



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.R.C. (MD)No.739 of 2017

K.Nagarathinam

.. Petitioner

Vs.

State, Rep. by
The Inspector of Police,
Ramanathapuram Bazaar Police Station,
Ramanathapuram District.
(Crime No.318 of 2008)

.. Respondent

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence, dated 12.07.2017, made in C.A.No.3 of 2016, on the file of the Principal District and Sessions Court, Ramanathapuram, modifying the sentence awarded in C.C.No.34 of 2014 , dated 22.02.2016, on the file of the Chief Judicial Magistrate Court, Ramanathapuram.

For Petitioner
For Respondent

: Mr.R.Venkateswaran
: Mr.E.Antony Sahaya Prabahar
Government Advocate
(Criminal side)

ORDER

The accused in C.C.No.34 of 2014, on the file of the Chief Judicial Magistrate Court, Ramanathapuram, is the revision petitioner. The respondent laid final report against him alleging that he had committed the offences punishable under Sections 279 and 304-A I.P.C. By judgment dated 22.02.2016, the trial Court convicted him under Section 304-A I.P.C. and sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for two months. Challenging, the said conviction and sentence, he filed an appeal in C.A.No.3 of 2016 before the Principal District and Sessions Court, Ramanathapuram. The learned Principal District and Sessions Judge, Ramanathapuram, by judgment dated 12.07.2017, had partly allowed the appeal, modifying the sentence imposed by the trial Court from three months simple imprisonment to one month simple imprisonment. In all other respects, the learned Principal District and Sessions Judge confirmed the findings arrived at by the



trial Court.

2.Challenging the said conviction and sentence, the petitioner is before this Court with this Criminal Revision.

3.The case of the prosecution in brief is as follows:-

(i) The deceased Namachivayam was working as Coolie in a lorry bearing Registration No.TN-60-1836. On 23.08.2008 near Vanasankari Amman Kovil Street, when at the time of delivering sand, the deceased herein gave signal to the driver to drive the lorry in reverse direction. At that time, the lorry dashed against the said Namachivayam, due to which, he fell down and sustained contusion on his rib. He also sustained abrasion on his left forehead and thereby, he was admitted in Government Hospital, Ramanathapuram, as Inpatient. P.W.12 - Arumugam, the then Head Constable, recorded the statement given by the said Namachivayam and after returning from the Hospital, he registered a case in Crime No.318 of 2008 for the offences punishable under Sections 297 and 337 I.P.C. The statement given by the deceased Namachivayam was marked as Ex.P.3 and the printed F.I.R. was marked as Ex.P.4.

(ii) After registering the case as above, on the same day, P.W.11 - Pandian, the then Sub-Inspector of Police took the same for investigation. He visited the scene of occurrence and in the presence of P.W.4 - Raja and P.W.5 - Rengaraj, he prepared an Observation Mahazar under Ex.P.5. He drew the Rough Sketch and the same was marked as Ex.P.6. He examined the witnesses and recorded their statements.

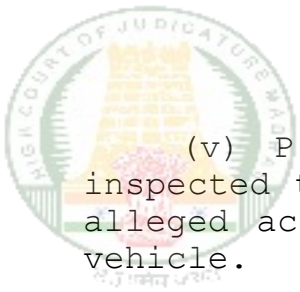
(iii) In the said circumstances, on 26.08.2008 around 14.30 hours, he received death intimation from Rajaji Government Hospital, Madurai. After receipt of the said intimation, he rushed to the Police Station and in turn, in the presence of Panchayatdhar and witnesses, he conducted an enquiry and prepared an Inquest Report under Ex.P.7. He submitted an application through P.W.12 - Arumugam to the Hospital Authorities with a request to conduct Postmortem on the body of the deceased Namachivayam.

(iv) In turn, in view of the request made by P.W.11, P.W.10 - Dr.Purushothaman conducted autopsy and found the following injuries on the body of the deceased:-

1.Abrasion 8 x 5 cms. noted on the back of right hip.

2.Abrasion over left side forehead 5 x 4 cms.

3.Sutured wound 2 cms x 1 cm x muscle deep noted over outer aspect of left eyebrow.



(v) P.W.9 - Karuppanan, who is the Motor Vehicle Inspector, inspected the offending vehicle and issued a report [Ex.P.1] as the alleged accident had not occurred due to mechanical defect of the vehicle.

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(vi) P.W.10 - Dr.Purushothaman has spoken about the autopsy conducted on the body of the deceased.

(vii) P.W.11 - Pandian, P.W.12 - Arumugam and P.W.13 - Dhanraj, who are Police Officers, spoken about the receipt of complaint from the deceased, investigation and about the filing of final report.

5.When the above incriminating the materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. According to the defence, when the lorry was proceeded in reverse gear, the deceased being the load man, after giving wrong signal, negligently fell down and as a result of which, the lorry ran over on him.

6.Having considered all the above materials, the trial Court found the accused guilty under Section 304-A I.P.C. and the lower appellate Court also confirmed the same. That is how the accused is before this Court with this Criminal Revision.

7.I have heard Mr.R.Venkateswaran, learned counsel appearing for the revision petitioner and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Criminal side) appearing for the respondent Police.

8.The learned counsel appearing for the revision petitioner would contend that before the trial Court in order to prove the negligent act of the deceased, P.W.3 alone gave evidence in support of the prosecution. Though he has supported the case of prosecution in his chief-examination, while at the time of cross-examination, he changed his version and gave evidence as due to the negligence of the deceased, the lorry ran over on him and therefore, the said contradictory evidence given by P.W.3 cannot be relied on to accept the case of prosecution. From the above facts, the learned counsel appearing for the revision petitioner would submit that the story put forth by the prosecution that the accident had occurred due to negligent act on the part of the accused, is absolutely false and hence, the accused is entitled for acquittal.

