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Crl.RC.No.667 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.667 of 2020

Rajesh

... Petitioner

Vs.

The State Rep. by its
The Inspector of Police
Thiruthuraipoondi Police Station
Thiruvarur District
Crime No.647 of 2013

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the Judgment dated 27.02.2020 in C.A.No.2 of 2019 passed by the learned District and Sessions Judge, Thiruvarur which confirmed the Judgment dated 11.01.2019 in C.C.No.228 of 2013 on the file of the learned Judicial Magistrate, Thiruthuraipoondi.

For Petitioner : Mr.G.Saravanabhavan

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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ORDER

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This Criminal Revision Petition has been filed seeking to set aside the Judgment dated 27.02.2020 in C.A.No.2 of 2019 passed by the learned District and Sessions Judge, Thiruvarur which confirmed the Judgment dated 11.01.2019 in C.C.No.228 of 2013 on the file of the learned Judicial Magistrate, Thiruthuraipoondi.

2. The respondent police registered the case in Crime No.647 of 2013 against the petitioner for the offence under Section 304-A IPC and after investigation laid charge sheet before the Judicial Magistrate, Tiruturaipoondi. The learned Magistrate, taken the case on file in C.C.No.228 of 2013 and after completing the formalities and after trial, convicted the accused and sentenced to undergo 2 years simple imprisonment and to pay fine of Rs.2,000/- in default, to undergo simple imprisonment for a further period of 3 months for the offence under Section 304-A IPC.



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3. Challenging the said Judgment of conviction and sentence, the accused filed an appeal before the Principal District and Sessions Judge, Tiruvarur, in Crl.A.No.2 of 2009. The learned Sessions Judge, after hearing the arguments and re-appreciating the evidence found the guilt of the accused for the offence under Section 304-A IPC and thereby, dismissed the appeal and confirmed the conviction and sentence passed by the learned Magistrate. Aggrieved over the said Judgment of dismissal of appeal, the appellant therein has filed the present revision before this Court.

4. The specific case of the prosecution is that on 05.11.2013 at about 12 noon, in Vanganagar Vellangal-Ovarur Thar Road, the petitioner drove the TATA ACE mini lorry bearing Regn.No.TN 51 D8782 in a rash and negligent manner and hit against the two wheeler bearing Regn. No.TN 49 M8709 which was driven by the deceased due to which, the deceased sustained grievous head injury and subsequently, succumbed to the accidental injuries at the spot. Hence, the case was registered for the offence under Section 304-A IPC against the petitioner.



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5. The learned counsel for the petitioner would submit that P.W.1 to P.W.3 have stated that the petitioner's vehicle came in a high speed. But, speed would differ from person to person. Even though as per the deposition of P.W.1 to P.W.3, the petitioner came in a high speed, it does not mean that the petitioner came in a rash and negligent manner. Further, based on the complaint given by P.W.1, FIR was registered on 05.11.2013 for the offence under Section 304-A IPC, whereas the FIR was sent to the Court only after 2 days i.e. on 07.11.2013 which creates doubt that there is a possibility for embellishment and deliberation. He would further submit that the deceased was not having driving license at the time of alleged accident which shows that the deceased did not know proper driving and therefore, the accident had taken place. Further, P.W.1 to P.W.3 have only deposed that the petitioner's vehicle which came from South to North without making horn, hit against the vehicle of the deceased which came from North to South and that their deposition of “without making horn” does not mean that the petitioner came in a rash and negligent manner. Further, the defacto complaint/P.W.1 who lodged



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the complaint before the respondent police did not state anything about the presence of P.W.2 and P.W.3 in the scene of occurrence which shows that P.W.2 and P.W.3 could not see the accident but, they have been made as eyewitnesses for the purpose of this case. Further, the inquest report did not contain the names of P.W.2 and P.W.3 which clearly shows that the witnesses namely P.W.2 and P.W.3 are not eyewitnesses and therefore, their evidence cannot be accepted for the purpose of corroboration of the evidence of P.W.1. He would further submit that the rough sketch shows that the TATA ACE vehicle driven by the petitioner was standing in the spot itself where the accident had taken place which shows that the petitioner drove the vehicle in a considerable speed and not in high speed. Further, the rough sketch shows that the TATA ACE vehicle driven by the petitioner which came from South to North, was standing in the left side of the road i.e. Western side of the road and the vehicle of the deceased was standing in the Eastern side and that too in the middle of the road which shows that the alleged accident did not take place due to the abnormal speed of driving by the petitioner. Further,



