



Crl.R.C.No.1217 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1217 of 2022 and
Crl.M.P.No.13332 of 2022

Dhanapal

...Petitioner

-Vs-

State represented by its
The Inspector of Police,
Perambalur Police Station,
Perambalur District.
(Crime No.204 of 2015)

...Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to set aside the judgment dated 14.03.2022 made in Crl.A.No.18 of 2021 by the learned Principal District and Sessions Judge, Perambalur, confirming the conviction and sentence made by the learned Judicial Magistrate No.I, Perambalur, in C.C.No.283 of 2015, dated 13.10.2021 and allow the above criminal revision.



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For Petitioner : Mr.R.Muthu Ramanand

For Respondent : Mr.S.Sugendran,
Additional Public Prosecutor

ORDER

This criminal revision is filed against the concurrent judgment of conviction passed by the learned Judicial Magistrate No.I, Perambalur, in C.C.No.283 of 2015, dated 13.10.2021 confirmed by the learned Principal District and Sessions Judge, Perambalur, in C.A.No.18 of 2021, dated 14.03.2022.

2 The respondent police registered a case in Crime No.204 of 2015 against the petitioner for the offence under Sections 279 and 304 (A) IPC and after investigation laid a charge sheet, which was taken on file in C.C.No.283 of 2015 and the learned Judicial Magistrate No.I, Perambalur, after trial and hearing both the parties, by an order dated 13.10.2021 convicted the petitioner and sentenced him to undergo simple imprisonment



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for a period of three months and to pay fine of Rs.500/-, in default, to undergo simple imprisonment for a further period of two weeks for the offence under Section 279 IPC and to undergo simple imprisonment for a period of one year and to pay fine of Rs.2000/-, in default, to undergo simple imprisonment for a further period of one month for the offence under Section 304(A) IPC. Aggrieved over the said judgment of conviction and sentence, the petitioner preferred an appeal in C.A.No.18 of 2021 and the learned Principal District and Sessions Judge, Perambalur, after hearing the respective counsel, by judgment dated 14.03.2022 dismissed the appeal confirming the judgment of conviction and sentence made by the trial Court, against which present revision is filed.

3 The learned counsel appearing for the petitioner would submit that no witness has spoken about the rashness and negligence driving of the petitioner as alleged by the prosecution. There are contradictions between the evidence of the prosecution witnesses. Mere riding the vehicle with high speed itself would not amount to offence under Section 304(A) IPC unless prosecution establishes the fact that the accident had occurred only due to



rash and negligence driving of the rider of the vehicle. In this case, none of the witnesses have spoken about the rashness and negligence of the petitioner. To support his contentions, the learned counsel placed reliance on the decisions of the Hon'ble Supreme Court reported in *(1998) 8 SCC 493* and the Kerala High Court in the case of *M.R.Thomas vs. State of Kerala*. Quoting the above judgments, the learned counsel argued that in a criminal trial, burden of proving everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. In this case, as already stated no witness has spoken about the rash and negligent driving of the revision petitioner. The trial Court has failed to consider the basic ingredients of Section 304(A) IPC and erroneously convicted the petitioner and the lower appellate Court has also failed to re-appreciate the entire evidence and simply endorsed the views of the trial Court, which warrants interference of this Court.

4 Mr.S.Sugendran, the learned Additional Public Prosecutor, appearing for the respondent police would submit that P.W.3 and P.W.4 are



the eye witnesses to the occurrence and they have clearly deposed about the driving of the vehicle by the revision petitioner. The petitioner came with high speed and dashed against the deceased and the deceased died on the spot. To prove the guilt of the accused, prosecution examined P.Ws.1 to 11, out of which, P.W.1 is the brother of the deceased and also an eye witness to the occurrence and he has clearly spoken about the incident. The evidence of P.W.3 and P.W.4 also corroborated with the evidence of P.W.1. Mere non mentioning of the rashness or negligence by the witnesses would not take away the offence committed by the petitioner/accused. Therefore, prosecution has proved its case beyond reasonable doubt. The trial Court as well as the lower appellate Court have rightly appreciated the evidence and convicted the petitioner, which does not call for any interference.

5 Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police and perused the materials available on record.



6 Case of the prosecution is that on 12.03.2015 at about 22.30 hours, the defacto complainant proceeded along with his brother from Chatramanai to Keezhkanavai Village in their two wheeler through Chettikulam to Perambalur Road and when they came near one Natarajan Agri field, the petitioner/accused drove his Tipper Lorry bearing Reg. No.TN 46 Q 6852 from opposite direction and dashed against the Motor Cycle drove by the brother of the defacto complainant and thereby the deceased sustained injuries and succumbed to death on the spot. Hence the present case.

7 Admittedly the vehicle was driven by the petitioner/accused and caused accident and the deceased died on the spot itself. Now the question is that whether the deceased died only due to rash or negligent driving of the petitioner alone. A careful reading of the entire materials and the evidence of eye witnesses P.Ws.1, 3 and 4 reveal that they have stated that the petitioner drove the vehicle with high speed and caused accident, but nowhere they have stated about the rashness and negligent driving by the petitioner.



8 Even though as argued by the learned Additional Public

Prosecution mere non mentioning of the rashness or negligent driving of the accused by the witnesses is not a ground to acquit the accused, however, the witnesses must speak about the rashness and negligent driving of the accused to attract the ingredients of Section 304(A) IPC, which reads as follows:

“304A Causing death by negligence-

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

“

9 Therefore, evidence of eye witnesses are not attracted the ingredients of offence under Section 304(A). As observed by the Hon'ble Supreme Court in the citation referred to supra by the learned counsel appearing for the petitioner that mere riding of the vehicle with high speed itself would not amount to an offence under Section 304(A) IPC unless prosecution establish that the accident had occurred only due to rash or



negligent driving of the petitioner. In this case none of the witness has stated that the accident had occurred only due to rash or negligent driving of the petitioner/accused and in the absence of the same, it is unsafe to record conviction against the petitioner for the offence under Section 304(A) IPC. As far as conviction under Section 279 IPC is concerned, once this Court comes to the conclusion that rash or negligent driving of the petitioner has not been proved by the prosecution beyond all reasonable doubts, the offence under Section 279 would not attract. Therefore, this Courts finds the appreciation of evidence by the trial Court and re-appreciation of evidence by the lower appellate Court are perverse and the prosecution has not proved the charges levelled against the petitioner beyond all reasonable doubts.

10 For the foregoing reasons, the judgment of conviction made by the learned Judicial Magistrate No.I, Perambalur, in C.C.No.283 of 2015, dated 13.10.2021 confirmed by the learned Principal District and Sessions Judge, Perambalur, in C.A.No.18 of 2021, dated 14.03.2022, are hereby set aside and the criminal revision case is allowed. Consequently connected miscellaneous petition is closed. The petitioner is acquitted from the offence



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under Sections 279 and 304(A) IPC. Fine amount, if any, paid by the petitioner shall be refunded to him forthwith.

20.10.2022

Index : Yes/No
Speaking Order/Non Speaking Order
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To

1. The Principal District and Sessions Judge, Perambalur.
2. The Judicial Magistrate No.I, Perambalur.
3. The Public Prosecutor, High Court of Madras.
4. The Inspector of Police, Perambalur Police Station, Perambalur District.



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P.VELMURUGAN, J.,

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