



CRL.R.C.No.1477 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM

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

Crl.R.C.No.1477 of 2018

Devaraj

... Petitioner

Vs.

The State by
The Sub-Inspector of Police,
Berigai Police Station,
Berigai,
Krishnagiri District.

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records and set-aside the judgment of conviction dated 20.11.2018 made in C.A.No.44 of 2017 on the file of the learned Additional District and Sessions Court, Hosur, Krishnagiri District, which confirmed the conviction and sentence imposed in the judgment dated 18.09.2017 made in C.C.No.89 of 2015 on the file of the learned Judicial Magistrate No.I, Hosur, Krishnagiri District and acquit the petitioner.

For Petitioner	: Mr.P.M.Duraiswamy
For Respondent	: Mr.A.Gopinath
	Government Advocate (Crl.Side)



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ORDER

This Criminal Revision is directed as against the judgment passed in C.A.No.44 of 2017 dated 20.11.2018 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District, confirming the judgment passed in C.C.No.89 of 2015 dated 18.09.2017 on the file of the learned Judicial Magistrate No.I, Hosur, Krishnagiri District, thereby convicting the petitioner for the offence punishable under Sections 279 & 304(A) of IPC.

2. The case of the prosecution is that on 28.05.2015, the accused had driven his Mahindra pickup van bearing registration No.KA-02-AA-7416, after loading coriander leaves bags and also carried the load men and others in the goods carrier vehicle in a rash and negligence manner and due to which the coriander leaves bags fell down along with deceased who had sat on the coriander leaves bag. Due to falling down from the vehicle, she sustained head injury and died. Hence the complaint.

3. On receipt of the complaint, the respondent registered the



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FIR in Crime No.178 of 2015 for the offence under Sections 279, 304(A) of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance in C.C.No.89 of 2015 by the trial Court. In order to bring the charges to home, the prosecution examined P.W.1 to P.W.11 and marked documents in Ex.P.1 to Ex.P.7. On the side of the accused, no one was examined and no documents were marked. On a perusal of oral and documentary evidence, the trial Court found the petitioner's guilty for the offences under Sections 279 & 304(A) of IPC and sentenced him as follows :-

Sl. No.	Conviction	Sentence
1.	Under Section 279 of IPC	To pay a fine of Rs.1,000/- in default to undergo simple imprisonment for two months.
2.	Under Section 304(A) of IPC	To undergo one year simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months.

Aggrieved by the same the petitioner preferred an appeal and the same was also dismissed by confirming the order passed by the trial Court. Hence, the petitioner filed this present revision.

4. The learned counsel appearing for the petitioner submitted that the prosecution failed to prove that the petitioner drove the vehicle in



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a rash and negligence manner and caused accident. No one is whispered that the petitioner drove the vehicle in a rash and negligence manner, due to which the deceased had fell down and sustained injury. All the prosecution witnesses are hearsay witnesses except P.W.3 and she is none other than the sister of the deceased and she was sitting in the cabin of the vehicle. Admittedly, the deceased was sitting in the back side. Therefore, P.W.3 could not have seen the occurrence. According to her, in a narrow and also bumping road, the petitioner drove the vehicle in a rash and negligence manner due to which the entire load was fell down from the vehicle along with the deceased. Therefore, she sustained injury and died.

4.1. He further submitted that the deceased was taken to the government hospital, Hosur. However, no accident register was recorded and no wound certificate was marked by the prosecution. Directly, they conducted autopsy and the doctor who conducted postmortem on the deceased alone examined as P.W.5. Therefore, the prosecution failed to prove his case. He further submitted that admittedly the occurrence took place in the State of Karnadaka and therefore, the respondent has no



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territorial jurisdiction to register the FIR. Therefore, the entire case of the prosecution is void and the conviction imposed on the petitioner cannot be sustained. Hence, he prayed to allow this petition.

5. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police submitted that P.W.3 also traveled along with the deceased in the vehicle owned by the accused bearing registration No.KA-02-AA-7416. She categorically deposed that the petitioner drove the vehicle in a rash and negligence manner and due to which the deceased fell down from the vehicle and sustained head injury and died. He further submitted that the doctor who conducted postmortem was examined as P.W.5 and the deceased died due to the injury sustained in the accident.

5.1. He further submitted that admittedly the deceased was travelling in the goods carrier vehicle that too she was sitting in the coriander leaves bag. The road is also narrow and bumping one. While it was being so, the petitioner drove the vehicle in a rash and negligence



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manner that too in the sharp turn, the load was fell down along with the deceased. Therefore, she sustained injury and died. Therefore, the *res-ipsa-loquitur* came to play in the case on hand and the Courts below rightly convicted the petitioner. Hence, he prayed for dismissal of the petition.

6. Heard Mr.P.M.Duraiswamy, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate appearing for the respondent Police.

7. Admittedly, the petitioner drove the Mahindra pick up van bearing registration No.KA-02-AA-7416 on 28.05.2015 after loading the coriander leaves. The victim deceased was working in the field and helped to load the coriander leaves in the vehicle. After loading the vehicle, while returning to home, she was also travelled in the goods carrier vehicle and she had sat on the coriander leaves gunny bag. Her sister was sitting inside the cabin. Unfortunately, the coriander leaves bag fell down and along with the said bag the deceased also fell down.



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8. Though the prosecution examined P.W.1 to P.W.11, except P.W.3 all other witnesses are hearsay witnesses. P.W.3 is none other than the sister of the deceased. She also travelled along with the deceased. However, she was sitting in the cabin of the vehicle. Therefore, there was absolutely no possible for her to notice the occurrence. Because of the bumping road, the petitioner himself stopped the vehicle and found that the coriander leaves bag fell down along with the deceased. Immediately she was taken to the government hospital, Hosur. However, she died due to the injuries sustained in the accident.

9. It is also the case of the prosecution is that along with the deceased, other persons were also sitting on the goods. But the prosecution failed to examine anybody to establish how the deceased fell down from the vehicle. Therefore, it cannot be possible to conclude that only because of rash and negligence driving of the petitioner, the deceased fell down from the vehicle. That apart, though the deceased had admitted into the Government Hospital, Hosur, no accident register was recorded and no intimation was forwarded to the concerned police



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station. Next day only on the complaint lodged by P.W.1 viz., the mother of the deceased, FIR was registered by the respondent. Therefore, the prosecution failed to prove its case beyond any doubt and the entire conviction as against the petitioner cannot be sustained and it is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the petitioner in the judgment passed in C.A.No.44 of 2017 dated 20.11.2018 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District, confirming the judgment passed in C.C.No.89 of 2015 dated 18.09.2017 on the file of the learned Judicial Magistrate No.I, Hosur, Krishnagiri District, are hereby set aside and the petitioner is acquitted from all charges. Fine amount, if any paid, shall be refunded to the petitioner forthwith. Bail bonds, if any executed, shall stand cancelled.

11. Accordingly, the Criminal Revision stands allowed.

30.11.2022



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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Additional District and Sessions Judge,
Hosur, Krishnagiri District.
2. The Judicial Magistrate No.I,
Hosur, Krishnagiri District.
3. The Sub-Inspector of Police,
Berigai Police Station,
Berigai,
Krishnagiri District.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J

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