



Crl.R.C.No.600 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.07.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.600 of 2015

Divakaran aged 24,
S/o.Thiruselvam,
Melasalai,
Annankoil,
Sirkali Taluk,
Nagapattinam District.

... Petitioner/Accused

/versus/

State rep. by,
The Inspector of Police,
Anaikkaranchathiram Police Station,
Nagapattinam District.
(Crime No.117/2013)

... Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397 and 401 of Cr.P.C., to call for the records of the Judicial Magistrate, Sirkali, Nagapattinam District in C.C.No.220 of 2013 and the conviction was confirmed by the District and Sessions Judge, Nagapattinam, made in Crl.Appeal No.41 of 2014 dated 16.03.2015 and set aside the same.

For Petitioner : Mr.C.Prabakaran



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For Respondent : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

ORDER

Heard the Learned Counsel for the Revision Petitioner and the Learned Government Advocate (Crl.Side) for the respondent.

2. This revision case is against the concurrent finding of the Courts below, sentenced the petitioner for offences under Section 279 and 304-A of I.P.C.

3. The case of the prosecution is that, on 10.06.2013, at about 11.00 a.m., near Pillaiyar Koil Street between Kollidam and Manganampattu the mini bus bearing Reg.No.TN-51/Y 3699 driven rash and negligently by his driver dashed against the cyclist, who is coming in opposite direction and caused death of the cyclist by name Jagabar Ali. Complaint regarding the road accident was given by P.W.1. The prosecution has relied on the evidence of P.W.1 to P.W.4 and P.W.9, who saw the accident. P.W.5 and P.W.6 are the observation mahazar witnesses. P.W.7 is the Motor Vehicle Inspector, who examined the offending



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vehicle and certified that vehicle had 60% leg brake efficiency. P.W.9, who took the injured to the hospital, where he was declared, brought dead. P.W.10, the doctor, who conducted autopsy. P.W.12 is the Investigating Officer.

4. Believing the statements of P.W.2 to P.W.4 and P.W.8, the Court below has held that the accident occurred due to rash and negligent driving by the accused. Whereas the Learned Counsel for the petitioner submitted that both the Courts below have erred in appreciating the evidence and ignoring the contradictions between the witnesses, who claims to have been witnesses to the occurrence. The rough sketch of scene of occurrence clearly show that there is a curve on the eastern side of the road and the mini bus driven by the petitioner could not have driven rashly and it was the deceased who failed to notice the on coming bus, dashed the mini bus and thrown away. The injuries found in his body as well as the deposition of P.W.2 and P.W.3, it is clear that, the cyclist hit the front side mirror of the bus and the deceased fell down losing his balance. The contradictions between P.W.2 and P.W.3 regarding the direction from which the deceased was proceeding also causes doubt about the presence of the witnesses at the time of occurrence. However, the trial Court as well as the Appellant Court



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ignored to take note of the said contradictions. P.W.1, the defacto complainant has turned hostile, did not support the case of the prosecution and the very fact from which direction the deceased was proceeding is also not clear from the prosecution evidence. Therefore, the Learned Counsel would contend that the petitioner is not guilty since the prosecution failed to prove the rash and negligent driving.

5. Per contra, the Learned Government Advocate (Crl.Side) for the respondent submitted that the witnesses without any contradictions had deposed that the death of Jagabar Ali was due to the accident caused by the mini bus and that bus was driven by the petitioner herein. Though, P.W.1 the defacto complainant has not supported the case of the prosecution and declared hostile, the evidence of P.W.2, who saw the accident is corroborated by the evidence of P.W.3 [Madhavan] and P.W.4 [Raj], they were extensively cross examined by the defence but their evidence stands unimpeached.

6. Further, the Learned Government Advocate (Crl.Side) for the



respondent submitted that as per Motor Vehicle's report the efficiency of the brake in the mini bus was only 60%. Therefore, negligence in causing the accident is established.

7. The Learned Counsel for the petitioner would rely upon the very same Motor Vehicle's report and submitted that, if really the bus was driven rash and negligently hit the cycle, there could have been some damage to the bus at the point of impact. However, the Motor Vehicle Inspector has observed that there was no damage to the bus.

8. On hearing the submissions and perused the records, two points attracts consideration of the Court.

(i). To ascertain whether the accident occurred due to rash and negligent driving of the petitioner, the rough sketch as well as admission of prosecution witnesses are relevant. The document and the oral evidence proves that there was a curve on the eastern side from where the mini bus was proceeding towards Kollidam. There is a contradiction between prosecution witnesses from which direction, the deceased proceeding in his cycle whether East to West or



West to East.

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9. P.W.2 had stated that the rear view mirror of the mini bus hit the cyclist coming from West and Jagabar Ali fell from his cycle. The other witness P.W.4 in the cross examination had stated that, Jagabar Ali after the accident was lying near the front steps of the bus. P.W.3, in the cross examination has also deposed that the deceased was not ran over by the bus. The accident occurred when the bus hit the two wheeler.

10. P.W.8 has deposed that the accident occurred when the bus hit the two wheeler on the front side and immediately after the impact, the cyclist was thrown away.

11. Now looking at the Post-mortem certificate [Ex.P.4], this Court finds that, the injuries are all only at the right side of the body indicating that the deceased sustained laceration over the right frontal temporoparietal area in the scalp; Fracture of the right femur bone; Abrasion over the right shoulder; Multiple rib fracture in the right side chest.



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12. Taking note of the fact that, the place of accident was near a curve. Both the deceased as well as the petitioner are familiar to that road, being driver of the passenger bus in that route and the deceased being a local medical shop owner, so, the accident cannot be totally attributed to the negligence of the bus driver. More so, when tell-tale evidence available indicates it that was not a head on collision but the hit of the bus side ward causing the cyclist thrown away from the vehicle and fracture on the right side rib causing lacerated wound on the right side scalp. This accident cannot be attributed solely to the negligence or rashness of the driver, hence benefit of doubt has to be extended to the petitioner.

13. Accordingly, the Criminal Revision Petition is allowed. The conviction and sentenced passed by the Courts below is hereby set aside. Fine amount paid if any, shall be refunded to the petitioner. Bail bond executed shall stand discharged.

11.07.2022

Index :Yes/No.
Internet :Yes/No.



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Speaking order/Non-speaking order
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To,

1. The Judicial Magistrate, Sirkali, Nagapattinam District.
2. The District and Sessions Judge, Nagapattinam.
3. The Inspector of Police, Anaikkarachathiram Police Station,
Nagapattinam District.
4. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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