



CrI.R.C.No.772 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.772 of 2019

Gunasekaran

.. Petitioner

Versus

State rep. by
Inspector of Police,
Traffic Investigation Department (East) Police Station,
Coimbatore
(Crime No.336/2013)

.. Respondent

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C, to call for the records and set aside the judgment dated 13.03.2019 passed in Criminal Appeal No.323 of 2017 on the file of III Additional District and Sessions Judge, Coimbatore and consequently set aside the judgment dated 20.09.2017 passed in C.C. No. 108 of 2015 on the file of the Chief Judicial Magistrate, Coimbatore.

For Petitioner	:	Mr. M. Arvind Kumar
For Respondent	:	Mr.S.Vinoth Kumar
		Government Advocate(Criminal Side)

ORDER

The Revision Petitioner is the sole Accused in C.C. No. 108 of 2015 on the file of the learned Chief Judicial Magistrate, Coimbatore. After trial in the said case, by judgment dated 20.09.2017 made in C.C. No. 108 of 2015, the



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Petitioner was convicted for the offence under Sections 304-A (2 Counts) of Indian Penal Code and sentenced to undergo simple imprisonment for a period of two years with fine of Rs.5,000/- (for each count), in default, to undergo simple imprisonment for a period of three months each. However, the sentences were ordered to run concurrently. Aggrieved by the Judgment dated 20.09.2017, the Revision Petitioner/Accused filed Criminal Appeal No. 323 of 2017 before the learned III Additional District and Sessions Judge, Coimbatore and it was dismissed on 13.03.2019 confirming the judgment of conviction passed by the trial Court. Aggrieved by the Judgment of the Appellate Court, dated 13.03.2019, confirming the Judgment of conviction dated 20.09.2017 passed by the trial Judge, the present Criminal Revision Case had been filed.

2. The brief facts, which are necessary for the disposal of this Criminal Revision Case, are as follows:-

2.1. According to P.W-1, he is working in a Textile firm and he used to drop his two children namely Durga, aged 10 years and Gokul, aged 8 years in Jeyandra Saraswathi School in the morning and pick them up in the evening regularly. Accordingly, on 17.10.2013, at about 16.30 hours, he had picked up his children in his two wheeler bearing TN-37-BD-4701 and proceeding to his



house. While he was driving the two wheeler in Ondipudhur Pattinam Road, near K.P. Engineering Workshop, a lorry bearing TN-34-D-3232 driven by the Revision Petitioner/Accused in the same direction in a rash and negligent manner had hit the two wheeler driven by him on his right side. In the impact, P.W-1 fell on the left side of the road, while the two children fell down on the right side of the road and the lorry tyre ran over the head of the two children which resulted in both the children died on the spot. Therefore, P.W-1 had given a complaint against the Revision Petitioner/Accused based on which the case in Crime No.336 of 2013 was registered for the offence punishable under Sections 279 and 304(A) of IPC (2 counts).

2.2. On the basis of the charge sheet filed in this case, summons have been issued to the Revision Petitioner/Accused for his appearance and charges have been framed. He was also furnished with the copies under Section 207 of the Code of Criminal Procedure. When the Accused was questioned regarding the incriminating evidence available against him, he denied the charges. Therefore, trial was ordered. During the trial, the Prosecution examined 9 witnesses as P.W-1 to P.W-9 and 12 documents have been marked as Ex.P-1 to Ex.P-12. The Revision Petitioner/Accused has neither examined any witness on his side nor produced any document.

2.3. The learned trial Judge, on appreciation of the oral and



documentary evidence, convicted the Revision Petitioner/Accused for the offence under Sections 304-A (2 Counts) of Indian Penal Code and sentenced him to undergo simple imprisonment for a period of two years with fine of Rs.5,000/- (for each count), in default, to undergo simple imprisonment for a period of three months each. Such conviction and sentence imposed on the revision Petitioner-Accused was confirmed by the Appellate Court in Appeal. Aggrieved by the same, the present Criminal Revision is filed by the Revision Petitioner/Accused.

3. The learned Counsel for the Revision Petitioner contended that the Rough Sketch under Ex.P-4 was prepared much after the occurrence. There is evidence before the trial Court that the Children fell from the two wheeler and got crushed under the wheels of the lorry and the lorry stopped after the accident at a distance away from the place of occurrence. However, in the Rough Sketch under Ex.P-4, the place where the lorry was stopped after the accident was recorded and not the place where the two wheeler and the lorry got colluded against each other. Therefore, the Rough Sketch under Ex.P-4 cannot be believed. The Rough Sketch was prepared from the place where the lorry was found parked after the occurrence. Even if the Rough Sketch under Ex.P-4 is to be believed, the Accused was convicted for the negligence caused by the conduct of the Complainant himself. The Complainant was carrying



