



WEB COPY



Crl.R.C.No.765 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2022

PRONOUNCED ON: 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.765 of 2021

V.Munusamy

...
/vs/

Petitioner

State, represented by
The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.
Crime No.411 of 2017

...

Respondent

Prayer : Criminal Revision Case has been filed under Sections 397 & 401 of Criminal Procedure Code, 1973 to call for the records culminating in the impugned judgment dated 13.07.2021 passed in C.A.No.3 of 2021 by the learned Additional District and Sessions Judge, Dharmapuri, confirming the judgment dated 30.12.2020 passed in C.C.No.80 of 2018 by the learned Judicial Magistrate, Palacode, examine the correctness, legality and propriety of the findings made therein, set aside the same and acquit the petitioner.

For Petitioner

...

Mr.Arun Anbumani

For Respondent

...

Mr.V.Meganathan
Govt. Advocate (Crl.side)



CrI.R.C.No.765 of 2021

ORDER

WEB COPY

This criminal revision case has been filed against the judgment dated 13.07.2021 in C.A.No.3 of 2021 on the file of the Additional District and Sessions Court, Dharmapuri, confirming the judgment and decree dated 30.12.2020 in C.C.No.80 of 2018 on the file of the Judicial Magistrate, Palacode.

2.The respondent/Inspector of Police, Karimangalam Police Station, prosecuted the revision petitioner/accused in Crime No.411 of 2017 for having committed offences punishable under Sections 279 and 304(A) IPC.

3.The prosecution case is that the revision petitioner/accused is the driver of PMP College bus bearing registration No.TN 29 BA 6009. On 21.09.2017 at about 9.00 a.m. he drove the bus towards Morappur to Karimangalam road in a rash and negligent manner and hit one Govindasamy near Thellanahalli bus stop, who was standing on the left side of the road in his cycle, which resulted in his death. Based on the complaint given by Marimuthu (PW1), the respondent police registered a case in



Crl.R.C.No.765 of 2021

Cr.No.411/2017 and after investigation, a final report was filed for offences under Sections 279 and 304(A) IPC.

4.The trial Court held that the revision petitioner/accused drove the college bus in a rash and negligent manner and it was on that account that the accident took place. Though the revision petitioner was charged for the offences under Sections 279 & 304(A) IPC, the trial Court convicted and sentenced the petitioner for offence under Section 304(A) IPC only to undergo 3 months of simple imprisonment. In respect of Section 279 IPC, the trial Court followed the judgment in ***Muman Hasanali Mohamdali Vs. State of Gujarat***, reported in ***AIR 1971 GUJ 72 : Crl LJ 469*** and held that ***“It is therefore, clear that the accused has been rightly convicted for each of the two offences under Section 304(A) and Section 279 of the IPC, but the punishment given for the minor offence such as under Section 279 cannot be passed in view of the provisions contained in Section 71 of IPC”***. The revision petitioner, aggrieved by this conviction, filed the appeal in C.A.No.3 of 2021 before the Additional District and Sessions Court, Dharmapuri. The appellate Court also confirmed the conviction and sentenced the revision petitioner for offence under Section 304(A) IPC.



Crl.R.C.No.765 of 2021

Aggrieved against the same, the present criminal revision petition has been filed.

5.The learned counsel for the revision petitioner/accused contended that the impugned judgment is contrary to law and weight of evidence and probabilities of the case. Further contended that there is no independent witness on the side of the prosecution to prove the case. Only relatives and friends of the deceased have been examined as prosecution witnesses. The prosecution projected the evidence of Jagadeesan (PW6) as an eye witness to the prosecution case. Though he claimed to have witnessed the accident, he did not give the complaint to the police. His evidence is unreliable and not enough to find the guilt of the accused. There is no evidence to show rashness and negligence on the part of the revision petitioner/accused. The trial Court and the appellate Court convicted the revision petitioner on the basis of the assumption and presumption. The cardinal principle of criminal Law is the prosecution has to prove its case beyond the reasonable doubt that has been totally ignored by the trial Court and the appellate Court. The trial Court and the appellate Court findings are improper, contrary to the



Crl.R.C.No.765 of 2021

materials on record and liable to be set aside and thus, pleaded to allow the criminal revision petition and acquit the accused.

