



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 12.01.2022
Order Pronounced on : 24.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.788 of 2015

Balu @ Balraj

.. Revision Petitioner

Versus

State rep. By the Inspector of Police,
Kilvelur Police Station,
Crime No.679 of 2009.

.. Respondent

Prayer : Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records relating to C.A.No.61 of 2012 of the Sessions Court, Nagapattinam, judgment, dated 06.04.2015 and revise, set aside the judgment of Sessions Court, Nagapattinam in C.C.No.17 of 2011 of the learned Chief Judicial Magistrate, Nagapattinam and may be pleased to allow this Revision.

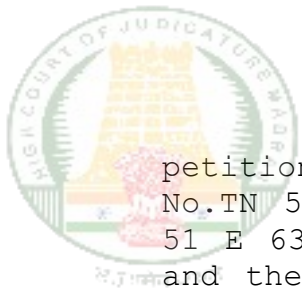
For Petitioner : Mr.M.Nallathambi
Legal Aid Counsel

For Respondent : Mr.L.Baskaran
Government Advocate
(Criminal Side)

ORDER

This Criminal Revision Case is filed by the petitioner Balu @ Balraj, aggrieved by the judgment of the Chief Judicial Magistrate, Nagapattinam, dated 20/11/2012 in C.C.No.17 of 2011, whereby, the petitioner is convicted for the offence under section 304-A of Indian Penal Code and imposed a punishment of one year Simple Imprisonment and the judgment of the learned District and Sessions Judge, Nagapattinam, dated 06/04/2015 in C.A.No.61 of 2012 that dismissed the appeal, preferred by the petitioner/accused.

2. On 30/10/2009, when P.W.12, Sub-Inspector of Police was on duty at the Kilvelur Police Station, P.W.1 lodged a complaint to the effect that his daughter Swetha, aged about 1 ½ years was playing near the house. Whiles, the



petitioner/accused, who drove the tractor, bearing registration No.TN 51 E 6331 along with trailer, bearing registration No.TN 51 E 6347, reversed the vehicle in a rash and negligent manner and the baby was caught under the left side rear wheel of the trailer and her head got crushed and she died. Based on the said complaint, P.W.12 registered a case in Cr.No.679 of 2009. Thereafter, P.W.13 took up the case for investigation. However, P.W.14 thereafter completed the investigation laid a charge sheet on 23/11/2009, proposing the accused guilty for the offences under section 279 and 304 -A of the Indian Penal Code.

3. The case was taken on file by the learned Chief Judicial Magistrate as C.C.No.17 of 2011 and upon being furnished with the copies of all the documents under Section 207 of the Code of Criminal Procedure and upon questioning, the accused denied the charges and stood trial. The prosecution, thereafter, examined P.W.1, the first informant and the father of the deceased child, P.Ws.2 and 3, eyewitness to the incident and the other witnesses upto P.W.14. On behalf of the prosecution, the complaint was marked as Ex.P-1, the observation mahazar was marked as Ex.P-2, the Motor Vehicle Inspection Report was marked as Ex.P-3, the Accident Register was marked as Ex.P-4, the Post-Mortem Report was marked as Ex.P-5, the First Information Report was marked as Ex.P-6, Inquest Report was marked as Ex.P-7, and the Rough Sketch was marked as Ex.P-8.

4. Upon being questioned about the adverse evidence and circumstances on record, as per section 313 of Cr.P.C., the accused denied the same. Thereafter, no oral or documentary evidence was let in on behalf of the accused. The trial court, therefore, proceeded to hear the learned Additional Public Prosecutor on behalf of the prosecution and the learned Counsel for the accused. By a judgment, dated 20/11/2012 that in view of the eyewitnesses evidence in P.Ws.1 to 3, coupled with the evidence of P.W.7 deposing that the tractor/trailer belonged to him and that the accused was driving is tractor and trailer on the date of accident, coupled with the Motor Vehicle Inspection Report, Observation Mahazar, the Post-Mortem Report evidencing the death of the child due to injury on the head, held that the prosecution has proved the guilt beyond any doubt and convicted the petitioner accused for an offence under Section 304-A of Indian Penal code and sentenced as aforesaid.