fodder at the time of accident and he was physically disabled person to negotiate the two wheeler properly and it led to the accident. This was also admitted by the complainant in the cross examination, but it was grossly omitted by the Courts below. The learned Counsel further submitted that P.W-1 could not effectively control the vehicle with the speed with which he had driven it especially with the two children riding in the same vehicle. However, P.W-1 had denied the suggestion put to him in the cross examination that the accident was caused due to his negligence. The learned Chief Judicial Magistrate, Coimbatore, however, ignored those materials available in the cross-examination of P.W-1 and P.W-5 and convicted the Accused based on the deposition of P.W-1 as well as P.W-5, an eye witness to the accident. The Appellate Court also, without taking note of the above, confirmed the conviction recorded by the trial Court.

4. The learned Counsel for the Revision Petitioner submitted that the Appellate Judge dismissed the Criminal Appeal only by placing reliance on Ex.P-4 Rough Sketch and it is legally not sustainable. The Appellate Court grossly ignored the grounds raised by the Appellant in the grounds of Appeal, which led to miscarriage of justice. In support of his contention, the learned Counsel for the Revision Petitioner placed reliance on the following reported decisions of the Hon'ble Supreme Court in the cases and they are:-



(i) **Mohammed Aynuddin @ Miyam Vs State of Andhra Pradesh**

reported in **2000 (7) SCC 72** in which the Hon'ble Supreme Court had observed as follows:

“It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prime facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus no presumption of negligence can be drawn against the driver of the bus.

The principle of res ipsa loquitur is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrong doer.”

(ii) **Ranvir Yadav -vs- State of Bihar** reported in **2009 (6) SCC 595,**

in which the Hon'ble Supreme Court had observed as follows:

“The object of examination under this Section is to give the Accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the Accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.

The word 'generally' in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the Accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the Accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form



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which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the Accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the Accused should be drawn to the specific points in the charge and in the evidence on which the Prosecution claims that the case is made out against the Accused so that he may be able to give such explanation as he desires to give.

The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the Accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an Accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

The examination under Section 313 of the Code the same reads as follows:

"Q. It is stated on the basis of statement of witnesses that on 31.7.1982 at around 8.30 A.M. Rameshwar Mistry was killed in Sirjua Diara by firing shot from rifle? What do you have to say about it?

Ans. No, I was falsely implicated.

Q. It is also stated that Accused kept the dead body of Rameshwar Mistry, Rajendra Mistry and Bramhadeo Singh on boat and they took Lalit Narayan Singh Kailash Singh, Chalitar Singh, Anil Sahib and Biranchi Das on the boat and killed Kailash Singh by proceeding further and threw the dead body in river by cutting it what do you have to say?

A. Ans. Police has implicated me. Safi Alam, S.P. of Khagaria committed murder on 15 April, 1980 in the evening by firing shot. My servant has filed case on him. My uncle filed case on police S.D.O. from that day, he started implicating me in the case and started saying



me to withdrew the case. The police which comes, states the same thing. I was not allowed to study at that time. I was studying. Due to this reason, I was falsely implicated.

Q. I heard the statement of witnesses. Do you have to say anything in defence?

A. I write it later on.

Q. It is also evident that you fired shot from the rifle at the arm of Amin."

10. It is true as contented by learned counsel for the appellant that no incriminating materials were put to the Accused under Section 313 of the Code. There is no accusation specifically put in question during examination as quoted above. It only refers to victim of kidnapping. So far as the question No.3 is concerned same relates to PW 10. He did not say that he had seen gun fired by the appellant.

11. Above being the position the appeal deserves to be allowed. It is a matter of regret and concern that the trial court did not indicate the incriminating material to the Accused. Section 313 of the Code is not an empty formality. There is a purpose behind examination under Section 313 of the Code. Unfortunately, that has not been done. Because of the serious lapse on the part of the trial court the conviction as recorded has to be interfered with. Conviction recorded by the High Court is set aside. Bail bonds executed to give effect to the order of bail dated 8.1.2002 shall stand cancelled because of the acquittal."

*(iii) In the case of **Nanjundappa -vs- The State of Karnataka***

*reported in **MANU/SC/0650/2022**, the Hon'ble Supreme Court had observed as follows:*

"Here it would be useful to advert to the dictum in the case of Syad Akbar v. State of Karnataka MANU/SC/0275/1979 : 1979CriLJ1374 in which this Court proceeded on the basis that doctrine of res ipsa loquitur stricto sensu would not apply to a criminal case as its applicability in an action for injury by negligence is well known."

