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Crl.R.C.No.331 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2022

CORAM :

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.R.C.No.331 of 2021

Eswaran

.. Petitioner

Vs.

State represented by
The Inspector of Police,
Avinashi Police Station,
Tiruppur.
Crime No.268 of 2014

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the conviction and sentence imposed in the judgment dated 09.04.2021 in C.A.No.134 of 2019 on the file of the I Additional District & Sessions Judge, Tiruppur partly allowed the appeal against conviction and sentence imposed in judgment dated 02.12.2019 made in C.C.No.243 of 2014 on the file of the Judicial Magistrate, Avinashi.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.V.Meganathan
Government Advocate (Crl.Side)



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ORDER

The revision petitioner is an accused in C.C.No.243 of 2014, on the file of the learned Judicial Magistrate, Avinashi. He was prosecuted by the respondent police for the offences punishable under Sections 279, 304(A) I.P.C., Section 3 r/w.181 Motor Vehicles Act and Section 146 r/w.190 M.V.Act.

2. It is the case of the prosecution that, on 02.07.2014, at about 22 hours at Avinashi to Erode Road, near S.P.Apparels banian company, the petitioner/accused drove his two wheeler TVS XL Super bearing registration No.TN 38 W 1240 in a rash and negligent manner and hit the pedestrian Bhuvaneshwaran, caused injuries and succumbed to injuries. Hence he was charged for the offences punishable under Sections 279, 304(A) I.P.C., along with other offences under Section 3 r/w.181 MV.Act Section 146 r/w.190 M.V.Act and the charge sheet has been taken on file as C.C.No.243 of 2014 on the file of the Judicial Magistrate, Avinashi.

3. To prove the charges, the prosecution examined eight (8)



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witnesses as PW.1 to PW.8 and marked ten (10) exhibits as Ex.P1 to Ex.P10. On the side of the defence, no evidence has been examined. PW.1/Kalaiselvan, PW.2/Sumathy, PW.3/Karthikey are hearsay witnesses. PW.4/Udayakumar is an eye witness to the occurrence. PW.5/Bharathi is the witness to the Observation Mahazar prepared by the Investigation Officer, PW.7/Vijayabaskar. PW.6/Srinivasan, who was the Head Constable in the Avinashi Police Station at the time of occurrence, registered the case on receiving the complaint from PW.1. PW.7/Vijaya Baskar took initial investigation and thereafter, PW.8/Thangavel, who was the Inspector of Police continued the investigation and filed a Final Report.

4. The trial Court, after concluding the trial and on consideration of the materials available on record, found the accused guilty for the offence under Sections 279 and 304(A) I.P.C, and convicted and sentenced the accused vide judgment dated 02.12.2019 in C.C.No.243 of 2014, as follows:



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<i>Charges</i>	<i>Findings</i>	<i>Punishment</i>
U/s 279 IPC	Guilty	To undergo one year Simple Imprisonment
U/s.304 A IPC	Guilty	To undergo one year Simple Imprisonment

5. Aggrieved by the said conviction and sentence, the petitioner has preferred an appeal in C.A.No.134 of 2009 before the I Additional District and Sessions Judge, Tiruppur. The lower appellate Court after considering the submissions of the learned counsel for the petitioner confirmed the conviction and modified the sentence as below:

<i>Charges</i>	<i>Findings</i>	<i>Punishment</i>
U/s 279 IPC	Guilty	To undergo six months Simple Imprisonment
U/s.304 A IPC	Guilty	To undergo six months Simple Imprisonment

6. Aggrieved by the modified sentence, the present Criminal Revision Case has been preferred.

7. The learned counsel for the petitioner contended that the



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judgment of the trial Court as well as the lower appellate Court is against the evidence on record and contrary to law. Further contended that before the trial Court, the prosecution had examined eight witnesses. Among eight witnesses, Udayakumar [PW.4] alone is projected as an eye witness to the occurrence. The evidence of Udayakumar [PW.4] is unbelievable for the reason that his presence itself is doubtful. In the chief examination, he deposed that he witnessed the occurrence, however, he has not spoken anything about the rash and negligent driving of the vehicle, whereas he has only stated that the accused hit the deceased with his two wheeler and the same was informed to his office and his wife. But in the cross examination, he deposed that the police had not examined him and he did not know the wife of the deceased Bhuvaneswaran and further deposed that the police arrived at the place of occurrence within half an hour. In fact the First Information Report was given only on the next day of the occurrence i.e., on 03.07.2014. However, in paragraph 9 of the Inquest Report [Ex.P7], the Inspector of Police recorded that the deceased was hit by lorry. Further, in the Inquest Report, the alleged eye witness had not signed as a witness. Hence, there is a serious doubt as to



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whether the deceased was died due to the accident of the lorry or hit with the two wheeler of the accused. In such circumstances, the accused is entitled for the benefit of doubt.

