



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
09.09.2021	29.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
Cr1.R.C. (MD)No.798 of 2017

Iyappan

... Petitioner/Petitioner

Vs.

State rep by
The Sub Inspector of Police,
Thirumangalam Town Police Station,
Thirumangalam,
Madurai District.
(Crime No.47 of 2006)

... Respondent/Complainant

PRAYER: This Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the judgment passed by the First Additional District and Session Court, Madurai in C.A.No.11 of 2017 dated 13.09.2017 upheld the judgment passed by the learned Judicial Magistrate, Thirumangalam in C.C.No.44 of 2006 dated 03.01.2016.

For Petitioner	: Mr.Karuppasamy Pandian for Mr.G.Ravi Sankar
For Respondent	: Mr.M.Muthumanikkam Counsel for Government of Tamil Nadu (Criminal Side)

JUDGMENT

The revision petitioner is an accused in C.C.No.44 of 2006 on the file of the learned Judicial Magistrate, Tirumangalam. The respondent laid the final report alleging that the petitioner had committed an offence punishable under Section 304-A of I.P.C. By judgment dated 03.01.2016, the trial Court convicted the accused under Section 304-A of I.P.C and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months. Challenging the same, the petitioner filed an appeal in C.A.No.11 of 2017 on the file of the Principal District and Sessions Judge, Madurai. By judgment dated 13.09.2017, the learned Principal District and Sessions Judge, Madurai, has dismissed the appeal, thereby, confirming the conviction and sentence imposed on him. Challenging



the above conviction and sentence the petitioner has come before this Court with this revision.

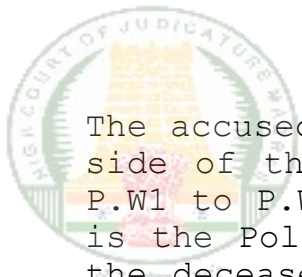
2.The case of the prosecution in brief is as follows:-

(i) The deceased Sagadevan, in this case, on 22.01.2006 around 4.30 p.m. was going in his motorcycle from north to south in Thirumangalam-Madurai main road. At that time, a bus bearing registration No.TN 59 D 6773, which is came from opposite direction, after overtaking the another vehicle, which is also came from opposite direction in a great speed, so rashly and negligently and dashed against the motorcycle. The bus was driven by the petitioner. The bus as well as the motorcycle got damaged. PW1-Chockkalingam and PW2-Mayakannan witnessed the occurrence. PW1 lodged the complaint. On the complaint of PW1, P.W.3-Ram Narayanan, the then Sub Inspector of Police attached with Thirumangalam Police Station registered a case in Crime No.47 of 2016 under Section 304-A of I.P.C. Ex.P1 is the complaint and Ex.P2 is the printed FIR. Thereafter, he has handed over the case records to P.W.10.

(ii) On the next day, PW10-Padhamuthu, the then Inspector of Police, Tirumangalam Taluk Police Station, took up the case for investigation. He visited the place of occurrence, prepared an observation mahazar and a rough sketch showing the place of occurrence, in the presence of witnesses. The observation mahazar and the rough sketch were exhibited as Ex.P6 and P7. Then, at 7.00 a.m., he conducted an inquest on the body of the deceased and prepared the inquest report under Ex.P8. He submitted an application through one Senthamarai, who is the Grade-I Head Constable, to the Government Hospital, Thirumangalam for autopsy. He examined the witnesses and recorded their statements. On receipt of the requisition, PW5-Dr.Vijayalakshmai attached with Government Hospital, Thirumangalam, on 23.01.2006 around 10.00 a.m., conducted the autopsy on the body of the deceased. During the time of autopsy, he find a crush injury on the head and left leg of the deceased. Further, she noted various multiple injury all over the body. He opined that the deceased would appear to have died of shock and hemorrhage occurred due to the injuries sustained in the accident. The postmortem report was marked as Ex.P3.

(iii) In continuation of investigation, PW10 forwarded both the vehicles for examination by Motor Vehicle Inspector. After made inspection, the Motor Vehicle Inspector opined that there was no mechanical defect in both vehicles. The said report given by P.W.9 was marked as Ex.P5. P.W.10 collected the medical records, examined the Doctor, collected reports from the Motor vehicle Inspector and finally on completing the investigation, laid the charge sheet against the accused under Section 304-A of I.P.C.