5. Further, the learned Counsel for the Revision Petitioner submitted

that while cross examination of the Accused regarding incriminating evidence



available against him, the learned Chief Judicial Magistrate, Coimbatore had not confronted him regarding the Rough Sketch under Ex.P-4. Had he been confronted with the same, he would have offered his explanation towards the same. By not putting anything about Ex.P-4 but relying upon the same to convict him, it has caused prejudice to the Revision Petitioner/Accused. Therefore, the finding of guilt recorded by the learned Chief Judicial Magistrate, Coimbatore in C.C.No.108 of 2015 by judgment dated 20.09.2017, which was confirmed by the judgment of the learned III Additional District and Sessions Judge, Coimbatore in dismissing the Criminal Appeal No.323 of 2017 by judgment dated 13.03.2019 are to be treated as perverse. Both the courts below ignoring the grounds raised by the learned Counsel for the Petitioner has erroneously convicted the Revision Petitioner/Accused. The learned Counsel for the Revision Petitioner, therefore, prayed for allowing this Appeal.

6. Per contra, the learned Government Advocate (Crl.Side) Mr.S.Vinoth Kumar vehemently objected to the submissions of the learned Counsel for the Revision Petitioner by stating that the two Courts had considered and appreciated the facts involved in the case on the basis of Prosecution witnesses and documents. In the revision, this Court need not re-appreciate the same. The learned Chief Judicial Magistrate, Coimbatore on the



basis of the appreciation of evidence of Prosecution witness P.W-1 to P.W-9 and documents under Ex.P-1 to Ex.P-12 had on proper appreciation convicted the Revision Petitioner, which was affirmed by the Appellate Court. The judgment of the trial Judge as well as the Appellate Judge are based on proper appreciation of the evidence. It is not the case of the Revision Petitioner that the conclusion reached by the Courts below is based on no evidence or on ignoring the vital evidence. According to the learned Government Advocate (Crl. Side), the scope of the Revision Case is to examine as to whether there is any material irregularity committed by the Courts below or the judgment rendered by them are perverse, while convicting the Revision Petitioner. Merely because there are two views are possible, it cannot be a ground to set aside the judgment of the Courts below by substituting a new view. In any event, there is no legal grounds made available in the Revision. The grounds raised are factual which were already held against the Revision Petitioner concurrently by the Courts below. The grounds raised in the present Revision are devoid of merits. The Revision Petitioner, due to his sheer negligence, had caused the death of two young children and taking note of the gravity of such negligent driving, the conviction and sentence imposed by the Courts below is reasonable and it does not warrant any interference by this Court in exercise of powers conferred under Sections 397 read with Section 401 of the Criminal



Procedure Code. Even otherwise, a minimum punishment has been imposed by the Courts below befitting the gravity and nature of the offence committed by the Revision Petitioner/Accused. Therefore, the learned Government Advocate, (Crl.Side) seeks to dismiss this Revision Case as having no merits.

Point for consideration:

Whether the judgment of conviction recorded by the learned Chief Judicial Magistrate, Coimbatore in C.C. No. 108 of 2015 dated 20.09.2017 which was confirmed by the learned III Additional District and Sessions Judge, Coimbatore in C.A.No.323 of 2017 by judgment dated 13.03.2019 are liable to be set aside as perverse?

7. Heard the learned Counsel for the Revision Petitioner and the learned Government Advocate (Crl.side). Perused the orders passed by the learned Chief Judicial Magistrate, Coimbatore in C.C.No.108 of 2015 and the learned III Additional District and Sessions Judge, Coimbatore in C.A.No.323 of 2017. Perused the evidence of P.W-1 to P.W-9 and the documents under Ex.P-1 to Ex.P-12.

8. In the course of trial before the learned Chief Judicial Magistrate, Coimbatore, the defence of the Accused was admitted in the cross examination of P.W-1 and P.W-5 that the cause of Accident was negligence on the part of the Complainant/P.W-1 also, who had taken fodder for his cattle in front of his



Honda Activa Scooter and also carrying his two children on the pillion of his two wheeler. Therefore, it is evident that PW-1 was unable to control the vehicle with the two children as well as the load of fodder. The Two Wheeler Honda Activa scooter of P.W-1 bearing Registration No. TN-37-BD-4701 and the lorry transporting Concrete mix bearing Registration No.TN-34-D-3232 driven by the Revision Petitioner were crossing each other at the relevant point of time, however, there were no damages to both the vehicles during the impact. It was admitted by P.W-1 Complainant in the cross examination that he had carried fodder protruding on both sides of his Two Wheeler. Even though both the vehicles were coming in the same direction, there was no contact between the two vehicles. It was caused only due to the negligence of the Complainant P.W-1. While so, the learned Chief Judicial Magistrate, Coimbatore, ignored the admissions in the cross-examination of P.W-1 and P.W-5 and had mechanically convicted the Accused for the offence under Section 304 (A) of I.P.C (2 Counts) merely based on the Rough Sketch under Ex.P-4. It is also seen that P.W-5 was examined as the person who witnessed the accident. During his examination P.W-4 simply said that four years had happened after he had witnessed the accident and therefore, he could not identify the Revision Petitioner/Accused. Thus, P.W-5, the eye witness did not support the case of the Prosecution.



