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Crl.RC.No.1032 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.1032 of 2018

Palanichamy

... petitioner

Vs.

The Inspector of Police,
Padalam Police Station,
crime No.357 of 2004

... Respondent

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the judgment dated 09.02.2018 in Crl.A.No.37 of 2016 on the file of the Principal Sessions Judge, Kancheepuram District at Chengalpattu by confirming the judgment of conviction imposed in CC.No.279 of 2005 on the file of the learned Judicial Magistrate No.I, Chengalpattu dated 01.09.2016 by allowing this criminal revision petition.

For Petitioner : Mr.R.Johnsathyan
for Mr.R.Marudhachalamurthy

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER

This criminal revision is filed as against the judgment passed in Crl.A.No.37 of 2016 dated 09.02.2018 on the file of the Principal Sessions Judge,



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Kancheepuram District at Chengalpet thereby confirming the judgment passed in

CC.No.279 of 2005 dated 01.09.2016 on the file of the learned Judicial Magistrate-I, Chengalpet, thereby convicted the petitioner for the offence punishable under Sections 279, 337 and 304(A) of IPC.

2. The case of the prosecution is that on 10.07.2004, the accused drove the bus bearing registration No.TN 33 N 1664 from Chennai to Erode in a rash and negligent manner and hit the bridge and fell down from the bridge at Thaballmedu GST road within the jurisdiction of the respondent police station, due to which 24 persons sustained grievous injuries and one person died. On the said complaint, the respondent registered FIR in crime No.357 of 2004 for the offence punishable under Sections 279, 337 and 304(A) of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial court in CC.No.279 of 2005.

3. On the side of the prosecution, in order to bring the charges to home, they had examined PW1 to PW17 and marked Ex.P1 to Ex.P46. On the side of the accused, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial court found guilty and convicted the petitioner for the offence punishable under Sections 337(24 counts), 279 and 304(A) of IPC



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and sentenced him to undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 279 of IPC and sentenced him to undergo six months each for 24 counts under Section 337 of IPC and to pay a fine of Rs.500/- (24 counts), in default to undergo one week simple imprisonment(each). He was sentenced to undergo two years simple imprisonment and to pay a fine of Rs.2,000/- for the offence punishable under Section 304(A) of IPC, in default to undergo one month simple imprisonment. Aggrieved by the same, the petitioner had filed appeal and the same was also dismissed and confirmed the judgment passed by the trial court. Hence, the present criminal revision has been filed.

4. Mr.R.Johnsathyan, the learned counsel for the petitioner would submit that the prosecution failed to prove that the petitioner drove the vehicle in a rash and negligent manner. No one has spoken about his rashness and negligence driving of the bus. Admittedly, he drove the bus in a bridge at Thabalmedu in GST road. While he was overtaking the bus which was driven in front of his bus, in a wrong road i.e. opposite side, another omni bus came in front of his bus. Therefore, in order to avoid head on collision, he turned on his right hand side and fell down from the bridge. Therefore, the accident had occurred only due to the negligence driving of the opposite bus and not on the negligence of the petitioner



herein. One of the passengers was examined as PW1. He deposed that only when the petitioner was overtaking another bus, in the opposite side, another bus had come and only to avoid head on collision, the bus turned on its right side and fell down from the bridge. Therefore, the accident had occurred not due to rash and negligent driving of the petitioner. He further submitted that the petitioner had 25 years of service and he is still working as driver. He had unblemished record and no accident had occurred during his service except the present accident. Therefore, without considering the above facts and circumstances of the case, the courts below convicted the petitioner.

5. Per contra, Mr.A.Gopinath, the learned Government Advocate(crl.side) appearing for the respondent / police submitted that though PW1 in the cross examination deposed that when another bus came in the opposite side, the driver of the bus turned the bus on its right side and fell down from the bridge, he is the complainant and he lodged complaint specifically alleging that only because of the rash and negligent driving of the petitioner, the accident had occurred. There was no whisper about the bus which was coming in the opposite direction in the same bridge. It is not at all possible since it is one way bridge and there are two bridges. Therefore, unless there is any traffic jam or any other reason such as diversion, no bus will come in the same bridge in the opposite direction.



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Therefore, the dictum of *res ipsa loquitur* would apply to the present case.

Therefore, the courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

6. Heard, Mr.R.Johnsathyan, the learned counsel for the petitioner and Mr.A.Gopinath, the learned Government Advocate(crl.side) appearing for the respondent / police.

