



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	08.02.2021
DELIVERED ON	22.02.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CrI.RC(MD)No. 435 of 2016

S. Rajendran

...Petitioner/Appellant/
Sole accused

Vs.

State rep. By
The Inspector of Police,
Thanjavur Taluk Police Station,
(In Crime No. 72 of 2008)

... Respondent/Respondent/
Complainant

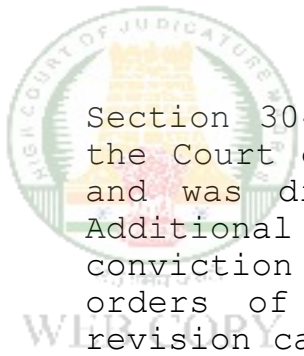
PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, against the Judgment of the Appellate Court passed by the learned II Additional District and Sessions Judge, Thanjavur, in C.A.No.2 of 2016, dated 02.04.2016, confirming the Judgment of the learned Judicial Magistrate No.II, Thanjavur, in C.C. No.185 of 2008, dated 01.02.2016 by allowing this revision.

For Appellant : Mr.V. Sasikumar
For Respondent : Mrs.M. Anantha Devi,
Government Advocate (Criminal side)

O R D E R

This Criminal Revision Case is filed by the petitioner/sole accused as against the Judgment, dated 02.04.2016 passed by the learned II Additional District and Sessions Judge, Thanjavur, in C.A.No.2 of 2016, confirming the Judgment, dated 01.02.2016 passed by the learned Judicial Magistrate No.II, Thanjavur, in C.C. No.185 of 2008.

2. The revision petitioner was tried for the offences under Sections 279, 338, 304(A) (Two Counts) of IPC, before the learned Judicial Magistrate No.II, Thanjavur and the trial Court, in conclusion of the trial, found him guilty, convicted and sentenced to undergo three months simple imprisonment for the offence under Section 279 of IPC and to undergo six months simple imprisonment for the offence under Section 338 of IPC and to undergo One year simple imprisonment and to pay a fine of Rs.2000/-in default to undergo One

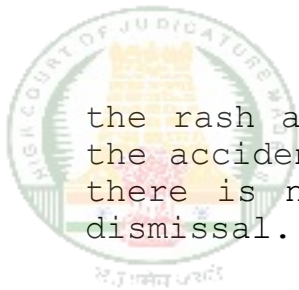


Section 304(A) of IPC. The petitioner preferred an appeal before the Court of Sessions and the same was taken in C.A.No. 02 of 2016 and was dismissed by order, dated 02.04.2016 by the learned II Additional District and Sessions Judge, Thanjavur, confirming the conviction and sentence imposed by the trial Court. Aggrieved by the orders of the Courts below, the petitioner has preferred this revision case.

3. The brief fact of the case is that on 11.02.2008, at about 10.30 a.m., in Thanjavur - Pattukkottai main Road, Duraiyur village main road, the petitioner herein drove a bus bearing Regn. no.TN-49-P-5051 from south to north, came in a rash and negligent manner and dashed against the Neem tree. In the said accident, Aravind, Thasarathan, Senthilkumar and Sakthivel who travelled in the door steps in the aforesaid bus were sustained injuries and died. Based on the complaint given by PW1, the case in Crime No.72 of 2008 was registered by the respondent Police for the offence under Sections 279, 337, 338 & 304(A) (2 counts) of IPC. The respondent Police, after investigation, has filed the final report and both the Courts below have convicted the petitioner/accused as stated supra.

4. The learned Counsel for the revision petitioner submitted that the Courts below ought to have considered the circumstances that death as well as injuries caused to the victims only because they had travelled in the footboard of the bus. He further submitted that the Court below failed to see that the material contradiction between P.W.1, P.W.2 & P.W.3 regarding manner of alleged accident and erroneously convicted the petitioner under Section 304(A) of IPC. He further submitted that the Court below failed to see that the delay in lodging the FIR and the same not explained and hence genesis occurrence is doubted and benefit of doubt goes to the petitioner/accused. He further submitted that the Court below failed to see that the evidence of P.W.8 and Ex.P.4 as spoken by P.W.1 to P.W.3 is not proved beyond reasonable doubt. He further submitted that the Court below ought to have considered that Ex.P.2 was not proved by the prosecution and pass the order of acquittal on considering the admission of P.W.5 & P.W.6 that the police obtained the signature and they did not know about the contents of the Ex.P.2. He prayed to allow the Criminal Revision Case.

