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Crl.RC.No.1171 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.1171 of 2018

Saravanan @ Saravanakumar

... petitioner

Vs.

The State represented by
Inspector of Police,
Sankari Police Station,
Salem District
(crime No.506 of 2014)

... Respondent

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the judgment dated 19.09.2018 made in Crl.A.No.50 of 2017 on the file of III Additional Sessions Court, Salem in confirming the judgment dated 19.03.2018 made in CC.No.95 of 2014 on the file of Judicial Magistrate No.I, Sankari and to allow the above criminal revision case by acquitting the petitioner.

For Petitioner : Mr.Prabakaran C.

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER

This criminal revision is filed as against the judgment passed in
Crl.A.No.50 of 2017 on the file of the III Additional Sessions Court, Salem



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dated 19.09.2018, thereby confirming the judgment passed in CC.No.95 of 2014 on the file of the learned Judicial Magistrate-I, Sankari dated 19.03.2018, thereby convicted the petitioner for the offence under Sections 279 and 304(A) of IPC.

2. The case of the prosecution is that on 28.08.2014 at about 07.30 p.m. at Sankari Salem bye pass main road near Mettukadai bus stop, the accused drove his vehicle bearing registration No.TN 29 AT 5263, bolero pick up van in a rash and negligent manner and hit the tata ace bearing registration No.TN 52 F 6005 which was parked in the left hand side of the road and thereafter hit the two wheeler bearing registration No.TN 28 H 9400 TVS XL super, which was also parked on the left hand side of the road and thereafter hit the deceased who was standing on the left hand side of the road, due to which she sustained head injury and admitted into Salem Government Hospital. Thereafter, she died. Hence, the complaint. On the complaint, FIR was registered in crime No.506 of 2014 for the offence under Sections 279 and 304(A) of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance in CC.No.95 of 2014.



3. On the side of the prosecution, in order to bring the charges to home, they examined PW1 to PW14 and marked Ex.P1 to Ex.P12. On the side of the accused, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial court found him guilty and he was ordered to pay a fine of Rs.500/- for the offence under Section 279 of IPC, in default to undergo one week simple imprisonment. He was also sentenced to undergo six months simple imprisonment for the offence under Section 304(A) of IPC and also to pay a fine of Rs.500/-, in default to undergo one week simple imprisonment. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the judgment passed by the trial court. Hence, the present criminal revision has been filed.

4. Mr.Prabakaran C., the learned counsel for the petitioner mainly contended that the identity of the petitioner was not proved by the prosecution. No one had spoken that the petitioner only drove the vehicle. When the identity of the accused itself was not proved by the prosecution, the entire conviction cannot be sustained as against the petitioner. That apart, on the right hand side of the road, there was a big pit. Therefore, when the vehicle fell on the pit and thereafter on bumping, it hit the four wheeler, two wheeler and the deceased. Therefore, the accident did not occur due to negligence driving of the petitioner.



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No one had spoken that the petitioner drove his vehicle in a rash and negligent manner. Therefore, the doctrine of *res ipsa loquitur* would not apply to the case on hand. However, the courts below without considering the above facts and circumstances of the case, mechanically convicted the petitioner. He also relied upon the judgment in the case of ***Amrik Singh Vs. State of Punjab*** reported in **(2022) 9 SCC 402**, in which the Hon'ble Supreme Court of India held that non conducting of the test identification parade is fatal to the case of the prosecution. The test identification was conducted in the court.

5. Per contra, Mr.A.Gopinath, the learned Government Advocate(crl.side) appearing for the respondent / police submitted that the eye witnesses PW2, PW3 and PW7 categorically deposed that the petitioner only drove the vehicle and caused accident. Since he drove the vehicle in a rash and negligent manner and caused accident. The petitioner had not only hit the deceased, before which he hit a four wheeler and another two wheeler and thereafter he hit the deceased, due to which she sustained head injury and immediately, she was taken to hospital. Unfortunately, she died due to injuries sustained due to the accident. The Motor Vehicle Inspector also deposed that the accident was not occurred due to any mechanical fault. Therefore, the courts



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below rightly convicted the petitioner and it does not require any interference by this Court.

6. Heard, Mr.Prabakaran C., the learned counsel for the petitioner and Mr.A.Gopinath, the learned Government Advocate(crl.side) appearing for the respondent / police.

7. Admittedly, the vehicle bearing registration No.TN 29 AT 5263 bolero pick up van caused accident. After hitting the tata ace four wheeler and one two-wheeler and hit the deceased, due to which she sustained head injury and immediately she was taken to Salem Government Hospital. She had taken treatment for two days and thereafter she died due to injuries sustained due to the accident.

8. The only point raised by the learned counsel for the petitioner is that the identity of the accused was not proved by the prosecution. On perusal of deposition of PW2, who was one of the eye witnesses categorically deposed that he knows the identity of the accused and showing the accused that he only drove the vehicle. Though the prosecution failed to examine the owner of the vehicle which was caused accident, it cannot be brushed aside the deposition of



eye witness. It is also corroborated by PW3 and PW7. The driver of the two wheeler was examined as PW2. After he parked his two wheeler on the left hand side of the road and standing there, at that juncture, the petitioner drove his vehicle in a rash and negligent manner and hit the four wheeler and thereafter hit his wheeler. Another eye witness-PW7, who was the driver of the four wheeler, categorically deposed that he had parked his four wheeler on the left hand side of the road and while he was standing there, the petitioner drove the vehicle in a rash and negligent manner and hit the vehicle and thereafter hit a two-wheeler. He also hit the deceased, due to which she sustained grievous injuries. Immediately she was taken to hospital for treatment. Therefore, all the three witnesses categorically deposed his identity and rash and negligent driving of the petitioner.

9. That apart, the Motor Vehicle Inspector who examined the petitioner's vehicle was examined as PW13 and he categorically deposed that the accident did not happen due to any mechanical fault. Therefore, the prosecution proved its case beyond any doubt. In the case on hand, the identification test parade is not required since the eye witnesses PW2, PW3 and PW7 categorically deposed that the petitioner only drove the vehicle. Therefore, the judgment cited by the petitioner is not applicable to the case on hand.



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Hence, the courts below rightly convicted the petitioner for the offences under Sections 279 and 304(A) of IPC and this Court finds no infirmity or illegality in the orders passed by the courts below. As such, this criminal revision fails and the same is liable to be dismissed.

10. Accordingly, the judgment dated 19.09.2018 made in Crl.A.No.50 of 2017 on the file of III Additional Sessions Court, Salem confirming the judgment dated 19.03.2018 made in CC.No.95 of 2014 on the file of Judicial Magistrate No.I, Sankari is confirmed and this criminal revision is dismissed.

29.11.2022

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The III Additional Sessions Court,
Salem
- 2.The Judicial Magistrate No.I,
Sankari
- 3.Inspector of Police,
Sankari Police Station,
Salem District
- 4.The Public Prosecutor,
High Court of Madras

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