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Crl.RC.No.8 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

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

Crl.RC.No.8 of 2018

J.Kuriakose

... petitioner

Vs.

State rep by
The Inspector of Police,
Uthiyur Police Station,
Tiruppur District
(crime No.151 of 2012)

... Respondent

PRAYER:

Criminal Revision filed under Sections 397 & 401 of Code of Criminal Procedure, to call for the records and set aside the judgment of conviction dated 31.10.2017 made in CA.No.122 of 2016 on the file of III Additional District and Sessions Court, Tiruppur at Dharapuram, which confirmed the conviction and the sentence imposed in the judgment dated 08.11.2016 made in CC.No.132 of 2013 on the file of the learned Judicial Magistrate, Kangeyam, Tiruppur District and to acquit the petitioner.

For Petitioner : Mr.P.M.Duraiswamy



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

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ORDER

This criminal revision is directed as against the judgment dated 31.10.2017 made in CA.No.122 of 2016 on the file of III Additional District and Sessions Court, Tiruppur, thereby confirmed the conviction dated 08.11.2016 made in CC.No.132 of 2013 on the file of the learned Judicial Magistrate, Kangeyam, Tiruppur District thereby convicted the appellant for the offence punishable under Sections 279 & 304(A) of IPC.

2. The case of the prosecution is that a group of 25 persons including the deceased persons started their pilgrimage to Palani from their native by walking on 14.12.2012. While they were proceeding to Palani on 16.12.2012 at about 04.45 a.m. towards south, just northern side of the petrol bunk situated at Uthiyur on the Kangeyam to Dharapuram Mainroad, a tourist mini bus bearing registration No.KL 55 A 999 came from north to south in the same direction was driven by the appellant and dashed against the deceased persons who were proceeding towards south along with other devotees and caused accident. Due to which, they sustained grievous injuries and died. One of the devotees who walked along with the deceased lodged complaint. On receipt of the said



complaint, the respondent registered FIR in crime No.151 of 2012 for the offence under Sections 279 and 304(A) of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance for the offence under Sections 279 and 304(A) of IPC.

3. The prosecution examined PW1 to PW10 and marked Ex.P1 to Ex.P8. On the side of the appellant, 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 and 304(A)-2 counts of IPC and sentenced him to undergo rigorous imprisonment for one year (for each count) for the offence under Section 304(A) of IPC and a sum of Rs.4,000/- as fine, in default to undergo three months simple imprisonment. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the order of conviction by the trial court.

4. The learned counsel for the petitioner would submit that no witnesses identified that the petitioner only drove the vehicle. Even according to the FIR, it is a case of hit and run. As per the investigation officer, after 10 hours from the accident, he was arrested and remanded to judicial custody. Therefore, no identification parade was conducted and no one had seen that the



petitioner only drove the vehicle. He further submitted that even according to the case of the prosecution, nearly 25 persons were walking as pilgrimage to Palani. When it was being so, only two persons i.e. the deceased walked near the middle of the road and as such, the accident took place not on the fault of the petitioner herein. Only because of the deceased fault, the accident took place and they sustained grievous injuries and died.

4.1 He further submitted that even as per the rough sketch, the vehicle was driven by the petitioner from north to south. While the deceased along with others were walking from north to south, the accident took place in the middle of the road. Therefore, only because of the deceased fault, the accident took place. No one deposed that the petitioner had driven the vehicle in a rash and negligent manner. Even assuming that the petitioner drove the vehicle in a speed manner, that would not amount to rash and negligent driving. He further submitted that if at all the petitioner drove the vehicle in a rash and negligent manner, definitely it would have hit all the persons who were walking on the road. Even according to the case of the prosecution, except the deceased, no one was injured and only two persons crossed the road without seeing the petitioner's vehicle, due to which, the accident took place. Unfortunately, both the courts below without considering the above, convicted the petitioner herein.



