



Crl.RC.No.982 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.982 of 2020

and

Crl.M.P.Nos.6862 and 6865 of 2020

Prabhu

... Petitioner

Vs.

State Rep. by
Inspector of Police
Sathyamangalam Police Station
Sathyamangalam
Erode District
Cr.No.324 of 2012

... Respondent

Prayer: Criminal Revision Case filed under Section 397 (1) and 401 of Criminal Procedure Code, praying to set aside the conviction and sentence imposed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in Crl.A.No.23 of 2009 dated 22.01.2020 confirming the conviction and sentence imposed by the learned Judicial Magistrate, Sathyamangalam in C.C.No.66 of 2012 dated 18.06.2019 and allow the Criminal Revision Case.

For Petitioner : Mr.E.Sampath Kumar

For Respondent : Mr.R.Murthi
Government Advocate (Crl. Side)



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ORDER

This Criminal Revision Case has been filed seeking to set aside Judgement of conviction and sentence passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in Crl.A.No.23 of 2009 dated 22.01.2020 confirming the conviction and sentence imposed by the learned Judicial Magistrate, Sathyamangalam in C.C.No.66 of 2012 dated 18.06.2019

2. The respondent police registered the case in Crime No.324 of 2012 for the offence under Section 279, 304(A) IPC and after investigation laid charge sheet, before the Judicial Magistrate, Sathyamangalam for the offence under Sections 279, 304(A) IPC and Section 3 read with 181 Motor Vehicle Act. The learned Magistrate taken the charge sheet on file in C.C.No.66 of 2012 and after completing the formalities, framed the charges and on conclusion of trial, found the guilt of the accused for the offences under Section 279, 304(A) IPC and also under Section 3 read with 181 of Motor Vehicle Act and convicted and

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sentenced him to undergo 3 months Rigorous Imprisonment and to fine of Rs.500/- in default to undergo simple imprisonment for a further period of one week for the offence under Section 279 IPC; to undergo one year Rigorous Imprisonment and to pay fine of 1,000/- in default to undergo simple imprisonment for a further period of two weeks for the offence under Section 304(A) IPC and to undergo one month Rigorous Imprisonment and to pay fine of Rs.500/- in default to undergo simple imprisonment for a further period of one week for the offence under Section 3 read with 181 of Motor Vehicle Act and all the sentences were ordered to run concurrently.

3. Challenging the said Judgment of conviction and sentence, the accused filed appeal before the Principal District and Sessions Judge, Erode in Crl.A.No.23 of 2019 and the same was made over to the IIIrd Additional District and Sessions Judge Erode, Gobichettipalayam. The learned Sessions Judge, after hearing the arguments, dismissed the appeal and confirmed the Judgment of conviction and sentence passed by the



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Judicial Magistrate. Aggrieved over the said Judgment of dismissal of appeal, the appellant therein has filed the present revision before this Court.

4. The learned counsel for the petitioner would submit that there is no eye witness to this case and none of the witnesses had identified the accused. Though the petitioner had license on the date of occurrence, unfortunately the same was failed to mark before the trial Court. Further he would submit that the accident had not occurred due to the rash and negligence of the revision petitioner. Even, P.W.6 has admitted that the direction of the lorry which was plying in different direction and the same was wrongly stated in the FIR. Further, the report of the Motor Vehicle Inspector/Ex.P.6 and Ex.P.7 shows that both the vehicles were not damaged which, clearly shows that due to own fault on the part of the deceased, the deceased herself fell down and sustained grievous injuries. The prosecution has not proved the rash and negligent driving of the petitioner and due to his rash and negligent driving, the alleged accident had taken place and the prosecution has also not established regarding



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the identification and arrest of the revision petitioner. Therefore, the findings of the trial Court is perverse and the appellate Court also unfortunately without re-appreciating the evidence, simply endorsed the views of the Magistrate. Therefore, the Judgments of both the Courts below are liable to be set aside and the revision has to be allowed and the petitioner has to be acquitted.

5. The learned Government Advocate (Crl. Side) would submit that at the time of accident, the two wheeler which met with an accident was drove by P.W.1 and he is the eyewitness to the accident and the deceased was a pillion rider who is none other than the wife of P.W.1. Even the father of the petitioner/P.W.2 has spoken about the accident which he came to know later and he has admitted that the said Lorry belongs to them and it was driven by his son/the petitioner herein at the time of occurrence. Further, P.W.4 who is an independent eyewitness has clearly spoken about the driver of the Lorry and the manner of accident caused by the Lorry. Even the inquest report/Ex.P.5 clearly shows that the



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deceased died due to accidental injuries and the Post-mortem report/Ex.P.8 also shows that the accidental injuries are the cause for the death of the deceased. Therefore, from the oral and documentary evidence, the prosecution proved its case beyond all reasonable doubt and the trial Court rightly appreciated the evidence and convicted the petitioner. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) and also perused the materials available on record.