3.Based on the materials available on record, the trial Court tried the accused for the offences under Sections 304-A of I.P.C.



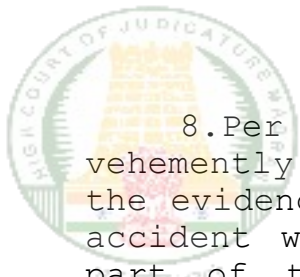
The accused denied the same. In order to prove their case, on the side of the prosecution, as many as 10 witnesses are examined as P.W1 to P.W10, of whom, P.Ws.1, 2 and 6 are the eye-witnesses. PW3 is the Police Officer, who registered the FIR. PW4 is the wife of the deceased and she is not an eye-witness to the occurrence. PW5 is the Doctor who conducted the autopsy on the dead body of the deceased. PW7 is the brother of the deceased, who came to the occurrence place, after hearing the details of the accident. PW8 is the sister of deceased, who is also came to occurrence place after hearing the news. PW9 is the Motor Vehicle Inspector, who inspected the offending vehicle as well as the motorcycle, opined that there was no mechanical defect found in both vehicles. PW10-has spoken about the entire investigation done.

4.When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. According to the defence taken, without seeing the vehicle, which came from opposite direction, the deceased negligently drove his motor cycle and dashed against the middle of the bus. Thus, according to the petitioner, he has not committed any offence punishable under Section 304-A of I.P.C.

5.Having considered all the above materials, the trial Court found the revision petitioner guilty under Section 304-A of I.P.C and the Lower Appellate Court also confirmed the same. Aggrieved by the said conviction and sentence, the petitioner is before this Court with this revision.

6.I have heard Mr.G.Ravisankar, learned counsel appearing for the petitioner and Mr.M.Muthumanikkam, learned counsel for Government of Tamilnadu (crl.side) appearing for the State and also perused the records carefully.

7.The learned counsel appearing for the petitioner would submit that the accident would not have happened in the manner as it is projected by the prosecution. It is his contention that PW1 and PW2 are interested witnesses and therefore, their evidences require close scrutiny. He would further submit that PW1 and PW2 have stated in their cross examination as immediately after the occurrence, the Police Officer came to the occurrence place and prepared an observation mahazar. In otherwise, in respect to the preparation of observation mahazar, PW10, who is the Investigation Officer had given evidence as on the next day only the said document was prepared. Further, it is the contention of the revision petitioner that driving the vehicle in higher speed is not an offence. According to him, it is the case, the Court below without considering those aspects convicted the accused and therefore, the accused is entitled for acquittal.



8.Per contra, the learned Government Advocate (crl.side) would vehemently oppose this criminal revision case. According to him, the evidences of PW1, PW2 and PW6 would clearly go to show that the accident was wholly due to the rash and negligent driving on the part of the petitioner. He would further submit that before overtaking the other vehicle, it is for the petitioner to see and verify whether any vehicle is coming from opposite side and then only, he has to overtake the other vehicle. In this case, such care is not taken by the petitioner and therefore, the said act would amount to negligence and thereby, the conviction and sentence imposed on the petitioner does not require any interference at the hands of this Court.

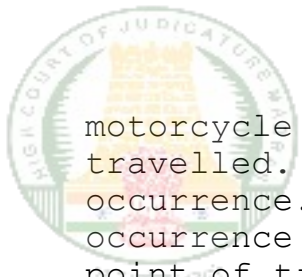
9.I have considered the rival submissions made by the learned counsel appearing on either side.

10.It is the case of the prosecution that due to the injury sustained in the road accident, the death would have occurred to the deceased Sagadevan.Before the trial Court, in order to prove the same, the Doctor, who conducted autopsy was examined as P.W.5. The post-mortem report issued by her was marked as Ex.P3. In the said document, she gave an opinion as due to the reason that the deceased sustained multiple fatal injury and as a result of which, the death would occur to him. In respect to the said evidence, there was no denial on the side of the accused that the death of the deceased is not due to result of road accident.

11.Secondly, the Motor Vehicle Inspector, who had inspected the offending vehicle and the vehicle, in which, the deceased was travelled, gave evidence as the mechanical defect is not a reason for the alleged road accident and the report given by him was exhibited as Ex.P5. Herein also, there was no denial on the side of the accused as the alleged accident had happened due to the mechanical defect.