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both the Courts below have failed to see the evidence of P.W.1 wherein, P.W.1 has deposed that the deceased was going in a Pulsar Bike and P.W.1 was going behind the deceased in a Splendor Bike and therefore, if the petitioner had driven the vehicle in a rash and negligent manner, definitely the bike of P.W.1 would have also met with an accident. But no such occurrence had taken place which shows that the accident occurred only due to the negligence driving of the deceased and not by the petitioner. The trial Court failed to appreciate the oral and documentary evidence and the appellate Court also failed to re-appreciate the evidence and to correct the findings of the trial Court and simply endorsed the views of the trial Court. As stated above there is no eyewitness to the accident and the accident did not take place as projected by the prosecution. Therefore, the revision has to be allowed and the petitioner has to be acquitted.

6. The learned Government Advocate (Crl. Side) would submit that on 05.11.2013, the deceased was going in his Pulsar Bike and one of the eyewitnesses namely P.W.1 was going behind the deceased in his



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Splendor Bike. At that time, the petitioner who drove the TATA ACE mini lorry in a rash and negligent manner, dashed against the Splendor Bike which was driven by the deceased and due to the accident, the deceased died at the spot. Therefore, the case was registered at 12 p.m. In this case, in order to substantiate the case of the prosecution, totally 11 witnesses were examined and 8 documents were marked. Out of the 11 witnesses, the defacto complainant who saw the accident and lodged the complaint, was examined as P.W.1 and he has clearly spoken about the accident. The other eyewitnesses viz., P.W.2 and P.W.3 have also corroborated the evidence of P.W.1. Therefore, the prosecution proved its case beyond all reasonable doubt and the trial Court rightly appreciated the evidence and convicted the petitioner and that the appellate Court also rightly re-appreciated the evidence and confirmed the conviction passed by the trial Court. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

7. Heard the learned counsel for the petitioner and the learned



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Government Advocate (Crl. Side) and perused the materials available on record.

8. In this case, in order to substantiate the charge against the petitioner, totally 11 witnesses were examined as P.W.1 to P.W.11 and 8 documents were marked Exs.P.1 to P.8. Out of the 11 witnesses, the defacto complainant was examined as P.W.1.

9. P.W.1 has clearly stated that on 05.11.2013 at about 11 a.m., he was going in his Splendor Bike and the deceased was going in his two wheeler bearing Regn. No.TN 49 M8709 in front of him from North to South. At that time, a TATA ACE vehicle bearing Regn.No.TN 51 D8782 which came in the same road from South to North in a rash and negligent manner without adhering the traffic rules and making horn, dashed against the vehicle which was driven by the deceased. Therefore, the deceased was thrown away and when P.W.1 went near the deceased, he had sustained grievous head injury and subsequently, he succumbed to the injury on the spot. He has further stated that the driver of the TATA ACE vehicle also came and saw the deceased and thereafter, left the



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place and that the accused/petitioner is the one who drove the TATA Ace vehicle and caused the accident.

10. P.W.2 and P.W.3 who are said to be the eyewitnesses to the accident, have also corroborated the evidence of P.W.1.

11. A careful reading of the evidence of the eyewitnesses viz., P.W.1 to P.W.3 clearly show that the accident took place due to the rash and negligent driving on the part of the petitioner. Therefore, the prosecution proved its case beyond all reasonable doubt and both the Courts below have rightly appreciated and re-appreciated the evidence and recorded conviction.

12. This Court does not find any perversity in the appreciation of evidence by the Courts below and there is no valid reason to interfere with the conviction recorded by the trial Court and confirmed by the appellate Court. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

13. However, as stated above, though the accident took place due



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to the rash and negligent driving of the petitioner herein, the accident is not an intentional one. Therefore, the sentence of simple imprisonment of two years for the offence under Section 304-A IPC alone is reduced to one year which would meet the ends of justice.

14. With the above modification, this Criminal Revision Case is partly allowed. 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 District and Sessions Judge, Thiruvarur
2. The Judicial Magistrate, Thiruthuraipoondi.
3. The Inspector of Police
Thiruthuraipoondi Police Station
Thiruvarur District
4. The Public Prosecutor
High Court, Madras



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P.VELMURUGAN,J.

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