



Crl.R.C.No.738 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.09.2022

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.738 of 2016

Ezhilarasan,

... Accused/Appellant/Petitioner

/versus/

State Rep. by
The Inspector of Police,
Sankarapuram Police Station,
Villupuram.

(Crime No.154 of 2010).

... Complainant/Respondent/Respondent

Prayer: Criminal Revision Petition is filed under Section 397 read with 401 of Cr.P.C., against the order passed by the Judicial Magistrate Court, Sankarapuram, in C.C.No.423 of 2010, dated 25.08.2011 as partly modified by Judgement in C.A.No.46 of 2011 dated 03.02.2016 on the file of III Additional Sessions Judge Court, Villupuram @ Kallakurichi.

For Petitioner

: Mr.K.Murugesan,
Legal Aid Counsel

For Respondent

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

ORDER



Crl.R.C.No.738 of 2016

This Criminal Revision Case is filed by the accused, who was held guilty for offence under Section 304(A) of I.P.C and sentenced to undergo one year R.I and fine of Rs.2,000/- in default, one month S.I. This order of the trial Court was challenged before the Lower Appellate Court and same was modified to 6 months R.I and fine of Rs.2,000/-, in default, two months S.I.

2. The Learned Counsel appearing for the petitioner challenging the concurrent finding submitted that, none of the 12 witnesses were examined by the prosecution, has really witnessed the accident or a person who drove the offending bus. The medical evidence namely the Post-Mortem certificate and the ocular evidence does not tally, indicating that the accident ought not to have happened in the manner in which the witnesses have spoken. Further, Learned Counsel submitted that the father of victim and other witnesses have admitted that the victim girl was mentally ill and also physically challenged. Therefore, she used to roam around in the bus stand erratically and it is also stated by the witnesses that, there was a speed break near the bus stand which all indicates that the accident has not by any act of negligence or rashness on the part of the petitioner.

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



Crl.R.C.No.738 of 2016

the State submitted that the accident occurred on 26.03.2010 at about 8.00 am near the Pudupalapattu bus stand. The petitioner, who was driving the College bus from Mottampatti to Sankarapuram, dashed against the victim lady, causing instant death since the rear wheel of the vehicle ran over her.

4. P.W.1, the father of the victim girl gave the complaint and based on the complaint, the prosecution has examined the witnesses. P.W.1 came to the spot subsequently. The accident was seen by P.W.2, P.W.3, P.W.4 and P.W.5 and further submitted that, act of for the negligence of the petitioner, the accident could not have occurred.

5. Heard the Learned Counsel for the petitioner and Learned Government Advocate (Crl.Side) for the respondent. Records Perused.

6. The Law was set into motion on the complaint given by P.W.1. He is not witness to the occurrence. He came to the spot after hearing about the accident. The other witnesses 2 to 5 claims to be present at the scene of accident. P.W.2 claims that the deceased his customer and used to come to the shop frequently. He denied the suggestion that the deceased is a mentally ill person, which is contrary to the evidence



of P.W.1, the father of the deceased also creates doubt about his claim that he know the deceased and himself used to come to the shop frequently. The other three eye witnesses namely P.W.3 (Senthil Kumar), P.W.4 (Venkatesan) and P.W.5 (Mani) all claim that, they were present in the respective shops when the accident took place and the shop is near the scene of accident. They claim that the deceased met with an accident while she was returning home after purchasing grocery. P.W.4 and P.W.5 also denied that the deceased was mentally ill.

7. The Courts below had relied upon the evidence of P.W.2 to P.W.5 considering them as eye witnesses to the accident and they know the deceased, if so, why they denied the suggestion that the deceased is mentally ill person could not be rationalised, when P.W.1 the father of the deceased himself admits that, she is mentally ill person.

8. The Court below particularly the Lower Appellate Court while taking note of this fact has said that, if a person is really mentally ill, there cannot be contribution to the accident. This edifice logic as the physically disabled persons and also mentally ill is prone to act or react unpredictably. While the father of the deceased P.W.1 has fairly conceded that her daughter suffers from mental illness, the



Crl.R.C.No.738 of 2016

other witnesses had denied the suggestion which was only indicates that they were not aware of the facts of the case and they did not witnessed the accident. Therefore, when there is no evidence to show that the accident occurred due to rash or negligent driving of the petitioner and the presence of speed breaker also not been consistently spoken by the witnesses, creates doubt about their presence.

9. This Court is of the view that the benefit of doubt has to be extended to the petitioner since the prosecution has failed to prove beyond doubt that the accused drove the bus in rash or negligent manner leading to the accident.

10. Accordingly, this ***Criminal Revision Case is Allowed.*** The conviction and sentence passed by the III Additional Sessions Judge, Villupuram is set aside. Fine amount paid if any, shall be refunded to the accused. Bail Bond executed if any, shall stand cancelled. If the custody of the petitioner is not required in any other case, the petitioner/accused shall be set at liberty forthwith.

14.09.2022

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



CrI.R.C.No.738 of 2016

bsm

WEB COPY

- To,
- 1.The III Additional Sessions Judge Court, Villupuram @ Kallakurichi.
 2. The Inspector of Police, Sankarapuram Police Station, Villupuram.
 3. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.R.C.No.738 of 2016

Dr.G.JAYACHANDRAN,J.

bsm

Crl.R.C.No.738 of 2016

14.09.2022