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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :13.06.2022

Pronounced on :17.06.2022

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.816 of 2017

Mudiyappan

.. Petitioner

/versus/

The Station House Officer,
Ramanathan P.S.,
Cr.No.54/2007

..Respondent

Prayer: Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., praying to set aside the order in Crl.A.No.47/2016 on the file of the III Additional District and Sessions Judge, Cuddalore at Vridhachalam which confirming the order in C.C.No.92/2007 on the file of the District Munsif cum Judicial Magistrate, Thittakudi.

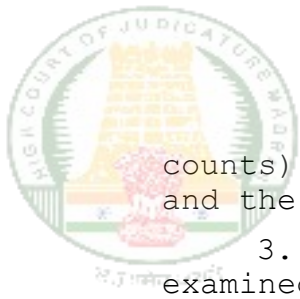
For Petitioner :Mr.K.Moorthy

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

O R D E R

Case in Crime No.54/2007 was registered by the respondent police on 12/04/2007 for offence under Sections 279,337,338,304 (A) IPC in respect of the road accident occurred on 12/04/2007 at about 2.40 p.m, near Ezhunthur Bridge on Chennai to Trichy Highways. A TATA 407 Mini Lorry bearing Registration No.TN 22 M 0343 and a Mahindra Van bearing Registration No.TN 31 B 1881 got colluded, resulting in death of three persons and injuries to 8 others, who were travelling in the van. Mudiyappan-driver of the Mini Lorry was arrayed as the accused for causing death of 3 persons and injuries to 8 persons due to rash and negligent driving.

2. On completion of investigation, the respondent police laid final report before the learned District Munsif-cum-Judicial Magistrate, Thittakudi against the accused for the offence under Sections 279, 337 (6 counts), 338 and 304(A) (3



counts) of IPC. The Report was taken on file as C.C.No.92/2007 and the accused was tried in accordance with law.

3. To prove the guilt of the accused, the prosecution has examined 10 witnesses and marked 18 documents as exhibits.

4. The trial Court on appreciating the evidence, held the accused guilty and sentenced him to under punishment as below:-

Section 279 IPC: to undergo 2 months Simple Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Simple Imprisonment.

Section 337(6 counts) IPC : to undergo 2 months Simple Imprisonment for each count and to pay a fine of Rs.500/- for each count, in default, to undergo 1 month Simple Imprisonment for each count.

Section 338 IPC: to undergo 6 months Simple Imprisonment and to pay a fine of Rs.1,000/-. In default, to undergo 1 month Simple Imprisonment.

Section 304(A) (3 counts): to undergo 2 years Simple Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default, to undergo one month Simple Imprisonment for each count.

The trial Court ordered the substantial period of imprisonment to run concurrently and set off the period of imprisonment if any, undergo already.

5. The above said conviction was challenged by the accused in C.A.No.47/2016 before the III Additional District and Sessions Judge, Cuddalore at Virudhachalam. The Appellate Court re-appreciating the evidence concurred the finding of the trial Court and confirmed the conviction and sentence imposed.

6. Against the dismissal of the appeal, the accused has preferred the present Revision Petition.

7. The learned counsel appearing for the revision petitioner submit that the Courts below failed to take note of the inordinate delay in registering First Information Report and in inspection by Motor Vehicle Inspector. The Courts below failed to consider the prosecution has not examined any independent witness to the alleged accident. It has erred in relying upon the evidence of PW-1 to PW-10, who are interested witnesses keen in getting compensation for the accident. Also, the Courts below have not properly appreciated the contradiction in their testimonies. PW-3 (Van driver- Kumar) admits in his evidence that he was not able to move further left on seeing the lorry coming ahead to him due to road work, sand was piled on the left side of the road. This admission clearly proves that the van driver did not pave way to the vehicle coming from the opposite side. However, there is no proof to show that there was obstacle



on the left side of the road leading towards northern direction. The Courts below failed to take note of this vital piece of evidence in the nature of admission, which will prove that the driver of the mini lorry was not at fault.

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8. The learned Government Advocate (Crl.Side) per contra submitted that the accident took place on 12/04/2007 at about 2.40 pm and the First Information Report came to be registered on the same day at 3.30 p.m. on receipt of the written complaint from one Srinivasan, one of the passenger travelled in the van. There was no delay in registering the First Information Report. The said Srinivasan was examined as PW-1 and he has deposed about the accident and his complaint marked as Ex.P-1. As far as the Motor Vehicle Inspection Report, Ex.P-4 dated 16/04/2007 is the Motor Vehicle Inspector's report for TATA 407 mini lorry bearing Registration No.TN 22 M 0343 driven by the accused and Ex.P-13 dated 18/04/2007 is the Motor Vehicle Inspector's Report for the Mahindra Maxi Cab bearing Registration No.TN 31 B 1881. The Motor Vehicle Inspectors, who were inspected the vehicle were examined as PW-15 and PW-18.They both have deposed that the inspection was done by them and they found the accident was not due to any mechanical fault. In fact, only PW-15 was cross examined and he has denied the suggestion that within between 12/04/07 (date of accident) and 16/04/2007(date of Inspection), there is possibility of rectifying mechanical defect in the vehicle. Therefore, few days delay to inspect the vehicle no way cause prejudice to the accused.

9. Regarding the rash and negligence, the learned Government Advocate (Crl.Side) referring the sketch marked as Ex.P-16, through PW-19 submitted that the sketch speaks for itself. The expansion of Tiruchy- Chennai National Highways on the left side was under construction and the same is noted in Ex.P-16. The van found on the extreme left. This clearly indicates that the lorry driven by the accused/petitioner had hit the van which was proceeding on the left side of the road. The ocular evidence of the prosecution witnesses corroborates this fact without any contradiction. Therefore, the learned Government Advocate (Crl.Side) submitted that the revision petition is liable to be dismissed holding that the correctness of the finding given by the Courts below.

10. The perusal of the finding and reasoning given by the Courts below based on the evidence does not warrant any interference. The evidence of PW-3 and the sketch Ex.P-16 proves the construction of road expansion, which was underway on the left side and the van driver, who was on his extreme left had,



no further space to move on his left. The accused/petitioner, who was the driving the lorry, ought to have been diligent and careful enough while proceeding. The damage caused to the van as per the Motor Vehicle Report Ex.P-4 and the evidence of PW-15 goes to show the rashness of the lorry driver, who in fact had not even produced his driving license during the inspection. The occupants of the van are the witnesses to the prosecution. They are all natural witnesses and they cannot be termed as witnesses interested in convicting the accused for the sake of compensation. The law of torts does not require. The conviction of tortfeasor to grant compensation for the third party victims.

11. The death of 3 occupants and injuries to 6 others occupants of the van, the extensive damage caused to the van and the evidence of the witnesses who were undoubtedly present at the time of the accident were properly appreciated by the Courts below. This Court finds no error in the correctness, legality or propriety of the finding and sentence passed by the trial Court and confirmed by the appellate Court.

12. As a result, this Criminal Revision Petition is dismissed. Bail bond if any executed by the accused shall be cancelled. The trial Court shall secure the petitioner and remand him to the prison to undergo the remaining period of imprisonment. The period of sentence already undergone by the petitioner/accused is set off.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To:

1. The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.
2. The District Munsif cum Judicial Magistrate,
Thittakudi.
3. The Station House Officer,
Ramanathan P.S.



4. The Public Prosecutor,
High Court, Madras.

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NSK/28/06/2022