8. Further, the learned counsel for the petitioner submitted that PW.4 is a planted witness by the prosecution for the purpose of the case. He may not be the eye witness to the occurrence of the incident. His evidence is not corroborated with any other witnesses. Under this circumstances, the accused is entitled for acquittal. The trial Court has not appreciated the facts of the case and the prosecution witnesses and arrived at a wrong conclusion. Therefore, the charges against the accused is contrary to the evidence on record and law, hence pleaded to set aside the conviction and sentence imposed by the trial Court as well as the lower appellate Court and thus, pleaded to allow the Criminal Revision Case.

9. The learned Government Advocate (Crl.Side) for the State submitted that in this case, Udayakumar [PW.4] is a natural witness. His evidence is enough to connect the accused with the crime and prosecution



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has sufficiently proved the charge against the accused. Conviction recorded by the trial Court as well as the lower appellate Court is based upon the evidence and there is no ground for interference with the conviction and sentence recorded by the trial Court as well as the lower appellate Court and thus pleaded to dismiss the Criminal Revision Case.

10. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials on record.

11. On evaluating the evidence of eye witness, two important points arise for consideration

(i) Whether in the circumstances of the case, it was possible for the eye witness to be present at the scene of occurrence or the explanation for their presence at the scene of occurrence can be accepted?

(ii) Whether there is anything inherently, improbable or unreliable in their evidence?

12. In this case, the evidence of Udayakumar [PW.4] is unreliable for the reason that in the chief examination, he had deposed



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that he witnessed the occurrence and that the accused hit the deceased with his two wheeler. Thereafter, he has stated that he informed the accident to the wife of the deceased as well as to the company. During his cross examination, he had stated that the police did not examine him and not recorded any statement and he did not know the injured person and his wife. Further he had stated that the police arrived to the place of occurrence within half an hour.

13. On a perusal of the record and the evidence of PW.6/Srinivasan, it reveals that the First Information Report about the occurrence had been given on the next day i.e., on 03.07.2014 at about 20.00 hours. Thereafter, a case has been registered in Crime No.268 of 2014, for the offence under Sections 279 and 337 I.P.C. If the police arrived within half an hour of the occurrence as stated by Udayakumar [PW.4], the F.I.R., need not have registered on the next day i.e on 03.07.2014 at about 20.00 hours. Therefore, for all the reasons, the evidence of PW.4 is unreliable. If his evidence goes out, there is no evidence to connect the accused with the crime. Apart from this, on a



perusal the Inquest Report [Ex.P7] in paragraph 9, the Inspector of Police recorded that the Inquest witnesses stated that the deceased was hit by lorry, in consequence, the deceased sustained head injury and died while he was taken to the hospital. This recorded version is totally contrary to the prosecution case.

14. The prosecution case is that the accused drove his two wheeler bearing registration No. TN 38 W 1240 and hit the deceased. But in the Inquest Report, it is recorded that the witnesses to the occurrence stated that the lorry hit the deceased. So it raises serious doubt about the prosecution case.

15. An order of conviction can be based only on legal evidence and not on hypothetical proposition or unwarranted inference surmises and suppositions cannot take place of legal proof in a criminal trial and suspicion. However, grave cannot sustain a criminal charge. In the absence of legal proof, there can be no legal criminality. The prosecution must give satisfactory proof that the offence has been



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committed by the accused. In this case, there is no evidence to connect the accused with the crime.

16. The prosecution has failed to prove the charges against the accused. The trial Court and the lower appellate Court have failed to properly appreciate the prosecution witnesses and found the accused guilty without any proper evidence. Therefore, the finding of the trial Court as well as the appellate Court are contrary to the evidence on record and against the law and it is liable to be set aside and the accused is entitled for acquittal.

17. Accordingly, this Criminal Revision Case is allowed. Consequently, the connected Criminal Miscellaneous Petition is also closed. The conviction and sentence passed by the trial Court and modified by the appellate Court is hereby set aside and the accused is acquitted from all charges. Fine amount, if any paid by the accused shall be refunded to them. Bail bond if any executed by the accused shall stand cancelled.



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To

1. The I Additional District & Sessions Judge, Tiruppur.

2. The Judicial Magistrate, Avinashi.

3. The Inspector of Police,
Avinashi Police Station,
Tiruppur.

4. The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM, J.

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