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Crl.R.C.No.1255 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.1255 of 2017

R. Prabhakaran

... Petitioner

Vs.

State represented by
The Inspector of Police,
Gurubarapalli Police Station,
Salem District.
(Crime No.306 of 2014)

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to set aside the judgment made in C.A.No.19 of 2017 on the file of the Principal Sessions Judge, Krishnagiri dated 18.08.2017 confirming the judgment and made in C.C.No.59 of 2015 on the file of Judicial Magistrate No.2, Krishnagiri dated 02.03.2017.

For Petitioner : Mr.Adinarayana Rao
for M/s.Karan and Uday

For Respondent : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)



ORDER

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This Criminal Revision Case is filed against the concurrent finding of the Courts below.

2. This is a case where the petitioner herein was found guilty of offences under Sections 279, 337, 338 (2 counts), 304(A) IPC, causing death of one person and injuries to two others in the motor accident, due to his rash and negligent driving.

3. According to the prosecution, on 15.12.2014 at about 06.00 hours, along the Krishnagiri to Hosur Highway in the service road under Gurubarapalli Bridge, the TVS XL Super, bearing registration No.XL TN 24 K 5882 driven by the deceased along with his wife, in the pillion and 11 years old son in front of the vehicle was dashed by the petitioner / accused who was riding his Bajaj Apache, two wheeler bearing Registration No.TN 23 BW 8817.

3(i). While, the case of the prosecution is that the accident occurred due to rash and negligent driving of the petitioner / accused, same was



denied by way of cross examining the witnesses, attributing negligence on the part of the deceased who travelled in his two wheeler with two other persons contrary to Motor Vehicles Rules.

4. Before the trial Court, the prosecution has examined 12 witnesses and marked 10 exhibits. The Courts below on relying upon the evidence of P.W.2, the wife of the deceased who was travelling on the pillion of the TVS XL Super and P.W.3, minor boy who was sitting on the front of the two wheeler, both sustained injury and the evidence of P.W.4 and P.W.6, held the accused guilty, sentenced him to undergo two months rigorous imprisonment for offence under Section 279 IPC; two months rigorous imprisonment for offence under Section 337 IPC; 6 months rigorous imprisonment for each count for offence under Section 338 IPC (2 counts) and one year rigorous imprisonment for offence under Section 304(A) IPC along with fine of Rs.2,000/- in default, two months simple imprisonment. The period of sentence was ordered to run concurrently.



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5. Learned counsel for the petitioner would submit that the sketch relied by the prosecution which is marked as Ex.P5 besides the evidence of P.W.4 and P.W.6 who could not be the natural witness present at scene of occurrence. Furthermore, pointing out the fact that the petitioner was travelling from East to West in the service road on the southern side, whereas the deceased in triples was proceeding from West to East on the same road which is, in fact a wrong side driving, since there is a service road on the north of the highways over a bridge. Contrary to the said evidence, the trial Court has wrongly held that the accused was driving on the wrong side of the road.

5(i). Further, submitted that P.W.10 is the actual witness who saw the accident along with P.W.2 and P.W.3. While P.W.10, the pillion rider on the Apache motorcycle, travelling along with the accused in the Apache motorcycle. He had categorically said in the chief examination that the accident was occurred due to rash driving of the deceased.

5(ii). Without considering these evidence, the trial Court has categorised P.W.10 as an interested witness in favour of the accused but has



not extended the same reasoning and justification for P.W.2 and P.W.3 who are related to the deceased, as wife and son.

6. Learned Government Advocate (Crl. Side) appearing for the State would submit that P.W.4 in the chief examination has clearly said that he was near the Automobile Shop, for purchasing oil and he saw the accident. Since, the other service road on the northern side was closed for traffic, the deceased was travelling towards the East on the extreme left side. Near the Gurubarapalli Bridge, the petitioner rashly riding the Bajaj Apache dashed the TVS XL, driven by Satrugan. Therefore, the trial Court has rightly held him guilty.

7. Heard both side and perused the records.

8. Regarding the violation of traffic Rule, from the facts placed by the prosecution, it is clear that the deceased has violated the road traffic rule by carrying two persons in his moped and also the sketch indicates that he was proceeding on the wrong direction on the service road. However, there



is evidence through P.W.4 that the other service road on the northern side was closed for traffic and therefore, the service road on the southern side was open for two way traffic. Except the evidence of P.W.4, there is no other contra evidence or corroborative evidence to conclude whether, the southern side of the service road was open for two way traffic or it was on the one way traffic.

9. Be that as it may, the evidence of P.W.10 who has attributed negligence on the part of the deceased not being controverted by the prosecution side. His testimony dislodges the evidence of P.W.2, P.W.3, P.W.4 and P.W.6 which causes serious doubt about the prosecution case. P.W.2, the wife of the deceased in the cross examination admits that she did not see the person who hit the two wheeler, since she was sitting behind the rider of the TVS XL. The evidence of P.W.3, a 11 years old boy has to be taken with some reservation. Since his evidence is embellished with falsehood.



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10. In the said circumstances, this Court is of the view that the rash and negligent driving of the petitioner is not being proved beyond doubt. Therefore, the judgment of conviction and sentence imposed by the Courts below is set aside. Accordingly, Criminal Revision Case is allowed. The fine amount, if any paid by the petitioner is ordered to be refunded to him.

11.10.2022

AT

Index : Yes/No

Speaking / Non-speaking



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Dr.G.JAYACHANDRAN,J.

AT

To

1.The Principal Sessions Judge, Krishnagiri.

2.The Judicial Magistrate No.2, Krishnagiri.

3.The Inspector of Police,
Gurubarapalli Police Station,
Salem District.

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