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Crl.R.C.No.979 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM:

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

Crl.R.C.No.979 of 2018

Murugaiyan

....

Petitioner

Vs

The Inspector of Police,
Kancheepuram Taluk Police Station,
Kancheepuram.

Crime No.281 of 2011

....

Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the entire records in connection with the C.A.No.2 of 2018 on the file of the District Sessions Judge, District Court No.2, Kancheepuram and set aside the conviction and sentence passed by the learned District Sessions Judge, District Sessions Court No.2, Kancheepuram in C.A.No.2 of 2018 dated 18.08.2018 confirming the conviction and modified the sentence passed by the learned Judicial Magistrate No.II, Kancheepuram in C.C.No.122 of 2011 dated 10.04.2018.

For Petitioner

: Mr.V.Paarthiban

For Respondent

: Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

This Criminal Revision case has been filed to set aside the Judgment dated 18.08.2018 made in C.A.No.2 of 2018 on the file of the District Sessions Judge, District Sessions Court No.II, Kancheepuram, thereby modified the sentence alone in the Judgment dated 10.04.2018 passed in C.C.No.122 of 2011 on the Judicial Magistrate No.II, Kancheepuram, thereby convicted the petitioner for the offence punishable under Sections 304(A), 337 (2 counts) and 279 of IPC.

2. The case of the prosecution is that on 11.05.2011 at about 8.45 p.m., near L & T Company in Vedal Village, on the Chennai to Bangalore High Ways Road, when the de-facto complainant was driving his motorcycle bearing Registration No.TN-20-R-0689, along with his wife and two children, at that juncture, the accused came in the opposite side i.e., in the wrong side, in his two wheeler bearing Registration No.TN-21-AB-4125 in a rash and negligent manner and dashed against the defacto complainant's motorcycle, due to which all fell down and the defacto complainant's three months old male child died.

3. On receipt of a complaint, the respondent registered a case in Crime No.281 of 2011 for the offence punishable under Sections 279, 337 and 304(A) of IPC. After completion of investigation, the respondent



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filed final report and the same has been taken cognizance by the Trial Court in C.C.No.122 of 2011.

4. In order to bring home the charge, the prosecution had examined P.Ws. 1 to 10 and marked Exs.P1 to P15. On the side of the accused, no one was examined and no document was marked.

5. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Sections 279, 337 and 304(A) of IPC and he was sentenced to pay a fine of Rs.500/- in default, to undergo 15 days simple imprisonment for the offence under Section 279 of IPC ; he was sentenced to undergo one month simple imprisonment i.e., two months for two counts and to pay a fine of Rs.500/- each count, in default to undergo 15 days simple imprisonment each count for the offence under Section 337 (2 counts) and he was sentenced to undergo two years simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment for the offence under Section 304(A) of IPC. Aggrieved by the same, the petitioner preferred an appeal and the same was partly allowed and thereby the sentence alone was reduced to six months from two years. Hence, this revision.

6. The learned counsel for the petitioner would submit that the



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prosecution failed to prove the charges beyond any doubt. In support of its case, the prosecution had examined P.W.5. P.W.5 categorically deposed that when the accused was standing in the junction, after stopping his bike and while he was talking to general public, the defacto complainant, who was riding his motorcycle with three pillion riders, lost his control and dashed against the motorcycle of the accused. Therefore, the pillion riders fell down and three months old child sustained grievous injuries and died. However, the Trial Court did not take into consideration all these aspects and mechanically convicted the petitioner for the offence punishable under Section 304(A) of IPC. The Investigation Officer was examined as P.W.10. The Rough Sketch was marked as Ex.P14. The Rough Sketch also is not clear as to where is the place of occurrence and which direction the defacto complainant was riding his motorcycle and which direction the accused was riding his motorcycle.

