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Crl.RC.No.818 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

Coram:

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

Criminal Revision Case No.818 of 2020

Senthilkumar

... Revision Petitioner

Vs.

State, rep. by the Inspector of Police

Mallur Police Station

Salem District

(Crime No.324 of 2013)

... Respondent

Prayer: Criminal Revision Case filed under Section 397 (1) and 401 of Criminal Procedure Code, praying to call for the records and set aside the Judgment dated 23.06.2020 passed by the III Additional Sessions Judge, Salem, in C.A.No.57 of 2019 confirming the Judgment dated 13.02.2019 passed by the Judicial Magistrate No.6, Salem, Salem District against the petitioner /accused in C.C.No.208 of 2013.

For Petitioner : Mr.B.Vasudevan

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 the Judgment dated 23.06.2020 passed by the III Additional Sessions Judge, Salem, in C.A.No.57 of 2019 confirming the Judgment dated 13.02.2019 passed by the Judicial Magistrate No.6, Salem, Salem District against the petitioner/accused in C.C.No.208 of 2013.

2. The respondent police registered a case in Crime No.324 of 2013 for the offences under Sections 279, 337, 304(A) IPC @ 279, 337 (3 counts), 338, 304(A) IPC and after investigation, laid charge sheet before the Judicial Magistrate No.6, Salem, Salem District. The learned Magistrate taken the charge sheet on file in C.C.No.208 of 2013 and after completing the formalities, framed the charges against the accused for the offences under Sections 279, 337 (3 counts), 338, 304(A) IPC and after trial, found the guilt of the accused for the offences under Sections 279, 337 (3 counts), 338, 304(A) IPC and convicted and sentenced him to undergo three months simple imprisonment for the offence under



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Section 279 IPC; to undergo three months simple imprisonment each for the offence under Section 337 (3 counts); to undergo six months simple imprisonment for the offence under Section 338 IPC; to undergo two years simple imprisonment and to pay fine of Rs.5,000/- for the offence under Section 304 (A) IPC and the sentences were ordered to be run concurrently.

3. Aggrieved over the said Judgment of conviction and sentence, the accused filed appeal before the Principal District and Sessions Judge, Salem and the same was taken on file in C.A.No.57 of 2019 and made over to the III Additional District Judge, Salem. The learned Additional District Judge, after hearing the arguments and considering the materials, dismissed the appeal by Judgment dated 23.06.2020 and confirmed the conviction and sentence passed by the trial Court in C.C.No.208 of 2013 dated 13.02.2019. Against the Judgment of dismissal of appeal, the appellant therein has filed the present revision before this Court.



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4. The case of the prosecution is that on 20.08.2013 at about 3.30 a.m., on the Namakkal to Salem High Ways near V.G.Vikas School Flyover, the Government Corporation bus bearing Regn.No.TN 68 N 0313, which was driven by the accused/petitioner herein in a rash and negligent manner, hit against the back side of a Lorry which was going in front of it bearing Regn.No.TN 47 AB 2433 due to which, the Conductor of the bus driven by the accused/petitioner herein, died at the spot and near about 15 passengers sustained injuries. Hence, the case.

5. The learned counsel for the petitioner would submit that a copy of the Accidental Register of one of the injured witnesses namely Rajamanoharan was marked as Ex.P.12 but, the said Rajamanoharan was not examined by the prosecution. Hence, the charge under Section 337 IPC (one count) was not proved by the prosecution. Further, Ex.P.1/ complaint shows that the accused had sustained injuries on his both legs, whereas P.W.2 has deposed that the leg of the bus driver/accused got crushed in the bus and thereby, the prosecution has failed to prove the



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injuries sustained by the accused/petitioner herein by marking the copy of the Accidental Register of the accused/petitioner herein. He would further submit that even P.W.1 and P.W.2 have not stated that the accused drove the bus in a high speed and negligent manner. Even P.W.3, P.W.4 and P.W.5 who were the passengers in the bus and sustained injuries in the accident, have not stated that the accused/petitioner herein drove the bus in a high speed and negligent manner and thereby, the prosecution has failed to establish the charge under Section 304 (A) IPC. The trial Court failed to appreciate the evidence of the prosecution witnesses properly and erroneously convicted the petitioner and the appellate Court also failed to re-appreciate the evidence properly. 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.

6. The learned Government Advocate (Crl. Side) would submit that the defacto complainant who is the driver of the Lorry which met with an accident on 20.08.2013, was examined as P.W.1 and the substitute driver



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of the said lorry was examined as P.W.2 and they both have clearly stated that soon after hearing a hit sound, they both went and saw the back side of the lorry wherein, the said bus was found to have hit against their lorry and the Conductor of the bus was found dead at the spot itself and that the passengers of the bus had sustained injuries. They have further clearly stated that the accused/petitioner herein is the one who drove the bus at the time of accident. Further the injured witness/P.W.3 who traveled in the said bus at the time of accident, has clearly deposed that the bus which was driven at a speed, hit against the Lorry due to which, he sustained injuries on his right Jaw, chest and hand. The other injured witness/P.W.4 who also traveled in the said bus at the time of accident, has stated that the driver of the bus hit against the Lorry and caused the accident. P.W.5 who is also an injured witness and he has stated that on the date of occurrence at about 3.30 a.m., he heard a sound and he hit against the front seat and sustained head injury. Thereafter, when they got down from the bus and saw, the bus was found to have hit against a Taurus vehicle. P.W.8 is the Sub Inspector of Police who received the