5. Per contra, the learned Government Advocate (Criminal Side) submitted that the trial Court came to a conclusion on the basis of not only the eye witness but also the injured person who travelled at the time of accident. She further submitted that the passengers travelled in the foot board is quite natural and in all the buses in the peak hours, the passengers are travelled on the foot board but from all the buses the passengers are not fell down. She further submitted that the accused driven the bus rashly and negligently that is why he went to the extreme left rashly and it caused the passengers to be thrown away from the bus. She further submitted that



the rash and negligent act of the petitioner alone route cause for the accident. Hence, the findings of the trial Court is correct and there is no chance for interference and therefore, she prays for dismissal.

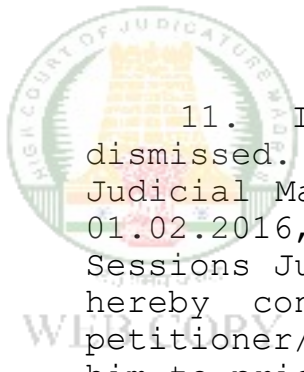
6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) and also to the materials placed on record.

7. The petitioner was convicted and sentenced to undergo three months simple imprisonment for the offence under Section 279 of IPC and to undergo six months simple imprisonment for the offence under Section 338 of IPC and to undergo One year simple imprisonment and to pay a fine of Rs.2000/-in default to undergo One month simple imprisonment for each count for the offence under Section 304(A) of IPC.

8. The case of the prosecution is that the petitioner had driven a bus bearing Regn. No.TN-49-P-5051 from Thanjavur to Pattukkottai on 11.02.2008 at 10.50 a.m., on the direction from south to west with high speed, rash and negligently. He turned the bus and on the left side upper portion of the bus dashed with the branch of neem tree. In this accident two persons were thrown out from the bus and died. Two persons were injured.

9. The defence of the petitioner is that no prosecution witnesses deposed about the rash and negligent of the driver. Mere high speed does not attract 304(A) of IPC. In support of his argument, he referred a Judgment ***dated 17.06.2019 in Crl.R.C(MD) No.412 of 2010, Manikandan Vs. The Sub-Inspector of Police, Thirumangalam Taluk Police station.***

10. This Court also agreed the above findings. But, in this case, the back upper portion of the bus dashed with a branch of Neem tree and two persons were thrown out of the bus and died. If the accused/driver drove the vehicle properly then accident would not happen like this. No damages on the left side of the bus. Only left side of the top of the bus was damaged. More than four people who travelled on the bus thrown out from the bus. Even, if the passenger who travelled on the steps of backside bus, it is a duty of the driver and conductor restrict the passenger. We can visualise the accident. When the bus over took a car with high speed and rash and saw a vehicle on the opposite side suddenly turned the bus to left side and dashed the Neem tree. The bus would collapsed. Then only passengers were fell down from the bus. Eventhough, there is no evidence of rash and negligence on the part of the driver, same accident clearly established the rash and negligent. Therefore, the Court below have correctly convicted the petitioner/driver. This Court is not inclined to interfere with the findings of the Courts below.



11. In the result, this Criminal Revision Case stands dismissed. The conviction and sentence passed by the learned Judicial Magistrate No.II, Thanjavur, in C.C. No.185 of 2008, dated 01.02.2016, confirmed by the learned II Additional District and Sessions Judge, Thanjavur, in C.A.No.2 of 2016, dated 02.04.2016 are hereby confirmed. The trial Court is directed to secure the petitioner/accused, who was sentenced for imprisonment and confine him to prison so as to undergo the remaining period of imprisonment, if any. Bail bonds, if any executed, shall stand terminated.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

KSA

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Judicial Magistrate No.II, Thanjavur,
2. The II Additional District and Sessions Judge,
Thanjavur.
3. The Inspector of Police,
Thanjavur Taluk Police Station.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section(Records)
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.V.SASI KUMAR, Advocate (SR-6560[F] dated 22/02/2021)

**Order made in
Crl.RC (MD) No.435 of 2016
22.02.2021**

MJ(CO)

SRS (16/03/2021) 4P : 7C

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