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CRL.R.C.No.1071 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

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

Crl.R.C.No.1071 of 2018
and Crl.M.P.No.12450 of 2018

Baskar

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
R4, PondyBazar Traffic Investigation Unit,
Pondy Bazar Police Station,
Chennai.

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 & 401 of Cr.P.C to call for the records passed a judgment in C.A.No.399 of 2017 dated 16.07.2018 by the learned XVI Additional Sessions Judge, Chennai and confirmed conviction and sentence passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.12983 of 2009 dated 20.11.2017 and to set aside the same.

For Petitioner : Mr.G.Anbuechezheian

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



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ORDER

This Criminal Revision case has been filed to set aside the order passed by the learned XVI Additional Session Judge, Chennai, on 16.07.2018 in C.A.No.399 of 2017, thereby confirming the order passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai, dated 20.11.2017 in C.C.No.12983 of 2009, thereby convicting the petitioner for the offences under Sections 279, 337, 338, 304(A)(2 counts) of IPC and Section 134(A) & (B) of the Motor Vehicle Act (herein after referred to as “the MV Act”).

2. The case of the prosecution is that on 27.05.2009, at about 9.50 p.m., one Tavera Car bearing Registration No.TN09AU6369, which was driven by its driver in rash and negligent manner in G.N.Chetty Street, T.Nagar, Chennai and hit the Hero Honda Motor Cycle which was traveling in front of the said car and turned to right side and hit one auto due to which, the auto driver and one passenger were died and other passengers who were traveling in the auto, sustained simple and grievous injuries. On the said complaint, the respondent registered FIR in Crime



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No.193/2009 for the offences under Sections 279, 338, 337, 304(A) (2 counts) of IPC and Sections 134(A) & (B) of the MV Act. After completion of investigation, the respondent filed charge sheet and the same has been taken cognizance by the trial in C.C.No.12983 of 2009 as against the petitioner.

3. Before the trial Court, the prosecution examined P.W.1 to P.W.12 and marked documents as Ex.P.1 to Ex.P.18. On the side of the petitioner, no one was examined and no documents were marked. On a perusal of the oral and documentary evidences the trial Court found the guilt of the petitioner and sentenced him to undergo six months simple imprisonment for the offence under Section 279 of IPC, six months simple imprisonment for the offence under Section 338 of IPC, three months simple imprisonment for the offence under Section 337 of IPC, two years simple imprisonment for the offence under Section 304(A) of IPC (2 counts), three months simple imprisonment for the offence under Section 134(A) of the MV Act and also three months simple imprisonment for the offence under Section 134(B) of the MV Act.



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Aggrieved by the same, the petitioner filed an appeal and the same was also dismissed by confirming the order passed by the trial Court, as against which the present revision.

4. The learned counsel appearing for the petitioner submitted that the petitioner was not identified by any of the witnesses. Even in the examination of the Investigating Officer, he was not supported the case of the prosecution in respect of the identification of the accused. According to the prosecution two persons died and three persons sustained injury. However, the doctor who conducted the autopsy was not examined by the prosecution and the accident report were marked through the Investigating Officers P.W.9 & 10. Therefore, the provision under Section 294(1) of Cr.P.C., was not followed and the entire conviction cannot be sustained as against the petitioner.

4.1. He further submitted that, in fact the motor vehicle report in respect of the alleged Tavera car was not marked through the Motor Vehicle Inspector, who was examined as P.W.3 by the prosecution and the



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said report was marked through Investigating Officer as Ex.P.18. It is fatal to the prosecution case. In support of his contention, he relied upon the following judgment:-

(i) *Manu/TN/1000/2001 – Jerald vs the State*

(ii) *2001 (2) MWN (Cr.) 260 – Arumugam Vs. State by the Sub-Inspector of Police.*

4.2. In the judgment reported in *Manu/TN/1000/2001* in the case of *Jerald vs the State*, in which the accused was convicted for the offence under Sections 304-A & 279 of IPC and the same was challenged before this Court and this Court held that non-examination of the doctor is fatal for the prosecution and the contents of the documents are inadmissible as they were not spoken to by the person who prepared it. The doctor who issued the certificate, though according to the prosecution conducted autopsy, was not examined and no explanation was offered by the prosecution before the Court, as to why he was not examined. Therefore, the learned counsel appearing for the petitioner submitted that the petitioner is entitled for acquittal.