7. The specific case of the prosecution is that 17.06.2012, the defacto complainant was proceeding in his motor cycle bearing Regn.No.TN 45 Y 4947 along with his wife as a Pillion Rider and his son was on the front side, towards north to south in Sathyamangalam - Gobichettipalayam Main Road near Kenjanayakkanur Pirivu Road,

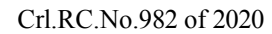


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Erumadai Pallam at about 7.00 p.m. At that time, a Lorry bearing Regn.No.TN 59B 4460 driven by the petitioner herein in a rash and negligent manner on the same direction, dashed at the back side of the Motor Cycle of the defacto complainant due to which, the defacto complainant, his wife and son fell down on the road. At that time, the back wheel of the Lorry ran over on the wife of the defacto complainant due to which, she died at the spot. Hence, the case.

8. In this case, the rider of the victim motor cycle bearing No.TN 45 Y 4947 was examined as P.W.1 and he has deposed that on 17.06.2012, he along with his wife and child was proceedings from Sakthi towards Gobi and when he was driving near Erumadaipallam, the offending lorry which came behind him, hit against his vehicle due to which they all fell down on the road. At that time, the back wheel of the lorry ran over on his wife due to which, his wife sustained head injury and died at the spot. Since he and his child fell down on the left side of the road, they sustained no injuries.

9. The father of the accused/revision petitioner was examined as



10. P.W.4 who is an independent eye witness to the occurrence has stated that on 17.06.2012, when he was proceeding in his friend's car from Sakthi on the Gobi Road, the offending Lorry over took them near Erumadaipallam, the Lorry hit against a bike which was going in the same direction of them due to which, the rider of the bike and his child fell down on the left side of the road and a lady who was traveling in the bike, got stuck under the back wheel of the Lorry. Before he got down from the lorry, the driver of the Lorry peeped from the lorry and escaped.



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11. Though the learned counsel for the petitioner vehemently denied that the accident occurred due to the said Lorry, from the evidence of the P.W.1 and P.W.4, the prosecution proved its case that the offending Lorry bearing Regn.No.TN 4460 only hit against the two wheeler driven by P.W.1 bearing Regn. No.TN 45 Y 4947 due to which, the deceased sustained head injury and succumbed to the injury. Further, the post-mortem report/Ex.P.8 proved that the deceased died due to the accidental injuries. Therefore, this Court finds that the accident had occurred due to rash and negligence on the part of the driver of the lorry bearing No. bearing Regn.No.TN 59 D 4460.

12. Now the question is as to whether the petitioner drove the lorry at the time of accident or not. In order to prove the same, the husband of the deceased who drove the said two wheeler at the time of occurrence, was examined as P.W.1 and he has clearly stated that he saw the driver of the Lorry and he could identify him. Though P.W.4 has stated that he did not see the driver of the Lorry, P.W.2 who is none other than the father of



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the petitioner himself has clearly stated that his son/the petitioner herein only drove the lorry at the time of accident. Further, on the side of the defence, no suggestion was put to the prosecution witnesses that the petitioner never drove the Lorry. Therefore, as already stated that from the evidence of P.W.1 and P.W.4, the prosecution proved the accident and the manner of the accident and from the evidence of P.W.2/father of the petitioner, the prosecution proved its case that the petitioner is the one who drove the offending Lorry at the time of accident. The said fact was not denied by the petitioner either during cross examination of the eyewitnesses or independent witnesses. Therefore, this Court finds that the petitioner is one who drove the Lorry bearing Regn.No.TN 59 D 4460. Further, from the evidence of P.W.1 and P.W.4, this Court finds that the accident had occurred due to the rash and negligence on the part of the driver of the lorry who is the revision petitioner herein.

13. Though the learned counsel for the petitioner vehemently contended that the Investigating Officer has not stated as to how they



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identified the petitioner and arrested him, the defence had not denied that the arrested person/the petitioner and the driver of the said Lorry one who drove the Lorry at the time of occurrence, are not one and same and they both are different persons. Further, though the Investigating Officer has not clearly mentioned about the identification and arrest of the accused/petitioner, it is settled proposition of law that mere defect in the investigation is not a sole ground to discredit the evidence of the prosecution witness especially eyewitness. Hence, this Court as a revisional Court, finds no perversity in the appreciation and re-appreciation of evidence by the Courts below. Therefore, there is no merit in the revision and revision is liable to be dismissed.

14. Though the learned counsel for the petitioner contended that the petitioner had possessed valid license at the time of occurrence and the same was failed to be marked before the trial Court, no license was produced either before the trial Court or before the appellate Court and even before this Court. Therefore, the said contention cannot be accepted.



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15. As stated above, though the accident took place due to the rash and negligent driving on the part of the petitioner herein, the accident is not an intentional one and therefore, the sentence of rigorous imprisonment of one year imposed by the Courts below for the offence under Section 304 (A) IPC alone is reduced to six months which would meet the ends of justice. The conviction and sentence passed by the Courts below for the other charge are confirmed.

16. With the above modification, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petitions are closed. The respondent police is directed to secure the petitioner to undergo the remaining period of sentence if any.

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To
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1. The III Additional District and Sessions Judge,
Erode at Gobichettipalayam
2. The Judicial Magistrate, Sathyamangalam
3. Inspector of Police
Sathyamangalam Police Station
Sathyamangalam
Erode District
4. The Public Prosecutor
High Court of Madras, Chennai



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