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CrI.R.C.No.823 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.10.2023

Delivered on: 22.12.2023

Coram:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.R.C.No.823 of 2019

S. Sankar : Petitioner/Appellant/Accused

Vs

State rep by
The Inspector of Police,
B5, Thuraimugam Police Station,
Chennai : Respondent/Respondent/Complainant

PRAYER: Civil Revision Case is filed under Section 397 and 401(1) of Cr.P.C to set aside the judgment dated 03.07.2019 made in CrI.A.No.2 of 2017 on the file of learned IV Additional Sessions Court, Chennai in C.C.No.2405 of 2011 on the file of learned XVI Metropolitan Magistrate, Georgetown, Chennai.

For Petitioner	..	Mr.M.R.Jothimanian
For Respondents	..	S.Vinoth Kumar Government Advocate (CrI.side)



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ORDER

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2. The learned Counsel for the Revision Petitioner submitted that the conviction of the Revision Petitioner by the learned XVI Metropolitan Magistrate, Chennai is perverse not on proper appreciation of entire materials available before the trial Court. The confirmation of the judgment of conviction by the learned IV Additional Sessions Judge, Chennai is also perverse. Therefore, the learned Counsel for the Revision Petitioner seeks to set aside the judgment of conviction.

3. The learned Counsel for the Revision Petitioner submitted that the Revision Petitioner was driving the Trailer lorry vehicle bearing Registration No. TN 04 AJ 9329 inside the Harbour, at the early hours. The Trailer lorry was driven in the reverse, based on the signals given by the Deceased who



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was standing behind the vehicle. In the din early hour and in the high loud noise inside the Harbour at that time, the Revision Petitioner could not have heard the signal given by the Deceased. Therefore the FIR was registered in Crime No.23 of 2011 for offences under Section 297 and 337 of IPC only. The Deceased died after treatment in very many Hospital, frequently shifted from one Hospital to another from Stanley Hospital to ESI Hospital and from there to MIOT Hospital. The Doctors in their evidence had clearly stated that there was no visible injuries on the body of the Deceased.

4. While so, the conviction by the learned XVI Metropolitan Magistrate, Chennai and the dismissal of the Appeal by the learned IV Additional Sessions Judge, Chennai are against Materials available before the trial Court. Through the evidence of the witnesses both the Courts failed to appreciate the entire materials available in the evidence.

5. In view of the materials available before the trial Court that the Accused drove the Trailer lorry in the reverse based on the signal given by the Deceased who was the Supervisor in Slot-7 giving instructions to shift the



vehicle to Slot-6.

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6. Considering the noise level inside the Harbour at the earlier hours between 3 a.m. to 4 a.m and considering the fact that the FIR in Crime No. 23 of 2011 was registered for offences under Sections 279 and 337 of IPC. Considering the fact that in the evidence of the Doctor P.W-9 who had been stated that there were no external injuries on the body of the deceased.

7. The Learned Government Advocate (Crl.side) vehemently objected to the line of arguments of the learned Counsel for the Revision Petitioner stating that the Two Courts had confirmed the conviction. The Revision Court cannot re-appreciate the evidence. There is no merit in this Revision Petition. The trial Court and the Appellate Court had arrived at the same conclusion. Therefore this Revision has no merit and has to be dismissed.

Point for Consideration:

Whether the judgment of conviction recorded by the learned XVI Metropolitan Magistrate, Georgetown, Chennai, in C.C.No.2405 of 2011 dated 09.12.2016 and confirmed in Appeal by the learned IV



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***Additional Sessions Judge, Chennai, in Crl.A.No.2 of
2017 dated 03.07.2019, are perverse?***

8. Heard Thiru.M.R.Jothimanian, learned Counsel for the Revision Petitioner and Thiru.S.Vinoth Kumar, learned Government Advocate (Crl.Side) for the State.

9. Perused the judgment of the learned XVI Metropolitan Magistrate, George Town, Chennai, in C.C.No.2405 of 2011 and the judgment of the learned IV Additional Sessions Judge, Chennai, in Crl.A.No.2 of 2017.

10. On perusal of the Accident Register which is the earlier document in this case, it is found that the Injured was conscious and he had only suffered abrasions 12 X 5 cm in left ankle and foot over the left ankle, 3 X 1 cm over the right ankle and severe pain over the hip Joint. When that be the case, the Injured having been shifted from one hospital to another hospital and had died due to Cardio Respiratory Arrest, Multi Organ Dysfunction syndrome, Acute Respiratory distress syndrome and Pelvic fracture is found to be due to the Multiple Organ Failure which cannot be considered due to the



injury caused by the Revision Petitioner. The injury suffered by the Deceased was Pelvic Fracture and Ankle which cannot be considered as endangering the life.

11. As rightly pointed out, the patient was shifted from one hospital to another hospital resulted in mis-management of the injured for which the Petitioner cannot be held liable for the offence under Section 304(A). The original injury was 337 simple injury. As per the report available before the learned XVI Metropolitan Magistrate, Chennai through the Death Summary from the MIOT Hospital, the cause of death was Cardio Respiratory Arrest, Multi Organ Dysfunction syndrome, Acute Respiratory Distress syndrome. The frequent shifting of the patient from one hospital to another resulted in the Medical complications resulting in the death of the injured man for which the Accused cannot be held responsible as per the evidence before this Court.

12. As per the FIR, the Deceased was the Supervisor of Slot-7 was giving signal to the Driver of the vehicle to move from Slot-7 to Slot-6. In the din of the loud noise in the Harbour premises, the signal of the injured person



was not available to the Petitioner. Injured also had been negligent in standing on the path of the vehicle coming on the reverse which had resulted in the ordinary course of death of a person. If it had been properly treated on time, as per the evidence available before the trial Court, the injured was shifted from Stanley Hospital to ESI Hospital and subsequently MIOT Hospital by then he had suffered multiple organ failure for which the Driver of the vehicle Trailer Lorry bearing Registration No. TN 04 AJ 9329 cannot be held liable. Therefore the Prosecution had not proved the case beyond reasonable doubt. The benefit of doubt in the Prosecution case has to be extended to the Accused.

13. The point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The judgment of conviction recorded by the learned XVI Metropolitan Magistrate, Georgetown, Chennai, and confirmed in Appeal by the learned IV Additional Sessions Judge, Chennai, are found perverse and the same is to be set aside.



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In the result, the **Criminal Revision Case is allowed**. The judgment of conviction recorded by the learned XVI Metropolitan Magistrate, Georgetown, Chennai, in C.C.No.2405 of 2011 and confirmed in Appeal by the learned IV Additional Sessions Judge, Chennai, in Crl.A.No.2 of 2017 are set aside as perverse.

22.12.2023

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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TO:

1. The XVI Metropolitan Magistrate,
Chennai.
2. The IV Additional Sessions Court,
Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.

shl/cda

Judgment in
CrI.A.No.823 of 2019

22.12.2023