



Crl.R.C.No.1089 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.1089 of 2020

and

Crl.M.P.Nos.7599 and 7601 of 2020

1. Annamalai

2. Radhakrishnan

... Petitioners

Vs.

State by
The Inspector of Police,
Tharamangalam Police Station,
Salem.

... Respondent

Prayer:

Criminal Revision Petition filed under Section 397 read with 401 Cr.PC., against the judgment dated 22.06.2020 passed in Crl.A.No.2 of 2019 on the file of the III Additional District Judge, Salem, confirming the conviction and sentence imposed on the petitioners in C.C.No.110 of 2013 by judgment dated 11.12.2018 on the file of the Judicial Magistrate, Omalur.

For Petitioners: Mr.S.Kalyanaraman

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



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ORDER

This Criminal Revision Case has been filed against the judgment dated 22.06.2020 passed in Crl.A.No.2 of 2019 on the file of the III Additional District Judge, Salem, confirming the conviction and sentence imposed on the petitioners by judgment dated 11.12.2018 passed in C.C.No.110 of 2013 on the file of the Judicial Magistrate, Omalur.

2. The respondent police registered the case against the petitioners in Crime No.185 of 2010 for the offences under Sections 279 and 304(A) IPC. After investigation, the respondent laid the charge sheet before the learned Judicial Magistrate, Omalur. The learned Magistrate has taken the charge sheet on file in C.C.No.110 of 2013 and framed the charges against the petitioners for the offences under Sections 279 and 304(A) IPC. After trial, the learned Magistrate found the petitioners guilty for the offence under Section 279 IPC and convicted and sentenced them to undergo three months imprisonment and to pay fine of Rs.500/-, in default, to undergo one week imprisonment. Further, both the accused were convicted for the offence under Section 304(A) IPC and



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sentenced to undergo one year imprisonment and to pay fine of Rs.1,000/-, in default, to undergo one week imprisonment. Challenging the judgment of conviction and sentence passed by the learned Magistrate, they filed an appeal in Crl.A.No.2 of 2019 before the III Additional District Judge, Salem. The learned III Additional District Judge dismissed the appeal, by confirming the judgment of the learned Magistrate. Aggrieved over the same, the petitioners/accused have filed the present Criminal Revision Petition case this Court.

3. Learned counsel for the petitioners has submitted that the manner of accident has not occurred as projected by the prosecution. Ex.P.4-is the rough sketch which clearly shows that there was a curve in the place of accident/scene of occurrence. The deceased stood up in the bus before reaching the bus stop and due to old age, she could not balance her and fell down from the bus. The trial court failed to consider the manner of accident that the deceased fell down from the bus on her own, due to which the accident had occurred and the petitioners are not liable. P.W.1/defacto complainant is not an eye witness in this case. P.W.1 to 3 are relative witness and they are interested witnesses. Though P.W.4 is the independent witness, during cross



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examination, he has stated that he come out of the shop after hearing the sound and did not see the occurrence of the accident. P.Ws.4 to 7 were not examined on the same day and they were examined by the Investigating Officer after three days from the date of accident, which is highly belated. The Investigating Officer has not examined any of the passengers who travelled in the said bus, and this has caused severe lacuna in the credible evidence as they are the best persons to speak about the manner of the accident. In the absence of specific evidence, the prosecution has not proved the case beyond reasonable doubt. The trial court convicted the petitioners based only on sympathy ground. The trial court failed to appreciate the witness examined on the side of the prosecution. The trial court has not examined the motor vehicle inspector as witness. The prosecution has not established as to why the other witnesses were examined by the Investigating Officer belatedly. There are no eye witnesses in this case and in order to get over the same, the prosecution has made P.Ws.4 to 7 as eye witnesses. Therefore, Judgment of both the Courts are liable to be set aside and the revision may be allowed.



