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Crl.RC.No.456 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2022

CORAM:

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

Crl.RC.No.456 of 2018

Murugesan

... petitioner

Vs.

The State rep. by
The Inspector of Police,
Papparapatti Police Station,
Dharmapuri District

... Respondent

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the judgment made in CA.No.1 of 2017 dated 24.01.2018 on the file of the Principal Sessions Judge, Dharmapuri in confirming the judgment made in CC.No.104 of 2009 dated 21.12.2016 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram and to allow the criminal revision.

For Petitioner : Mr.V.Sakkarapani

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

ORDER

This criminal revision is filed as against the judgment passed in CA.No.1 of 2017 dated 24.01.2018 on the file of the Principal Sessions Judge,



Crl.RC.No.456 of 2018

Dharmapuri, thereby confirmed the judgment passed in CC.No.104 of 2009 dated 21.12.2016 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram, 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 16.05.2008 at about 10.00 p.m., the petitioner was driving his TATA 407 tempo bearing registration No.KA 05 AF 0006 from Papparapatti to Dharmapuri Road to worship their family deity after loading utensils and eight persons in a rash and negligent manner and dashed against a tamarind tree on the left hand side near Samraj grocery shop at Padi Village, due to which one person sustained grievous injuries and one person died. Hence, the complaint. On receipt of the said complaint, FIR was registered in crime No.204 of 2008 for the offence under Sections 279, 337, 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.104 of 2009.

3. On the side of the prosecution, they examined PW1 to PW18 and marked Ex.P1 to Ex.P11. 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 him guilty for the offence under Sections 279, 337, 304(A) of IPC and he was sentenced to undergo three months simple imprisonment for the offence under Section 279 of IPC, three months simple imprisonment for the offence under Section 337 of IPC. He was also sentenced to undergo six months simple imprisonment for the offence under Section 304 (A) of IPC with fine of Rs.2,000/-, in default to undergo one month simple imprisonment. Aggrieved by the same, the petitioner preferred 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.V.Sakkarapani, the learned counsel for the petitioner would submit that the accident occurred not due to rash and negligent driving of the petitioner. In the place of occurrence, there was a pit on the left hand side road. When a two wheeler came from the opposite side and only to avoid to hit the two wheeler, the petitioner turned the vehicle on his left hand side. Unfortunately, the roof of the cabin hit a tamarind tree and due to the said impact, the deceased, who was standing in the vehicle without holding any part of the vehicle, fell down and sustained injury. Therefore, the accident was caused due to rash and negligent driving of the petitioner. The person who sat



inside the cabin was examined as PW8 and he deposed that only to avoid hitting the two wheeler, the petitioner drove the vehicle on his left hand side.

4.1 He further submitted that there was a pit and as such due to bumping, hit the tamarind tree. However, the deceased was standing without holding the vehicle. Therefore, he fell down and sustained injuries and died. In fact, the petitioner duly cross examined all the witnesses to that effect and even then, the courts below convicted the petitioner. In fact, PW4, 5, 6, 7, 8 10, 15 turned hostile and no eye witness had deposed against the petitioner. PW1 is also not an eye witness and is a hear say witness. Therefore, the prosecution failed to prove the case beyond any doubt.

5. Per contra, Mr.A.Gopinath, the learned Government Advocate(crl.side) appearing for the respondent submitted that admittedly the petitioner drove the vehicle. The said vehicle is a '407 tempo'. The persons are not supposed to be boarded in the goods vehicle. The petitioner boarded eight persons i.e. three persons inside the cabin and five persons in the back side of the van along with other utensils. They all planned to worship the god and went after loading kitchen utensils and proceeded to Mallikuttai temple from Papparapatti. Due to rash and negligent driving, he hit a tamarind tree on his



Crl.RC.No.456 of 2018

left hand side of the road and due to which, the deceased and another sustained grievous injuries. Unfortunately, the deceased died and another person sustained grievous injuries. The Motor Vehicle Inspector categorically deposed that the accident happened not due to any mechanical fault. Only because of his rash and negligent driving, the accident occurred and due to which one person sustained grievous injuries and one person died. Therefore, the courts below rightly convicted and it does not require any interference by this Court.