7. That apart, registration number of the vehicle was wrongly stated in the evidence of P.Ws.1 and 2 as TN-20-W-0189 instead of TN-20-R-0689. Whereas, the FIR and the Motor Vehicle Inspector Report reveals that the two wheeler, which was ridden by the defacto complainant is one bearing Registration No.TN-20-R-0689. Cumulatively, all these



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discrepancies go to show that the prosecution failed to prove its case beyond any doubt. Therefore, the entire conviction and sentence imposed on the petitioner is liable to be set aside.

8. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent submitted that P.W.5 is also hailing from same village, therefore he failed to support the case of the prosecution. Insofar as, the vehicle number is concerned, it is only typographical error and even assuming that P.W.1 had wrongly deposed that the registration number, that is not fatal to the case of the prosecution, since, admittedly, the petitioner drove his motorcycle in the wrong way and there was accident. Therefore, both the Courts below rightly convicted the petitioner for the offence under Sections 279, 337 and 304(A) of IPC and it does not warrant any interference by this Court.

9. Heard, Mr.V.Paarthiban, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

10. Admittedly, P.W.1 was riding his motorcycle bearing Registration No.TN-20-R-0689 from Chennai to Bangalore National High Ways Road, near L & T Company in Vedal Village, along with his wife



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and two children. According to the case of the prosecution, the accused was riding his motorcycle from the opposite direction i.e., wrong way.

Since this is a four way direction, the accused was supposed to ride his vehicle in the adjacent road and dashed against P.W.1's two wheeler. Therefore, the pillion riders fell down, due to which three months old male child sustained grievous injuries and died. In support of the case of the prosecution, P.W.5 was examined. P.W.5 deposed that when the accused was riding his vehicle, he was talking to others. P.W.1 drove his motorcycle along with three pillion riders and he lost his control. His two wheeler was also loaded and dashed against the vehicle which was stopped in the junction. That apart 50 to 60 general public were standing and even then the prosecution did not examine the general public in order to prove the charge.

11. A perusal of the Rough Sketch, which was marked as Ex.P14, reveals that the Investigation Officer failed to draw the rough sketch, place of accident, the vehicles, which were dashed against each other and nothing can be decided from the rough sketch. Though the discrepancies are not mentioned about the registration number of the two wheeler which was driven by P.W.1, cumulatively, considering the contradiction of the deposition of P.W.5, the prosecution failed to prove its case beyond



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any doubt. It is obvious that P.W.1, who was riding his motorcycle along with three pillion riders with luggage he might have lost his control.

Further, in the scene of crime, there is a service line near the main road.

Therefore, whether the accused was riding his vehicle or stopped the vehicle when P.W.1 lost control and dashed against the accused vehicle is not clear. The service road is meant for both entries. Therefore, it cannot be stated that the accused was riding his motorcycle in a wrong way.

Further, both the Courts below did not believe the evidence of P.W.5.

Though P.W.5 belonged to same village, he is not a relative of the accused. There is absolutely no reason to disbelieve the evidence of P.W.5. He categorically deposed that the accused was standing after stopping his vehicle and was talking to general public. P.W.1 lost his control and dashed against the vehicle of the petitioner. Further, the prosecution has also failed to examine any other general public who were standing in the place of accident. Therefore, in the considered opinion of this Court, both the Courts below wrongly convicted the petitioner for the offence punishable under Section 304(A) of IPC.

12. In view of the above, the Judgment dated 18.08.2018 made in C.A.No.2 of 2018 on the file of the District Sessions Judge, District Sessions Court No.II, Kancheepuram and the Judgment dated 10.04.2018



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passed in C.C.No.122 of 2011 on the Judicial Magistrate No.II,

Kancheepuram, are hereby set aside. Accordingly, this Criminal Revision

Case stands allowed.

30.11.2022

Index : Yes/No

Internet : Yes

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To

1.The District Sessions Judge,
District Sessions Court No.II,
Kancheepuram.

2. The Judicial Magistrate No.II,
Kancheepuram.

3. The Inspector of Police,
Kancheepuram Taluk Police Station,
Kancheepuram.

4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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