



Crl.R.C.No.918 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.R.C.No.918 of 2014

Mohanraj,
S/o.Sivasamy

... Petitioner

Versus

State by
Sub-Inspector of Police,
Velipalayam Police Station,
Velipalayam,
Nagapattinam.

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the Mahila Fast Track Court, Nagapattinam in C.A.No.37 of 2011 confirming the conviction and modifying the sentence passed in C.C.No. 636 of 2010 by the Judicial Magistrate No.2, Nagapattinam.

For Petitioner : Mr.K.Subburam

For Respondent : Mr.C.E.Pratap,
Govt. Advocate (Crl. Side)



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ORDER

The Revision Petitioner is the accused in Crime No. 428 of 2009 on the file of respondent police charged under Sec.279, 337 (2 counts), 338, 304 (a) of Cr.P.C. based upon a complaint lodged by one Pounammal.

2. The case of prosecution is that as per statement given by one Pounammal that on 06.08.2009 at about 12.00 noon, from the Collector's office, Nagapattinam, she along with two others travelled in a Auto bearing Regn. No. TN-51 E-2466, nearing Kadambadi Arabshah Dharga, a TATA Ace van came from the opposite direction in a rash and negligent manner and dashed against their auto, thereby auto was capsized and the persons, who travelled in the said auto including driver sustained grievous injuries. Immediately, all the persons were admitted in the hospital, but one Pounammal was died. Hence, the above F.I.R. was lodged against driver of TATA Ace van/Revision petitioner herein.



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3. To prove the charges against the accused, the prosecution examined 15 witnesses and marked 14 documents. No oral evidence was adduced on their side. In order to establish the charges, on the side of prosecution, the driver of auto is examined as P.W.1 and persons, who were travelled in the auto at the time of accident were examined as P.W.2 and P.W.3. The statement given by deceased Pounammal is marked as Ex.P14 and documents were also relied on by the prosecution to prove the negligence on the side of accused. On considering both oral and documentary evidence and also considering submissions of both sides, the trial court arrived a conclusion that on the date of alleged accident, the accused driven the vehicle in a rash and negligent manner, and the same was proved by the prosecution beyond reasonable doubt. Accordingly, the accused was convicted for one year simple imprisonment with fine.

4. Challenging the said conviction, the accused preferred an appeal in Crl.A. No. 37 of 2011 before the Mahila Fast Track Court, Nagapattinam stating that the prosecution not proved the charges against



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the accused and failed to consider the fact that at the time of alleged accident, the driver of auto also driven the vehicle in a rash and negligent manner, but it was not appreciated by the trial court and erroneously convicted him. Accordingly, he prayed to set aside the conviction passed by the trial court.

5. The lower appellate judge independently analysed the evidence and documents on record and held that on the date of alleged accident, the driver of TATA Ace van driven the vehicle in a rash and negligent manner and the same was proved by the prosecution beyond reasonable doubt and accordingly, the lower appellate judge confirmed the conviction of the trial judge, but modified the sentence to six months. Challenging the concurrent findings, the accused preferred this Criminal Revision Petition stating that both the courts below failed to take note of the fact that P.W.1, P.W.2 and P.W.3 were travelled in one auto and apart from that, no other independent witness was examined to prove the alleged accident and also failed to take note of the fact that the driver of auto also driven the vehicle in a rash and negligent manner and hit against TATA



Ace van.

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6. As rightly pointed out by the learned Government Advocate (Crl. Side), there is no evidence on the side of accused examined during the trial with regard to his charge. On the other hand, the prosecution examined P.W.1, who is driver of Auto and P.W.2 and P.W.3, who were travelled along with deceased at the time of accident as eye-witness. All the three witnesses are present at the scene of occurrence at the time of accident, but it was not denied by the accused. Furthermore, to prove the rash and negligent act of the accused, the prosecution also relied on the statement of Pounammal, which is marked as Ex.P14, it would clearly prove that immediately after the accident, she gave a statement to the respondent police about the nature of accident and the same is established that the accident was happened due to the rash and negligent act of driver of TATA Ace van. So, the prosecution had proved the rash and negligent act of Revision Petitioner and the same was rightly appreciated by the courts below, which needs no interference. But, the learned counsel for accused submitted that though there was no evidence on the side of Revision



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Petitioner, but the accident was happened due to the negligent act of driver, but he unable to disprove the offence. Furthermore, he prayed for modification of sentence.

7. Considering the young age of driver of TATA Ace van, and admittedly, he has no past antecedents, this Court is inclined to modify the sentence from the period of six months to the period of three months. Accordingly, this Criminal Revision Petition is allowed.

19.10.2022

Index: Yes/No
Internet: Yes/No
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To

1. Sub-Inspector of Police,
Velipalayam Police Station,
Velipalayam, Nagapattinam.
2. The Public Prosecutor,
High Court, Madras.



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T.V. THAMILSELVI, J.

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