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4.3. In another judgment reported in **2001 (2) MWN (Cr.) 260** in the case ***Arumugam Vs. State by the Sub-Inspector of Police***, this Court held that the marking of documents must be in accordance with the procedure contemplated under Section 294 of Cr.P.C., and the post mortem certificate and the motor vehicle inspector report must be marked through the author of the said document. The learned counsel appearing for the petitioner raised objections that the documents could not be marked through the Investigating Officer but have to be marked through the persons who prepared them and it is illegal. Therefore, he prayed to allow the present revision.

5. Per contra the learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the prosecution in order to bring the charges home, examined P.W.1 to 10 and also marked documents as Ex.P.1 to Ex.P.18. The doctor, who treated the injured witnesses, was examined as P.W.6 and he was not cross-examined by the petitioner. Further the petitioner never raised any objection while marking the documents viz., accident register, post mortum certificate



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etc., through the Investigating Officer.

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5.1. Insofar as the identification of the petitioner is concerned, though the injured witnesses failed to identify the petitioner, the owner of the vehicle has been examined as P.W.8 by the prosecution. He categorically deposed that the petitioner told him that while driving the car, he met with an accident and the same was informed before the Investigating Officer. He also produced the RC book, insurance policy of the alleged car and the driving license of the petitioner, which were marked as Ex.P.9. Therefore, unless there is a contra evidence disputing the documents produced by P.W.8., no other material to disbelieve the fact that the petitioner only drove the car. Therefore, the Courts below rightly convicted the petitioner and it doesn't warrant any interference by this Court.

6. Hear Mr.G.Anbuechezheian, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent/Police.



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7. On 27.05.2009 at about 9.50 p.m., one Tavera car bearing registration No. TN09AU6369 was driven by its driver in rash and negligence manner from East to West in new bridge at G.N. Chetty Street, T. Nagar, Chennai and hit a two wheeler on its backside and immediately turned right side and hit an auto coming opposite side due to which, the auto driver and one of his passenger died on spot and other passengers sustained simple and grievous injuries.

8. Admittedly, the persons who sustained injuries did not notice the petitioner, since during the accident it was night and they sustained injuries. Whereas, the owner of the car who was examined as P.W.8 categorically deposed that for the past six months, the petitioner only driving the car and he also produced RC book, insurance policy of the car and driving license of the petitioner. However, the petitioner failed to produce any contra evidence to show that he was not driving the car on that day. Further he also failed to cross examine any of the prosecution witness to that effect.



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9. The learned counsel appearing for the petitioner vehemently contended that the post mortum reports were marked through the Investigating Officer as such it cannot be accepted as prosecution document in support of their case. The motor vehicle inspection report also marked through the Investigating Officer. It is seen that Ex.P.4 to Ex.P.7 are the medical records marked through P.W.6, the doctor who treated the injured witnesses and he was not cross examined by the petitioner. Further the petitioner never objected those documents while marking the same.

10. That apart, the petitioner failed to produce any contra evidence to disbelieve the prosecution case. Admittedly two persons died on the spot and their post mortum reports were marked through the Investigating Officer. Insofar as the motor vehicle inspection report, which was marked as Ex.P.18 through the Investigating Officer, revealed that the accident was not occurred due to any mechanical problem. The petitioner did not produce any contra evidence. Therefore, it is not fatal to the case of the prosecution, since the petitioner failed to cross examine



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the witnesses to that effect and also did not raise any objection while marking the documents. Therefore, the judgments cited by the learned counsel appearing for the petitioner are not helpful to the case on hand. This Court finds no infirmity or illegality in the order passed by the Courts below and this revision is liable to dismiss.

11. Accordingly, the Criminal Revision stands dismissed. The trial Court is directed to take steps to secure the petitioner for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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To

1. The XVI Additional Sessions Judge,
Chennai
2. The IV Metropolitan Magistrate,
Saidapet, Chennai,
3. The Inspector of Police,
R4, PondyBazar Traffic Investigation Unit,
Pondy Bazar Police Station,
Chennai.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J

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