6. Heard, Mr.V.Sakkarapani, 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 the vehicle bearing registration No.KA 05 AF 0006 i.e. 407 TATA Van on the date of occurrence. On 16.05.2008 at about 10.00 p.m. He loaded kitchen utensils along with eight persons to worship their family deity at Mallikuttai from Papparapatty on the road towards Dharmapuri near Samraj grocery shop at Padi Village. The petitioner drove his vehicle in a negligent manner and hit a tamarind tree which was standing on his left hand side. The vehicle's roof hit a tamarind tree and due to the said impact, the persons who were standing behind the cabin



sustained grievous injuries and due to which, one person died and one person sustained grievous injuries.

8. The person who was standing along with the injured and the deceased person was examined as PW3 and he categorically deposed that while they were proceeding to worship their family deity, the petitioner drove the vehicle in a rash and negligent manner and hit the tamarind tree at Padi village, due to which he sustained injuries on his head, right hand and hip. At the same time, the deceased also sustained injuries and died. The Motor Vehicle Inspector was examined as PW17, who deposed that the accident did not take place due to any mechanical fault. He had given Motor Vehicle Inspection Report which was marked as Ex.P11, which revealed that the left hand side body of the vehicle and roof of the cabin got damaged due to the accident. Eye witness deposed that the petitioner drove his vehicle in a negligent manner and hit a tamarind tree on his left hand side of the vehicle. Therefore, the prosecution proved its case beyond any doubt that only due to the negligent driving of the petitioner, the accident had occurred.

9. The learned counsel for the petitioner vehemently contended that one of the persons, who had sit in the cabin, was examined as PW8, who



deposed that only to avoid hitting the two wheeler which was coming from the opposite side, the petitioner turned the vehicle on the left hand side and hit the tamarind tree. The deceased and the injured were not holding any part of the van. Therefore, they fell down and sustained injuries.

10. Though the injured and the deceased failed to hold the van, only due to the impact of hitting the tamarind tree, they fell down and sustained injuries. Therefore, the prosecution proved its case beyond any doubt and both the courts below rightly convicted the petitioner. Hence, this Court finds no merits in this revision and it is liable to be dismissed. However, the learned counsel for the petitioner would submit that considering the age of the petitioner, the sentence may be reduced.

11. In view of the above submission, this Court is inclined to reduce the sentence alone for the offence under Section 304(A) of IPC from six months to three months. As such, the judgment in CA.No.1 of 2017 dated 24.01.2018 on the file of the Principal Sessions Judge, Dharmapuri, thereby confirmed the judgment made in CC.No.104 of 2009 dated 21.12.2016 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram is modified as follows:



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CrI.RC.No.456 of 2018

- (i) The order of conviction and sentence for the offences under Sections 279 and 337 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 six months simple imprisonment to three months simple imprisonment.
- (iii) The fine of Rs.2,000/- imposed for the offence under Section 304(A) of IPC is confirmed.
- (iv) The sentences of imprisonment shall run concurrently.
- (v) The period of remand already undergone by the petitioner, if any, is to be given set off under Section 428 of Cr.P.C.

12. Accordingly, this criminal revision is partly allowed.

28.11.2022

Speaking/non-speaking
Index : Yes/No
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CrI.RC.No.456 of 2018



WEB COPY



CrI.RC.No.456 of 2018

G.K.ILANTHIRAIYAN, J.

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To

- 1.The Principal Sessions Judge,
Dharmapuri
- 2.The learned District Munsif cum Judicial Magistrate,
Pennagaram
- 3.The Inspector of Police,
Papparapatti Police Station,
Dharmapuri District
- 4.The Public Prosecutor,
High Court of Madras

CrI.RC.No.456 of 2018

28.11.2022