulgence can be shown.

14. In the result, this Criminal Revision Case is partly allowed. The judgment of the trial Court is confirmed. The sentence imposed on the accused is modified and the sentence is reduced and the accused is sentenced to undergo 6 months Rigorous Imprisonment and imposed with a fine of Rs.1,000/-; in default, to undergo 3 months R.I., for the offence under Section 304(A) IPC. Same punishment be imposed on him for the offence under Section Section 279 IPC. If the fine amount has already been paid by the accused, he need not pay. The period of incarceration undergone by the accused can be set off under



Section 428 Cr.P.C. The learned trial Judge is directed to issue non-bailable warrant for securing the accused and send him to prison to undergo the remaining period of sentence.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge, Salem
2. The Judicial Magistrate No.6, Salem.
3. The The Inspector of Police,
Vazhapadi police station,
Salem.
4. The Public Prosecutor,
High Court, Madras.
5. The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.68052

Cr1.R.C.No.805 of 2017

BP(CO)
CT 25/01/2022