5. Per contra, the learned Government Advocate (crl.side) appearing

for the respondent / police submitted that the petitioner drove the vehicle in a rash and negligent manner and committed accident, due to which two women died. While the deceased along with others were walking towards Palani as a pilgrimage on the extreme left hand side of the road, the petitioner drove the vehicle in a rash and negligent manner and hit behind them. Therefore, they sustained grievous injuries and died. PW1, one of the devotees walked along with the deceased, lodged the complaint and he categorically mentioned the registration number of the vehicle which involved in the accident. Admittedly, the petitioner only drove the vehicle and as such, no identification parade required in this case. PW1, PW5 and PW6 are the eye witnesses and they deposed that the petitioner drove the vehicle in a rash and negligent manner and caused accident. Ex.P7 i.e Motor Vehicle Inspection report shows that the left side indicator and headlight assemble completely damaged. Thus, it is clear that the petitioner drove the vehicle in a rash and negligent manner and hit the deceased, due to which the indicator assemble and headlight assemble completely damaged. It also shows that the deceased while they were walking on the extreme left hand side of the road, the vehicle hit behind them, due to which only, the left side indicator assemble and headlight assemble got



damaged. Therefore, both the courts below rightly and concurrently convicted the petitioner herein.

6. Heard, Mr.P.M.Duraiswamy, the learned counsel for the petitioner and Mr.A.Gopinath, Government Advocate(crl.side) appearing for the respondent / police.

7. The deceased and others while were walking towards Palani as pilgrimage at about 04.45 a.m. on 14.12.2012 towards south, just northern side of the petrol bunk situated at Uthiyur on the Kangeyam to Dharapuram Mainroad, the petitioner had driven his vehicle bearing registration No.KL 55 A 999 from north to south and dashed behind the deceased persons. Even according to the case of the prosecution, the vehicle hit behind only two persons though 25 persons were walking along with the deceased. Due to the accident, two persons suffered grievous injuries and died. The learned counsel for the petitioner vehemently contended that even assuming that the vehicle was driven in a speed manner, it does not amount that the petitioner drove the vehicle in a rash and negligent manner. No witnesses had spoken that the petitioner drove the vehicle in a rash and negligent manner. Even according to the prosecution, the petitioner drove the vehicle and hit behind the deceased. However,



admittedly the vehicle hit behind the deceased and due to which, they sustained grievous injuries and died.

8. It is very unfortunate that it happened in the early morning, that too with full of fog. In order to bring the charge to home, the prosecution examined eye witnesses PW1, PW5 and PW6. All of them deposed cogently and without any contradiction. Further, PW1 lodged complaint and specifically mentioned the registration number of the vehicle which caused accident. Admittedly, the petitioner drove the said vehicle and as such, identification parade does not require in this case. Though the prosecution failed to establish that the petitioner drove the vehicle, only because of the driving of the petitioner, two persons died. It is also evident from Ex.P7-Motor Vehicle Inspection Report of the vehicle, which shows that it got damaged on its left side front indicator assemble and headlight assemble. Therefore, both the courts below rightly convicted the petitioner for the offence under Sections 279 and 304(A) of IPC. Insofar as sentence is concerned, this Court felt that it would be appropriate to reduce the sentence imposed by the courts below. As such, the judgment passed by the trial court, which was confirmed by the appellate court, is modified as follows:



(i)	The conviction rendered by the courts below for the offence under Sections 279 & 304(A)-2 counts of IPC is confirmed.
(ii)	The sentence of imprisonment imposed by the trial court is reduced to three months rigorous imprisonment for each count of Section 304(A) of IPC. (the period in prison by the accused is to be given set off under Section 428 of Cr.P.C.)
(iii)	The trial court imposed fine of Rs.4,000/- payable by the accused, which is enhanced to Rs.50,000/- (Rupees Fifty Thousand only), in default to undergo further three months simple imprisonment. Both the sentences are ordered to run concurrently on payment of the enhanced fine amount.
(iv)	The trial court is directed to procure the accused and to execute the sentence imposed on him.
(v)	The legal heirs of the deceased are permitted to withdraw the enhanced fine amount by filing proper application before the trial court.

9. Accordingly, this criminal revision is partly allowed.



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Speaking/non-speaking
Index : Yes/No
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The III Additional District and Sessions Court,
Tiruppur at Dharapuram
- 2.The learned Judicial Magistrate,
Kangeyam, Tiruppur District
- 3.The Inspector of Police,
Uthiyur Police Station,
Tirppur District
- 4.The Public Prosecutor,
High Court of Madras

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