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complaint and registered the case and recorded the statement of the witnesses. The doctor who conducted postmortem over the body of the deceased Conductor was examined as P.W.9 and he has given opinion that the deceased would have died due to the injuries sustained by him. The doctor who treated the injured witness/P.W.4 was examined as P.W.10 and he has opined that the injuries 1 and 2 sustained by P.W.4 are grievous in nature and the injuries 3 and 4 are simple in nature. P.W.13 is the doctor who treated the injured witnesses namely P.W.3, P.W.5 and one Rajamanoharan. The wound certificates of P.W.3 and P.W.5 were marked as Ex.P.10 and Ex.P.9 which show that the injuries sustained by P.W.3 and P.W.5 are simple in nature. Since the said Rajamanoharan who was admitted as inpatient did not take treatment, no opinion was issued with regard to the injuries sustained by him. Further, the Motor Vehicle Inspector who inspected the said Lorry and Bus was examined as P.W.7 and he has stated that both the vehicles did not have any mechanical defects and the Inspection report of the said vehicles were marked as Ex.P.3 and Ex.P.4 and that the evidence of the Motor Vehicle Inspector,



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supported the case of the prosecution that the accident did not took place due to mechanical defect. Therefore, the evidence of P.W.3 to P.W.4 corroborated the evidence of P.W.1. Further, the official evidence and the medical evidence also corroborated the case of the prosecution. The trial Court rightly appreciated the evidence and convicted the petitioner and the appellate Court also rightly confirmed the conviction. 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 Government Advocate (Crl. Side) and also perused the materials available on record.

8. The specific case of the prosecution is that on 20.08.2013 at about 3.30 a.m. in the Namakkal to Salem High Ways near V.G. Vikas School Flyover, the accused who drove the Government Corporation bus in a rash and negligent manner, hit against the back side of the lorry going in front of it due to which the Conductor of the said bus died in the spot and the passengers who travelled in the bus sustained injuries.



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9. In order to substantiate the case of the prosecution, totally 14 witnesses were examined as P.W.1 to P.W.14 and 13 documents were marked as Ex.P.1 to Ex.P.13.

10. Out of the 14 witnesses, the driver of the lorry which met with an accident on 20.08.2013, was examined as P.W.1. He has clearly stated that on the said date when he was driving his lorry with Salt load from Vedharanyam, there was a hitting sound against his lorry near Mallur bye-pass V.G. Vikash School at about 3.00 a.m. Immediately, he stopped the lorry and got down from it and went back where he saw a Government Bus had hit against the back side of his lorry. Further, the Conductor of the said bus was found dead at the spot and near about 15 persons who were traveling in the bus had sustained injuries. Immediately he gave intimation to the Mallur Police Station and thereafter, the police came to the scene of occurrence and sent the injured to the Government Hospital. Subsequently, he preferred a complaint before the police and as per Ex.P.1/complaint, the accused/petitioner



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herein only drove the said bus. P.W.2 is the substitute driver of the said lorry driven by P.W.1 and he has also corroborated the evidence of P.W.1.

11. P.W.3 is one of the injured witnesses who travelled in the said bus and he has deposed that at the time of occurrence, the bus which came at a speed, hit against the lorry and caused the accident. Further during his cross examination, he has denied the suggestion made by the defence that the driver of the lorry only responsible for the said accident.

12. P.W.4 who is also an injured witness and travelled in the said bus at the time of occurrence, has deposed that the driver of the bus hit against the Lorry and caused the accident.

13. The doctor who conducted postmortem on the body of deceased Conductor was examined as P.W.9 and he has given opinion that the deceased would have died due to the injuries sustained by him. The doctors/P.W.10 and P.W.13 who treated the injured witness/P.W.4



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and P.Ws.3,5 and one Rahamanoharan have stated that the said injured persons were brought to their hospital and they informed them that their bus had hit against a lorry due to which, they sustained injuries and that the doctors/P.W.10 and P.W.13 have spoken about the nature of injuries sustained by them and issuance of wound certificates to them.

14. The Motor Vehicle Inspector who was examined as P.W.7 has clearly stated that the accident did not take place due to mechanical defect.

15. As a revisional Court, this Court cannot exercise the powers of the appellate Court and re-appreciate the entire evidence and substitute its own views in the findings already given by the final Court of fact finding namely the appellate Court. The powers of the revisional Court is very limited. This Court while exercising the revisional jurisdiction, has to see whether there is any perversity in the appreciation and re-appreciation of evidence and illegality in the findings of the Courts below.



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16. A careful perusal of the evidence of the prosecution witnesses, this Court finds that the prosecution has established its case that the said bus only had hit against the Lorry bearing Regn.No.TN 47 AB 2433 due to which, the accident occurred and the conductor of the bus died at the spot and the passengers who travelled in the bus sustained injuries. This Courts finds no perversity in the appreciation and re-appreciation of evidence by the Courts below and therefore, there is no merit in the revision and the revision is liable to be dismissed.

17. However, as stated above, though the accident took place due 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 and the conviction and sentence passed by the Courts below for the other offences are confirmed.



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18. With the above modification, this Criminal Revision Case is dismissed. The respondent police is directed to secure the petitioner to undergo the remaining period of sentence if any.

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To

1. The III Additional Sessions Judge, Salem,
2. The Judicial Magistrate No.6, Salem, Salem District
3. The Inspector of Police
Mallur Police Station
Salem District
4. The Public Prosecutor
High Court of Madras, Chennai

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P.VELMURUGAN

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