9.Per contra, the learned Government Advocate (Criminal side) appearing for the respondent Police would vehemently oppose this Criminal Revision. According to him, the cross-examination of P.W.3 was conducted after long back from the date on which his chief-examination was recorded, therefore, the same cannot be taken as a ground to disbelieve the case of prosecution. He would further submit that if any necessity arises to take the vehicle in reverse



direction, it is for the accused to take much care, but in this case, the same has not been followed by the accused, as a result of which, the lorry ran over on the deceased. According to the learned Government Advocate (Criminal side), the said act committed by the accused is negligent one and thus, the conviction and sentence imposed on him does not require any interference at the hands of this Court.

10.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

11.Now, on going through the judgment rendered by the Courts below, it appears that only by believing the evidence given by P.W.3, both the Courts below came to the conclusion that the prosecution has proved its case beyond reasonable doubt. In otherwise, in respect of validity of the complaint given by the deceased, no endorsement has been made that the same is not a substantial document to accept the case of prosecution.

12.In the said situation, on considering the validity of the statement recorded by P.W.9 from the deceased, it is not in dispute that after receipt of information from the hospital authorities, P.W.9 rushed to the Hospital and after seeing the deceased, he recorded the statement. In the said statement, except the deceased, none have signed as witness. Since the author of the said document died after giving the said statement, the same can be treated as dying declaration.

13.In this regard, the learned counsel appearing for the revision petitioner would contend that in view of the evidence given by P.W.2 and P.W.3, immediately after admitting the deceased in the Hospital, he becomes unconscious, hence, it is impossible to record the statement from the accused.

14.Now, on going through the said submissions, it seems that P.W.2, in his evidence, has stated that immediately after hearing the news, he went to the Hospital, wherein the deceased was found unconscious. P.W.3 has also gave similar evidence. In the said circumstances, contrary to the said evidence, P.W.11, who recorded the statement from the deceased, had spoken about the recording of statement as, during the time of recording statement from the deceased, he was conscious.

15.Now, on culling out the said evidence, here it is a case, the accident register and the treatment particulars pertain to the deceased have not been produced before the trial Court, being the reason that, the death had occurred to the injured after two days from the date of accident. Necessarily, there may be a chance to prepare an A.P copy by the Doctor, who admitted the deceased as an



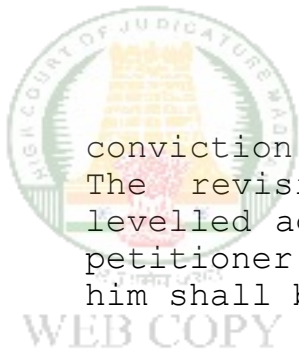
Inpatient. But, here is a case, the said document has not been marked as an exhibit. Therefore, in the absence of the said records, this Court does not find whether the deceased was in the stage of conscious at the time of giving statement before P.W.11. Accordingly, the complaint alleged to be given by the deceased becomes doubtful and therefore, the same is not having any evidentiary value.

16.Secondly, on going through the evidence given by P.W.3, it is true that in his chief-examination, he has narrated the occurrence as, during the time of occurrence, the deceased alone gave signal to the accused to drive the lorry in reverse direction. In otherwise, in his cross-examination, he changed his version and stated before the trial Court as, the accident had happened due to the negligent act of the deceased. After recording the said evidence, with the leave of the Court he was treated as hostile witness. Subsequently, during the time when he was put under cross-examination by the learned Assistant Public Prosecutor, he had given evidence as the averments found in the chief-examination are true. On the other hand, in respect of the evidence given in the cross-examination, the learned Assistant Public Prosecutor did not pose any question as to whether the same is correct or not, thereby, the evidence given by P.W.3 in his cross-examination particularly, before treating him as hostile witness, is the evidence and the same can be relied on for deciding the issue raised in this Criminal Revision.

17.As rightly pointed out by the learned counsel appearing for the revision petitioner, P.W.3 had given clear evidence that the alleged occurrence had happened due to the negligent act of the deceased. The Courts below without analyzing the cross-examination conducted by the learned Assistant Public Prosecutor, concluded the case that the revision petitioner is guilty under Section 304-A I.P.C., which is erroneous in law.

18.Though due to the incident, the person has died, the accused cannot be convicted on mere surmises and conjecture and can be convicted only on legal evidence. The law does not permit the Court to punish the accused on the basis of moral conviction or suspicion alone. The burden of proof in criminal trial never shifts and the burden is always on the prosecution to prove its case beyond all reasonable doubts on the basis of acceptable evidence. It is a well settled principle of criminal jurisprudence that more serious offence, the stricter is the degree of proof. In this case, the prosecution has failed to prove its case beyond all reasonable doubts and the Courts below without properly appreciating and analysing the evidence, have erred in convicting the petitioner/accused.

19. In fine, this Criminal Revision is allowed and the



conviction and sentence imposed by the Courts below are set aside. The revision petitioner/accused is acquitted from the charges levelled against him. Bail bonds, if any, executed by the revision petitioner shall stand cancelled and fine amount, if any, paid by him shall be refunded to him.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

- 1.The Principal District and Sessions Judge,
Ramanathapuram.
- 2.The Cheif Judicial Magistrate,
Ramanathapuram.
- 3.The Inspector of Police,
Ramanathapuram Bazaar Police Station,
Ramanathapuram District
- 4.The Section Officer, (2C)
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.
5. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

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22.09.2021

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