9. As Revision Court, this Court is not expected to interfere with appreciation of facts by the trial Court as well as first Appellate Court. However, this Court is not legally forbidden from examining as to whether any vital part of the evidence has been ignored by the Courts below in convicting and sentencing the Petitioner herein. On appreciation of the evidence of the complainant himself, he agreed that he was carrying fodder in the front of his two wheeler besides the two minor children were traveling in his vehicle. While visualising the situation coupled with the deposition of P.W-1, it could be explicit that P.W-1 could not negotiate the two wheeler driven by him effectively that it had come into contact with the lorry on his right side. In the impact, P,W-1 fell on the left side while the children were caught under the wheels of the lorry. This was least expected either by P.W-1 or by the Petitioner/Accused who were driving their respective vehicles. It is also an admitted fact that after the accident, Petitioner/Accused stopped the lorry at a distance and he has not fled the scene of occurrence. These material evidences have not been discussed by the Courts below in proper perspective.

10. In this case, as pointed by the learned Counsel for the Revision Petitioner, even though there were materials available before the trial Court, in the light of cross-examination of P.W-1 Complainant himself coupled with the



deposition of P.W-5, an eye witness to the accident, it is evidently clear that P.W-1 had also contributed for the accident and it cannot be lost sight of. The entire blame cannot be thrown over the driver of the lorry viz., the Revision Petitioner/Accused for the unfortunate death of the two children of P.W-1.

11. As per the submission of the learned Counsel for the Revision Petitioner, the Rough Sketch under Ex.P-4 was prepared by the Investigation Officer at the site of the accident. It is stated that the rough sketch did not disclose the place where the two wheeler driven by P.W-1 and the lorry driven by the Revision Petitioner have come into contact with each other to give an impression that the lorry driven by the Revision Petitioner had hit the two wheeler at the place mentioned under Ex.P-4. Therefore Ex.P-4 cannot be wholly relied on by the trial Court as well as the Appellate Court to convict the Revision Petitioner/Accused. As per the Motor Vehicle Report, there was no contact between the two vehicles involved in this case. P.W-1 also admitted that he does not have three fingers on the left side of his hand. This fact also admitted by the other witness P.W-5. Therefore, the person who does not have three fingers on his hand may not be able to effectively control the vehicle containing fodder as well as the two minor children travelling. This fact was not considered by the learned Chief Judicial Magistrate, Coimbatore while appreciating evidence even though the materials were available in the cross



examination. This part of the evidence was highlighted in the Appeal by the learned Counsel for the Appellant before the Appellate Court. Still the Appellate Court rejected the arguments of the learned Counsel for the Appellant and believed and placed reliance on Ex.P-4, the Rough Sketch.

12. In the normal course, the Revisional Court is not expected to re-appreciate the evidence, but when there is perverse finding recorded by the Courts below, which is highlighted as a technical flaw by the learned Counsel for the Revision Petitioner, it has to be necessarily considered based on the reported decision relied by the learned Counsel for the Revision Petitioner. In the light of the reported decision, the submission of the learned Counsel for the Revision Petitioner is considered to be reasonable in the given facts and circumstances of the case. The objection of the learned Government Advocate (Crl.Side) to the effect that the Revisional Court cannot interfere with the findings recorded by both the Courts below, has to be only rejected. It cannot be said that the findings rendered by the Courts below cannot be interfered with, even if it is found to be perverse. It depends on the facts and circumstance of each case.

13. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondent.

The judgment of conviction recorded by the learned Chief Judicial Magistrate,



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Coimbatore in C.C.No.108 of 2015, dated 20.09.2017 which was confirmed by the learned III Additional District and Sessions Judge, Coimbatore in C.A.No.323 of 2017 by judgment dated 13.03.2019 is found perverse and the same is to be set aside.

In the result, **this Criminal Revision is allowed.** The judgment of conviction recorded by the learned Chief Judicial Magistrate, Coimbatore in C.C.No.108 of 2015, dated 20.09.2017 which was confirmed by the learned III Additional District and Sessions Judge, Coimbatore in C.A.No.323 of 2017 by judgment dated 13.03.2019 is set aside.

09.10.2023

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Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order



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1. III Additional District and Sessions Judge,
Coimbatore
2. The Chief Judicial Magistrate,
Coimbatore
3. The Inspector of Police,
Traffic Investigation Department (East) Police Station,
Coimbatore
4. Public Prosecutor
High Court of Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

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