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Crl.R.C.No.1298 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

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

Crl.R.C.No.1298 of 2018

Joseph George

.... Petitioner

Vs

State represented by
The Inspector of Police,
H-1, Washermenpet Traffic,
Investigation Wing, Chennai.
(crime No.95/H3/2017)

.... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the Judgment dated 14.09.2018 made in C.A.No.71 of 2018 on the file of the XVII Additional City Civil Court at Chennai and confirming the Judgment passed in C.C.No.1886 of 2017 on the file of the III Metropolitan Magistrate, George Town, Chennai and to acquit the petitioner from all charges.

For Petitioner : Mr.A.K.Martin

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

This Criminal Revision is filed as against the Judgment passed in C.A.No.71 of 2018 on the file of the XVII Additional Sessions Court, Chennai, dated 14.09.2018, thereby confirming the Judgment passed in C.C.No.1886 of 2016 dated 11.01.2018, thereby convicted the petitioner for the offence punishable under Section 304(A) of IPC (2 counts) and under Section 184 of the Motor Vehicle Act.

2. The case of the prosecution is that on 29.05.2017 at about 1.45 hours at Basin Bridge Road, near the Mint New Bridge Bus Stop, Washermenpet, Chennai, the accused, being a driver of the van bearing Registration No. TN-20-CK-3776, drove the vehicle in a rash and negligent manner and dashed on the center median wall and dashed on the pedestrians, who were standing on the center median for crossing the road, and caused fatal injuries. Immediately, they were taken to Government Stanley Hospital and succumbed to injuries.

3. After completion of the investigation, the respondent filed final



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report and the same has been taken cognizance for the offence punishable under Section 304(A) of IPC (2 counts) and under Section 184 of the Motor Vehicle Act.

4. On the side of the prosecution, they examined P.Ws.1 to 12 and marked Exs.P1 to P15. On the side of the petitioner, no one was examined and no document was marked.

5. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 304(A) of IPC (2 counts) and Section 184 of Motor Vehicle Act and he was sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.4,000/- each count, in default to undergo simple imprisonment for a period of one month each count for the offence punishable under Section 304(A) of IPC (2 counts). He was sentenced to pay a fine of Rs.1,000/- under Section 184 of Motor Vehicle Act, in default to undergo simple imprisonment for two weeks. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and the order of the Trial Court was confirmed.



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6. The learned counsel for the petitioner would submit that there was no evidence to show that the petitioner had driven the vehicle in a rash and negligent manner. Even according to the prosecution, the place of occurrence was Basin Bridge Road, which is running from east to west and from west to east, having a center median to separate the flow of traffic in both direction. Even the eye witness categorically stated that there was a speed breaker and as such, the petitioner would not have driven the vehicle in a rash and negligent manner. P.Ws.1 to 4 stated that the petitioner driven the vehicle in a speed manner, which by itself cannot be presumed that he had drove the vehicle in a rash and negligent manner. Admittedly, there was no Zebra Crossing for pedestrian to cross the road. The second deceased is the daughter of the first deceased, she crossed the road without getting instruction from her mother and without noticing the petitioner's vehicle and immediately as the first deceased came to rescue her, the occurrence had taken. Therefore, the accident did not occur due to the negligent on the part of the petitioner. It occurred only on the part of the negligence of the deceased. However, the Courts below, without considering the facts and circumstances, mechanically



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convicted the petitioner.

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7. The learned Government Advocate (Criminal Side) submitted that P.Ws.1 to 4 were the eye witnesses. They categorically deposed that the petitioner drove the vehicle in a rash and negligent manner and when the deceased was standing in the center median. After crossing half of the road and to cross the remaining half of the road, the petitioner hit them and due to which, they sustained grievous injuries. It is further submitted that the Motor Vehicle Inspector inspected the vehicle and the report was marked as Ex.P7. He categorically deposed that the right hand side of bumper got damaged, due to the accident. He further deposed that the accident had not occurred due to any technical defect. Therefore, it is clear that only the rash and negligent driving on the part of the driver of the van, due to which, two innocent persons sustained grievous injuries and died. Hence, the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

8. Heard, Mr.A.K.Martin, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on



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record.

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9. There were two deaths due to the accident. The petitioner drove the vehicle in a rash and negligent manner and hit the deceased, while they were standing in the middle of the road, after crossing half of the road and yet to cross the half of the road, the petitioner hit them and due to which, they succumbed to injury. P.W.1 was the eye witness to the occurrence and he categorically deposed that the petitioner drove the vehicle in a rash and negligent manner and hit them when they are standing in the middle of the road, which is meant for pedestrian cross. The center median is fenced with planted over, there is a small gap in the median for pedestrian cross. Though, P.W.1 stated that first the vehicle hit the center median and thereafter, hit the deceased. The vehicle was driven in a rash and negligent manner and hit them. It was also corroborated by P.Ws.2 to 4 herein. It seems that the deceased, after crossing half of the road they waited to cross the remaining half of the road, at that juncture, the petitioner drove the vehicle in a rash and negligent manner and hit against the deceased, due to which, they sustained grievous injuries and succumbed to injuries.



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10. That apart, the Motor Vehicle Inspector was examined as P.W.8. He categorically stated that the vehicle, which was driven by the petitioner got damaged on its right hand side bumper. There was no evidence to show that the vehicle first hit the center median and thereafter, hit the deceased. It is also categorically corroborated by P.Ws. 2 to 4. They deposed that the petitioner drove the vehicle in a rash and negligent manner, directly hit the deceased and succumbed the injuries. Therefore, the Courts below rightly convicted the petitioner and this Court finds no infirmity or illegality in the order passed by the Courts below.

11. However, the learned counsel for the petitioner would submit that the petitioner is aged about 60 years and never caused any accident except in the present accident. He is suffering from age old ailments. Therefore, he prayed for reduction of sentence.

12. Considering the submission made by the learned counsel for the petitioner, this Court is inclined to reduce the sentence alone.



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Accordingly, the conviction imposed on the petitioner is hereby confirmed for the offence punishable under Section 304-A of IPC (2 counts and 184 of Motor Vehicle Act and the sentence imposed on the petitioner is reduced from one year to nine months.

13. Accordingly, this Criminal Revision Case is partly allowed.

31.10.2022

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The XVII Additional Judge,
City Civil Court, Chennai

2. The III Metropolitan Magistrate,
George Town, Chennai.

3. The Inspector of Police,
H-1, Washermenpet Traffic,
Investigation Wing, Chennai.

4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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