7. Admittedly the petitioner drove his bus bearing registration No.TN 33 N 1664 from Chennai to Erode. While the bus was crossing a bridge at Thabalmedu on GST Road, the petitioner was trying to overtake another bus on the same direction. He was unable to over take the bus and hit the bridge and fell down from the bridge, due to which 24 passengers sustained grievous injuries and one person died. On the complaint lodged by PW1, the respondent registered FIR for the offence under Sections 279, 337 and 304(A) of IPC. The complainant was examined as PW1. PW1 categorically deposed that while overtaking the bus, the petitioner drove the bus in a rash and negligent manner and hit the bridge and fell down. In his cross examination, he deposed that in the opposite direction one bus came and only because of that accident had occurred. It is nothing but only by cross examination, when the counsel for the accused questioned that do you know



the registration number of the opposite vehicle, he can say only 'no'. It does not mean that in the opposite side, one bus had come. Except this cross examination, no one had spoken that in the wrong entry, one other bus came from the opposite side. If it is the case of the defence, definitely the driver of the bus would have lodged complaint alleging that only because of the bus came from the opposite direction and on its rash and negligent driving, the accident had occurred. Admittedly the petitioner did not lodge any complaint and did not even whisper about the same. At last, he would have examined any witness in support of his contention. He did not do so. In fact, he would have examined himself as witness. He also failed to enter into the box.

8. It is also not a defence before the trial court and only in the revision, the learned counsel for the petitioner argued that there was another bus coming from the opposite side and due to which, the accident had occurred. On perusal of deposition of other passengers in the bus, they categorically deposed that only because of the rash and negligent driving of the petitioner, the accident had occurred. All the witnesses deposed that when the petitioner was overtaking another bus, he hit the bridge and fell down. The Motor Vehicle Inspector was examined as PW6. He categorically deposed that the accident was not taken place due to any mechanical fault. It is not the case of the prosecution that the petitioner



drove the bus in a speed manner and he negligently drove the vehicle and he attempted to over take another bus which was going in front of his bus and he hit the bridge negligently and fell down from the bridge. Therefore, the doctrine of *res ipsa loquitur* comes in to play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. The petitioner did not even lodge any complaint alleging that only because of the bus which was driven in the opposite side, the accident had occurred. Further, he did not even enter into the box and deposed that only because of the opposite side vehicle's rash and negligent driving, the accident had taken place.

9. It is also pertinent to note here that there are two bridges. Therefore, there is absolutely no possibility for a bus coming on the opposite direction unless there is any traffic jam or any other reason. It is also not the case of the petitioner that there was some traffic congestion, due to which a bus was coming on the same bridge from the opposite side. Therefore, this Court finds no infirmity or illegality in the orders passed by the courts below and the courts below rightly convicted the petitioner for the offence under Sections 279, 337 and 304(A) of IPC. However, the learned counsel for the petitioner would submit that considering the age of the petitioner, the sentence may be reduced.



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10. Considering the above submission, this court is inclined to reduce the sentence from two years to nine months for the offence under section 304(A) of IPC alone. As such, the judgment dated 09.02.2018 passed in Crl.A.No.37 of 2016 on the file of the Principal Sessions Judge, Kancheepuram District at Chengalpattu confirming the judgment in CC.No.279 of 2005 on the file of the learned Judicial Magistrate No.I, Chengalpattu dated 01.09.2016 is modified as follows:

- (i) The order of conviction and sentence for the offences under Sections 279 and 337 (24 counts) of IPC is confirmed. The conviction under Section 304(A) of IPC is also confirmed.
- (ii) The sentence imposed for the offence under Section 304(A) of IPC is reduced from two years imprisonment to nine months imprisonment.
- (iii) The fine imposed for the offences under Sections 279, 337 and 304(A) of IPC is confirmed.
- (iv) The sentences of imprisonment shall run concurrently.
- (v) The trial court is directed to secure the accused and send him to prison to undergo the remaining period of sentence.



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WEB COPY 11. Accordingly, this criminal revision is partly allowed.

29.11.2022

Speaking/non-speaking

Index : Yes/No

Internet : Yes

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Principal Sessions Judge,
Dharmapuri
- 2.The Principal Sessions Judge,
Kancheepuram District at Chengalpattu
- 3.The learned Judicial Magistrate No.I,
Chengalpattu
- 4.The Public Prosecutor,
High Court of Madras

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