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4. Learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1 is the defacto complainant, who is the nephew of the deceased. P.Ws.4 and 5 are the eye witnesses in this case. From the evidence of P.Ws.4 and 5, prosecution has proved the manner of accident. Ex.P7 is the report filed by the Motor Vehicle Inspector, which clearly shows that the accident has not happened due to mechanical defect. When the deceased tried to get down from the bus through front side entrance, the conductor of the bus blew the whistle, subsequently the driver of the bus without seeing the rear view of the mirror, moved the bus in a negligent manner. Hence, the accident had occurred. The accident had happened due to negligence on the part of the driver and conductor of the bus/revision petitioners herein. From the evidence of P.Ws.4 and 5 and Ex.P7-Report of the Motor Vehicle Inspector, the trial court rightly appreciated the evidence and convicted the petitioners. The appellate court also rightly re-appreciated the evidence, dismissed the appeal and confirmed the judgment of the trial court. Therefore, there is no merit in the Criminal Revision Case and the same is liable to be dismissed.



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5. Heard the learned Counsel for the petitioners and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

6. The accident is said to have taken place on 29.03.2010 at about 1700 hours at Tharamangalam to Salem main road near Anaimedu bus stop. The second petitioner is the driver of the bus bearing Registration No.TN-27-N-1314 route No.59 belonging to the State Corporation. The first petitioner is the conductor of the said bus. When the deceased tried to get down from the bus through front side entrance of the bus, the conductor/A1 blew the whistle, subsequently, the driver without seeing the rear view of the mirror, moved the bus in a negligent manner. Due to which, the deceased fell down from the bus and the accident had occurred.

7. On the side of the prosecution, totally nine witnesses were examined as P.Ws.1 to 9 and ten documents were marked as Ex.P1 to P.10. Out of the nine witnesses, P.Ws.4 and 5 are the eye witnesses. P.W.1 is the defacto-complainant who sets the law into motion. P.Ws.1 to 3 are relative witnesses,



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who came to the spot after the occurrence. P.W.4 is the owner of the hostel which is situated at the place of occurrence. During the course of examination of P.Ws.4 and 5, they have categorically stated that they have seen the occurrence. From the evidence of P.Ws.4 and 5 and Ex.P7-Report of the Motor Vehicle Inspector, it is found that the accident had not occurred due to mechanical defect. Though the witnesses are relative and interested witness, that may not be the sole ground to disbelieve the case of the prosecution. P.W.4 who is running the hotel at the place of occurrence was present at the scene of occurrence and has clearly narrated the manner of the accident. Hence, evidence of P.W.4 is believable and credible. Though the learned counsel for the petitioners has stated that the deceased fell down from the bus on her own negligence and caused her death, there is no defence witness who has been examined to prove the same. Ex.P1 and P2 have established that the accident had happened due to negligence on the part of the petitioners. Therefore, combined reading of the prosecution witnesses, especially, evidences of P.Ws.4, and 5, the trial court has rightly appreciated the evidence. The appellate court is the final court of fact finding, it has further re-appreciated the evidence and confirmed the judgment of the trial court.



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8. The scope of the revision is very limited and the revisional court while dealing with the revision, has to see as to whether there is any perversity in the appreciation of evidence in the judgment. Therefore, while deciding the revision, the Revisional Court cannot sit in the arm chair of the appellate court and reappreciate the entire materials. On the reading of the materials, both the Courts below have passed concurrent judgments based on the evidence of the eye witnesses. In this case, there is no perversity in the appreciation of evidence and there is no merit in the revision and the same is liable to be dismissed. However, considering the fact that the accident is an un-intentional one, sentence of imprisonment alone is hereby reduced from one year imprisonment to six months imprisonment for the offence under Section 304-A IPC alone.

9. With the abovesaid modification, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

10.01.2023

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Index:yes/No

Internet:yes/No

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To

1. The III Additional District Judge, Salem,
2. The Judicial Magistrate, Omalur.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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