6.In support of his argument, the learned counsel for the revision petitioner/accused placed reliance on the decision of the Hon'ble Supreme Court in *State of Karnataka Vs. Satish* reported in (1998) 8 Supreme Court Cases 493 and the decision of this Court in *Senthilkumar Vs. The Station House Officer, Valavanur Police Station, Villupuram District* reported in 2017 – 2- L.W.(Crl.) 113, *Selvamani Vs. The State rep.by The Inspector of Police, Perambure Police Station, in Crl.R.C.No.632 of 2014 and Dharmaraj Vs. State by the Inspector of Police, M-3, Kovilpalayam Police Station, Crime No.410 of 2010, Coimbatore District in Crl.R.C.No.347 of 2016.*

7.The learned Government Advocate (Crl.side) for the respondent supported the judgment of the trial Court and the appellate Court and contended that the prosecution examined nine witnesses and marked seven documents. Jagadeesan (PW6) is the eye witness to the occurrence and other witnesses have corroborated his evidence and the prosecution proved



Crl.R.C.No.765 of 2021

its charges beyond the reasonable doubt. There is no valid reason to disbelieve the evidence of Jagadeesan (PW6) and no reason to interfere with the findings of the Courts below, thus, pleaded to dismiss the criminal revision case.

8.Heard the learned counsel for the parties and I have examined the records.

9.On perusal of records, it is seen that the revision petitioner/accused V.Munusamy is the driver of the PMP College bus bearing registration No.TN 29 BA 6009. He was found guilty of negligence, in the accident that occurred on 21.09.2017 at about 9.00 a.m. near Thellanahalli bus stop which caused the death of one Govindasamy. In the trial Court, prosecution examined nine witnesses and marked seven documents.

10.I have gone through the prosecution evidences Marimuthu (PW1), Sankar (PW2), Murugan (PW3), Manickam (PW4), Vediappan (PW5) are not eyewitnesses to the occurrence and they did not depose to connect the accused with the accident. Jagadeesan (PW6) is projected by the



CrI.R.C.No.765 of 2021

prosecution as an eye witness. Sabarinathan (PW7) is the witness to mahazer (Ex.P2), Kannammal (PW8) Sub Inspector of Police and Sathish Kumar (PW9), Inspector of Police, both registered the case and investigated and laid the charge sheet. Now, the only eye witness is Jagadeesan (PW6).

11.On perusal of the evidence of Jegadeesan (PW6), it is seen that his evidence is also not sufficient to connect the accused with the crime. In his evidence, he stated that on 9.00 a.m. while he was standing at Thellanahalli bus stop, PMP college bus came from Morappur side speedily and hit Govindasamy, who was standing with his cycle. Subsequently, he sustained injury and died on the spot. The accused was the bus driver. He did not speak about rash and negligent driving of the driver of the vehicle. Further, in the cross examination, he stated that the accident took place at the bus stop and his evidence runs as follows:

“சம்பவ நடந்த இடம் தெள்ளன அள்ளி
பஸ் நிறுத்தம் என்றால் சரிதான்.
சம்பவத்தில் ஈடுபட்ட வாகனம் அந்த
பேருந்து நிறுத்தத்தில் நின்றதான் சென்றது
என்றால் சரிதான். வாகனம் கிளம்பும்போது
விபத்து சம்பவம் நடைபெற்றது என்றால்



CrI.R.C.No.765 of 2021

சரிதான்”

WEB COPY

If his evidence is true, the bus may not have speedily started and run and hit the standing person Govindasamy. While the case is such that the accident took place at the bus stand, normally a bus will not start with high speed in the bus stop.

12.It is a wrong proposition that for any motor accident, negligence of the driver should be presumed. In a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. On fact, in this case, there is no evidence on record to show rashness and negligence on the part of the accused/driver, there is no evidence to show that the driver of the bus started the bus in the bus stop speedily. Since there being no evidence on record to establish the negligence and rashness in driving of the bus on the part of the accused, the accused is entitled to be acquitted.

13.In this case, the prosecution had failed to prove its case beyond the



Crl.R.C.No.765 of 2021

reasonable doubt that the revision petitioner/accused drove the vehicle in a rash and negligent manner and hit the deceased Govindasamy. The trial Court has not properly appreciated the evidence of Jegadeesan (PW6) and his evidence is not substantial enough to connect the accused with the crime. Since the charge framed against the accused is not proved, conviction and sentence passed by the trial Court dated 30.12.2020 in C.C.No.80 of 2018, which was confirmed by the appellate Court dated 13.07.2021 in Crl.A.No.3 of 2020 is liable to be set aside. Accordingly, the conviction and sentence passed by the trial Court as well as the appellate Court are hereby set aside and the criminal revision case is allowed. If the accused is on bail, the bail bond executed by the revision petitioner is hereby cancelled.

Index : Yes/No
Internet : Yes/No
sms

23.12.2022

To

1.The Additional District and Sessions Court,



CrI.R.C.No.765 of 2021

Dharmapuri.

2.The Judicial Magistrate,
Palacode.

3.The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.
Crime No.411 of 2017.

4.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM ,J.

sms



WEB COPY



Crl.R.C.No.765 of 2021

Pre-delivery order made in
Crl.R.C.No.765 of 2021

23.12.2022