12.The next aspect to be decided in this revision petition is that the prosecution has proved that the revision petitioner herein had drove the vehicle at the time of accident. In this regard, P.Ws1, 2 and 6, who are all eyewitnesses, had clearly stated that during the time of occurrence, the revision petitioner herein drove the vehicle and caused the accident. Therefore, the witnesses examined on the side of the prosecution had proved the identity of the accused as the revision petitioner alone drove the bus at the time of occurrence.

13.The next aspect is that whether the alleged accident had happened due to the rash or negligent act of the accused. In this regard, before the trial Court, Pws 1, 2 and 6 are examined as eyewitnesses. In view of the evidence given by P.W1 and P.W2, during the time of occurrence, they have travelled in a single



motorcycle just behind the motorcycle, in which the deceased was travelled. P.W6 is running the tea stall near to the place of occurrence. In the said circumstances, in respect to the occurrence all of them had clearly stated that during the relevant point of time, the deceased was coming from north to south, wherein, the accused drove the bus from south to north. It is specific evidence given by PW1, PW2 and PW6 that during the time of occurrence, when the accused overtaking the another vehicle in a rash manner and dashed against the two wheeler, which was driven by the deceased.

14.Now, on scrutinizing the said evidence with the rough sketch prepared by the Investigation Officer, it appears that in the occurrence place, the width of the road is 24 feet. Therefore, it could be possible if the accused drove his vehicle in a careful manner, the alleged accident could not have happened. In fact, in view of the evidence given by P.W10, the investigation Officer and upon the evidence given by PW1, PW2 and PW6, the alleged accident had happened on the eastern side of the south west road. In fact, in the bus came from south to north and there is no necessity for the said vehicle to travel in the eastern side. Therefore, the circumstances and the evidences given by prosecution witnesses had clearly proved that during the time of occurrence, the accused drove his vehicle in rash manner and without listening the vehicle coming from the opposite side and dashed against the vehicle, wherein, the deceased was travelled and caused the accident.

15.The one other aspect, which is necessary to be decided in this case is that in view of the evidence given by the Motor Vehicle Inspector, there was a damage to the bus in the middle of the bumper. The said situation also one of the circumstances to show that the alleged accident had happened only at the time when the bus was overtaking the another vehicle. In otherwise, in respect to the presence of Police officer is not a material one to decide the issue raised in the appeal. In fact, before the trial Court, the evidence given by PW6, who is one of the eyewitness, has not been disputed by way of cross-examination. In otherwise, the evidence given by PW6 in his chief examination is very narrow and inspired the confidence of this Court. Accordingly, in the light of the above discussion, I am of the considered opinion that the Court below only on appreciating the evidence given by the prosecution in a perspective manner came to the conclusion that the accused is guilty under Section 304-A of I.P.C.

16.In this occasion, the learned counsel for the revision petitioner would contend that after the alleged accident, the revision petitioner is facing this case for the past 14 years. Further, the revision petitioner is the only bread-winner of the family and therefore, some leniency must shown to the accused in awarding the sentence.



17.On considering the said submissions with relevant records, the First Appellate Court had convicted the accused under Section 304-A of IPC and sentenced to undergo simple imprisonment for six months. In the said circumstances, it true the alleged accident had occurred in the year of 2006 and thereafter, the revision petitioner herein is facing the case for the past 14 years. Further, as of now, the accused herein attained the age of 60 years. In the said circumstances, convicting the accused on higher side is not necessary.

18.In fine, this Criminal Revision Petition is partly allowed, the conviction and sentence awarded by the Courts below on the petitioner under Section 304-A of IPC is reduced to three months and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for two months is confirmed. The period of imprisonment already undergone by the revision petitioner shall be set off. Bail bond, if any, executed by the petitioner shall stand cancelled. The trial Court is directed to secure the revision petitioner and commit him in prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (Cs-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To:-

- 1.The First Additional District and Session Court,
Madurai.
- 2.The Judicial Magistrate,
Thirumangalam.
- 3.The Sub Inspector of Police,
Thirumangalam Town Police Station,
Thirumangalam,
Madurai District.
- 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,

<https://hcservices.ecourts.gov.in/hcservices/>



Madurai.

Crl.R.C.(MD) No.798 of 2017

+1 CC to M/s.G.RAVISANKAR, Advocate (SR-30653[F] dated 29/09/2021)

Crl.R.C. (MD) No.798 of 2017
29.09.2021

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