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Crl.R.C.No.1358 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1358 of 2016

M.Mathi @ Mathiyalagan

... Petitioner

Vs.

State rep. by,  
The Inspector of Police,  
Thiruvallur Taluk Police Station Circle,  
Thiruvallur District.  
(Crime No.136 of 2004)

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 15.06.2016 made in C.A.No.74 of 2015 passed by the Principal District & Sessions Judge, Thiruvallur and set aside the same and consequently set aside the order dated 22.09.2015 passed by the Judicial Magistrate Court No.II, Thiruvallur in C.C.No.552 of 2004 and acquit the petitioner.

|                |   |                                |
|----------------|---|--------------------------------|
| For Petitioner | : | Mr.R.Sasikumar                 |
| For Respondent | : | Mr.L.Baskaran                  |
|                |   | Government Advocate (Crl.Side) |

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ORDER

The petitioner/accused was convicted by the learned Judicial Magistrate No.II, Thiruvallur (trial Court), by Judgment, dated 22.09.2015 in C.C.No.552



of 2004 for an offence under Sections 279, 338 and 304(A) of IPC and sentenced to undergo six months Simple Imprisonment for each offence and sentenced to run concurrently. As against the conviction, the petitioner had preferred an appeal before the Principal District & Sessions Judge, Thiruvallur (lower Appellate Court) in C.A.No.74 of 2015. The lower Appellate Court, by Judgment dated 15.06.2016 confirmed the conviction and modified the sentence of six months to three months (each) and dismissed the appeal, against which the present Criminal Revision.

2.The background of the case is that on 27.05.2004 at about 4 P.M., the accused rode his three wheeler (Fish Cart) without any valid documents and in that vehicle he had taken one Rajkumar (deceased) along with P.W.2, P.W.3 and P.W.4. The petitioner/accused drove the vehicle in a rash and negligent manner and caused capsizing of the vehicle, due to which, Rajkumar (deceased) got grievous injuries on his head. Thereafter, he was taken to hospital by P.W.1, who is the father of the deceased. The said Rajkumar was died on the way and the other injured persons took treatment in the Hospital. P.W.8 is the Causality Doctor, who had treated the injured. P.W.7 is the Post-mortem Doctor. P.W.2, P.W.3 are the witnesses who were travelled in the Fish



Cart. P.W.4 and P.W.9 are the Mahazar Witnesses. P.W.5 is the owner of the Fish Cart. P.W.6 is the Motor Vehicle Inspector who had examined and given a report (Ex.P.2). P.W.7 is the Post-mortem Doctor who had issued Post-mortem certificate (Ex.P.3). P.W.8 is the Casualty Doctor who had issued injury certificate (Ex.P.4) and P.W.10 is the Sub Inspector of Police, who registered the FIR, listed the scene of occurrence and prepared observation Mahazar, rough sketch and made request for Post-mortem. Thereafter, P.W.11 took up further investigation in this case and filed Charge Sheet. P.W.13 is the another eye witness to the occurrence. On conclusion of the trial, the evidence and materials produced, the trial Court had convicted the petitioner/accused and thereafter, the lower appellate Court confirmed the conviction and modified the conviction as stated above.

3.During trial, on the side of the prosecution, 13 witnesses were examined as P.W.1 to P.W.13 and 10 documents were marked as Exs.P1 to P.10. On the side of the defence, no witness was examined and no document was marked. The trial Court, on conclusion of trial, convicted and the sentenced the petitioner, vide Judgment dated 22.09.2015 in C.C.No.552 of 2004. As against the Judgment of the trial Court, an appeal was preferred by the



petitioner before the lower appellate Court in C.A.No.74 of 2015. The

lower Appellate Court confirmed the conviction and modified the sentence of six months to three months (each) and dismissed the appeal.

4.The contention of the petitioner is that though it has been projected by the prosecution that the petitioner was in a drunken state and due to which, he driven the Fish Cart in a rash and negligent manner and caused the accident. No materials have been produced to prove that the petitioner was in a drunken state. The petitioner was not subjected to any medical examination. In this case, P.W.1, father of the deceased Rajkumar though projected as an eye witness, he admits in his evidence that he was in his work spot at Food Corporation of India, Godown, Pattabiram at the time of accident and he is in the nature of hearsay. The eye witness to the occurrence, namely P.W.13 not supported the case of the prosecution. The witnesses, who had travelled in the Fish Cart, P.W.2 and P.W.3 have not stated that the petitioner had driven the vehicle in a rash and negligent due to which the capsized occurred. P.W.4 is the Mahazar witness and P.W.5 is the owner of the Fish Cart, both have not supported the case of the prosecution. P.W.6 is the Motor Vehicle Inspector, who stated that since the vehicle is not registered under the Motor Vehicle Act, he could not



examine the vehicle and could not give any report. In this case, the prosecution had not produced the Fish Cart as a material object and no photographs have been produced to prove that the Fish Cart was damaged due to over speed and capsizing. In the Rough Sketch (Ex.P.8) as well as in the Observation Mahazar (Ex.P.9), the vehicle has not been shown .