5. Aggrieved by the same, the petitioner/accused preferred Criminal Appeal No. 61 of 2012 and by a judgment, dated 06/04/2015, after independently appraising the evidence on record, the Appellate Court, based on the evidence of P.Ws.1 to



3 coupled with the evidence of P.W.5 and P.W.7, held that the prosecution had proved the charges. The Appellate Court held that the only defence, which was taken was that the child got hit somewhere else and only for the purpose of claiming compensation the accused is being roped in, stands totally not proved. With the said findings the Appellate Court dismissed the appeal and confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present revision is laid before this court.

6. Heard Mr.M.Nallathambi, the learned Legal Aid counsel appearing on behalf of the petitioner and Mr.L.Baskaran, the learned Government Advocate (Criminal side) on behalf of the prosecution.

7. Mr.M.Nallathambi, the learned Counsel for the petitioner would submit that upon reading of the F.I.R, the earliest statement given by the P.W.1 before the police about the accident, would itself show that he did not witness the accident and therefore his evidence is liable to be discarded. This apart, from the cross-examination of P.Ws.2 and 3 regarding the width of the road, it would be clear that the accident could not have happened in the manner as alleged by the prosecution. This apart, even P.Ws.2 and 3 cannot be the eyewitnesses to the incident and they have deposed only to favour the prosecution. It is his submission that the charge sheet laid by the P.W.14 did not specifically mention about reversing the vehicle. Therefore, he would submit that considering all these aspects together, this is a fit case for interference by this court, in exercise of its powers, under revisional jurisdiction.

8. Per contra, Mr.L.Baskaran, the learned Government Advocate (Criminal side) appearing on behalf of the prosecution would contend that in this case, the prosecution has proved the offence beyond any doubt. P.W.7 had established that the tractor and trailer belong to him and it is only the petitioner/accused who was engaged to drive the tractor. On the date of incident, the petitioner/accused was on duty driving the tractor and trailer trailer is also established. The fact that the child got under the left side rear wheel of the trailer and died due to crush injury is also established. The manner in which the tractor was driven that is it was reversed in a speedy manner without checking out for the child or any person is established by the evidence of P.Ws.1 to 3 and therefore, the charge against the accused is proved beyond any doubt and therefore, he would pray that this revision be dismissed.



9. I have given my anxious consideration to submissions made on either side. I have gone through the records. It is true that has contended by the learned Counsel for the petitioner that in the final report, filed by P.W.14, it is not mentioned that the tractor was being 'reversed' specifically in the charge. It is true that P.W.1 could not have witnessed the accident which should be clear from his narration of the events in the First Information Report. Be that as it may, from the copies furnished to the accused, from the statement of all the witnesses, the rough sketch and the other evidence, the accused was put on notice about the clear charge that when he was reversing the vehicle the child got caught under the left side rear wheel of the trailer and died on the spot. Therefore, the absence of the word 'reversing' in the final report has not caused any prejudice to the petitioner accused as the exact charge has been put to his notice. Similarly, even discarding the evidence of P.W.1, P.Ws.2 and 3 are the eyewitnesses who have witnessed the accident. Further, the deceased is 1 ½ year old child and when the said child gets caught under the rear side wheel of the trailer, this is case of invocation of the principle of res ipsa loquitar, as no mistake whatsoever can be attributed to the child. In any view of the matter, no exception can be taken for the finding of the Trial Court and the First Appellate Court holding the petitioner accused guilty of the offence under Section 304 -A of the India Penal Code.

10. This accident had occurred in year 2009 and at that point of time petitioner/accused was 31 years of age. Since then, he has not been involved in any other offence. It is seen from the evidence on record that he did not flee the scene and as a matter of fact everyone there helped the child to be taken to the hospital. Considering the nature of the offence, as well as the age of the petitioner, I am inclined to modify the sentence imposed by the Trial Court and the First Appellate Court, by reducing the same from Simple Imprisonment for a period of one year to that of Simple Imprisonment for a period of two months. The petitioner will be entitled to set off the period of imprisonment, if any, already undergone by him.

11. The Criminal Revision Case stands partly allowed accordingly.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar



- 1.The District Sessions Judge,
Nagapattinam.
- 2.The Chief Judicial Magistrate,
Nagapattinam.
- 3.The Public Prosecutor,
High Court of Madras.
- 4.The Inspector of Police,
Kilvelur Police Station.
- 5.The Superintendent,
Central Prison, Cuddalore.
- 6.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.M.Nallathambi, Advocate SR.No.4213

Cr1.R.C.No.788 of 2015

NK(CO)
GN(18/02/2022)