5.The learned counsel for the petitioner submitted that there is no material evidence to show that the petitioner had driven the vehicle in a rash and negligent manner and the petitioner is the cause for the accident. The lower Appellate Court failed to consider these aspects. The lower Appellate Court merely reproduced the trial Court Judgement and confirmed the conviction.

6.The learned Government Advocate (Crl.Side) appearing for the respondent Police submitted that P.W.1 is the father of the deceased Rajkumar. P.W.1, P.W.2, P.W.3 as well as the P.W.12 were playing near the resident. At that time, the accused, who was in a drunken state, had forced the young boys to get into his vehicle for a jolly ride. Due to his drunkenness, he driven the Fish Cart in a rash and negligent manner and capsized the vehicle while turning, due to which, the said Rajkumar (deceased) son of P.W.1 sustained head injury and died. P.W.1 taken his son to the hospital, where he was



declared brought dead. P.W.8 is the Casualty Doctor, who also recorded the same. P.W.7 is the Post-mortem Doctor.

7. He further submitted that P.W.4 is the Mahazer witness, who had not supported the case of the prosecution. Alternatively, P.W.9 is the other Mahazar witness, who had clearly stated about the drawing of Observation Mahazer and Rough Sketch (Exs.P.5 and P.6). P.W.6 is the Motor Vehicle Inspector, who had confirmed that the vehicle was not registered under the Motor Vehicles Act and it was not permitted to ply in the roads. P.W.10 is the Sub Inspector of Police, who on receipt of the complaint, registered an FIR (Ex.P.7), visited the scene of occurrence, prepared observation Mahazer, rough sketch and also examined the witnesses present in the scene of occurrence. Subsequently, conducted inquest and thereafter, handed over the investigation to P.W.11/Inspector of Police, who filed the Final Report. P.W.12 is one of the occupants of the Fish Cart and P.W.13 is an eyewitness. Both have not supported the case of the prosecution. The points raised by the petitioner herein have already been raised before the trial Court as well as the lower Appellate Court. Both the Courts below have considered the same and thereafter, on independent analysis of the evidence and materials had rightly convicted the petitioner. Hence, he prayed for dismissal of the revision.





not been done so. Though, the petitioner has been projected as he was in the drunken state, there have been no medical examination in this regard. From the Rough Sketch and Observation Mahazar, nothing contrary to decipher. The eye witness to the occurrence (P.W.13) has not supported the case of the prosecution and only remaining witness of this case is P.W.2. P.W.2 in his cross examination stated that he had sustained injuries, no Doctor has been examined and no medical records produced. The evidence of P.W.3 is that it was only the Rajkumar (deceased) and Karthickraja (P.W.12) alone travelled in the Fish Cart. Admittedly, P.W.12 have not supported the case of the prosecution. In this case, there have been lot of infirmities and the prosecution not taken any steps to produce the evidence with regard to the damage caused to the Fish Cart. P.W.10 admits that there are contradiction in the statement of the witnesses. The trial Court as well as the lower appellate Court failed to consider the case in these aspects. Thus, this Court finds that the prosecution had failed to prove the case against the petitioner beyond reasonable doubt.

10. In view of the same, this Court allows the Criminal Revision Petition. Accordingly, this Criminal Revision Case is allowed. The Judgment of conviction and sentence passed by the learned Principal District &



Crl.R.C.No.1358 of 2016

Sessions Judge, Thiruvallur in C.A.No.74 of 2015 dated 15.06.2016, confirming the order of conviction passed by the learned Judicial Magistrate Court No.II, Thiruvallur in C.C.No.552 of 2004 dated 22.09.2015 are set aside and the revision petitioner is acquitted of the charges.

08.12.2022

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

- 1.Principal District & Sessions Judge,  
Thiruvallur.
- 2.The Judicial Magistrate Court No.II,  
Thiruvallur.
- 3.The Inspector of Police,  
Thiruvallur Taluk Police Station Circle,  
Thiruvallur District.
- 4.The Public Prosecutor,  
High Court, Madras.

M.NIRMAL KUMAR, J.

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