



Crl.R.C.No.1199 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1199 of 2017

L.Bakkiyaraj
S/o.Lakshmikanthan

... Petitioner/Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Traffic Investigation,
H-1 Washermanpet Police,
Chennai - 600 021.
Cr.No.65/H-3/2016

... Respondent/Respondent/
Complainant

Prayer : Criminal Revision filed u/s.397 and 401 of the Code of Criminal Procedure against the judgment dated 18.07.2017 made in C.A.No.41 of 2017 on the file of XIX Additional Sessions Judge, City Civil Court, Chennai, confirming the judgment dated 14.02.2017 made in C.C.No.1864 of 2016 on the file of III Metropolitan Magistrate, George Town, Chennai.



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For Petitioner : Mr.K.Kannan

For Respondent : Mr.L.Baskaran
Government Advocate [Crl.side]

ORDER

This criminal revision case has been filed against the judgment and order passed by the XIX Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.41 of 2017, dated 18.07.2017, dismissing the appeal and confirming the judgment and order passed by the III Metropolitan Magistrate, George Town, Chennai, in C.C.No.1864 of 2016, dated 14.02.2017, convicting the petitioner for offence u/s.304-A IPC and sentencing him to undergo one year rigorous imprisonment and to pay fine of Rs.5,000/-, in default, one month simple imprisonment. The petitioner was also convicted for offence u/s.184 of the Motor Vehicles Act and was sentenced to pay fine of Rs.1,000/-, in default, to undergo two weeks simple imprisonment.

2. The case of the prosecution is that on 23.03.2016 at about 04.30



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p.m., the petitioner was driving a Metropolitan Transport Corporation [MTC] bus from south to north at TH Road, Washermenpet and near Annai Mahal, the bus is said to have dashed a two-wheeler, which was coming from north to south in the same road. It is alleged that this accident took place since the petitioner drove the bus in a rash and negligent manner. The deceased Sivaraj, who was driving the two-wheeler was thrown out of the two-wheeler and he sustained head injuries and he was rushed to the Government Stanley Hospital and the deceased succumbed to the injuries at about 06.20 p.m. on 29.03.2016.

3. PW-1, who is said to be working at a marketing agency in Tondiarpet, was travelling in the same road and the deceased Sivaraj was also his co-worker. He saw the deceased Sivaraj thrown out of the two-wheeler and sustaining head injuries. Immediately, all those, who were present in the scene of crime rushed and made arrangements to send the deceased Sivaraj in an auto rickshaw to the Government Stanley Hospital, Chennai. PW-1 gave the complaint [Ex.P1] to the Sub-Inspector of Police,



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H1 Washermenpet Police Station on 23.03.2016 at about 17.30 hours. Based on the complaint, the First Information Report [Ex.P10] was registered in Crime No.65/H-3/2016 for offences u/s.338 IPC and Section 184 of the Motor Vehicles Act.

4. The injured Sivaraj was given treatment by PW-10, doctor, at the Government Stanley Hospital. The Accident Register [Ex.P9] was marked through PW-10 and it is seen from the Accident Register that unknown persons had brought the deceased Sivaraj to the hospital and it is noted that the deceased was unconscious and there was blood oozing from his ear. The reason for the deceased sustaining such injuries was also noted in the Accident Register.

5. The investigation was taken up by PW-11 and he went to the scene of occurrence and prepared the observation mahazar marked as Ex.P2 and the rough sketch marked as Ex.P11 in the presence of witnesses. He also recorded the statements of witnesses u/s.161(3) Cr.P.C. He also visited the



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hospital and collected the Accident Register from the doctor. He arrested the petitioner on 24.03.2016 and let him out on station bail. Thereafter, PW-11 handed over the damaged two-wheeler to the Motor Vehicle Inspector and collected the report, which was marked as Ex.P4. The Motor Vehicle Inspector also gave an opinion to the effect that the accident was not due to any mechanical defects in the vehicle.

6. The investigation was thereafter taken over by PW-12. He received the information from the Government Stanley Hospital on 29.03.2016 that the deceased succumbed to the injuries. Hence, PW-12 prepared an alteration report and altered the offence by including Section 304-A IPC. The alteration report was marked as Ex.P14. PW-12 thereafter went to the hospital and conducted inquest over the body of the deceased and the inquest report was marked as Ex.P15. Thereafter, PW-12 took steps to send the body of the deceased for postmortem.

7. The postmortem was conducted by PW-9 and the postmortem



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certificate was marked as Ex.P8. The following injuries were recorded in the postmortem certificate:

- '1. Surgically sutured wound, measuring 8 cm, present over right parieto-temporal-region.
 2. Multiple abrasions, size varying from 5x3 cm to 2x1 cm, present over both lower limb and upper limb, and they covered with reddish brown scar.
- Scalp:- On reflection diffuse extravasation over occipital region.
- Skull:- Fissure fracture measuring 8 cm, present over occipital region, and involving bones of middle cranial.
- Brain:- Diffuse subdural and subarachnoid hemorrhage present over both cerebral hemisphere and base of brain.
- Heart:- Intact and congested
- Lungs:- Intact and congested
- Liver, Spleen, Intact and congested
- Kidneys:-
- Genitalia:- Intact.'

A final opinion was given by PW-9, doctor, that the death is due to head injuries sustained by the deceased. After the alteration report was submitted, the bus that was involved in the accident was also subjected to inspection by the Motor Vehicle Inspector. PW-6 gave his report, which was marked as Ex.P3. It is seen from the report that the accident was not due any



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mechanical defects of the vehicle and there was a slight impression on the front right side bumper of the bus.

8. PW-12 completed the investigation and filed the final report before the trial Court.

9. The trial Court served the copies to the petitioner u/s.207 Cr.P.C. and the trial Court framed charges against the petitioner for offence u/s.304-A IPC and Section 184 of the Motor Vehicles Act. When the charges were put to the petitioner, he denied the same.

10. The prosecution examined PWs.1 to 12 and marked Exs.P1 to P15. When the incriminating evidence was put to the petitioner when he was questioned u/s.313(1)(b) Cr.P.C., he denied the same as false.

11. The trial Court, on considering the facts and circumstances of the



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case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and accordingly, the petitioner was convicted and sentenced in the manner stated supra.

12. The petitioner aggrieved by the judgment and order passed by the trial Court filed an appeal and the same was dealt with by the XIX Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.41 of 2017. The appellate Court re-appreciated the evidence and after considering the findings of the trial Court came to a conclusion that there was no ground to interfere with the judgment of the trial Court. Accordingly, the appeal was dismissed by judgment dated 18.07.2017 and the judgment of the trial Court was confirmed. Aggrieved by the same, this Criminal Revision Case has been filed.

13. Heard Mr.K.Kannan, learned counsel for petitioner and



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Mr.L.Baskaran, learned Government Advocate [Crl.side], appearing for respondent/State.

14. The main ground that was urged by learned counsel for petitioner is that both the Courts below had placed reliance upon the evidence of PW-1, PW-3 and PW-4 and none of these witnesses could have seen the accident and they were all made up witnesses to sustain the case of prosecution. Learned counsel submitted that the version that was given by all these three witnesses was unnatural and unbelievable and the findings that were rendered by the trial Court and as confirmed by the appellate Court are vitiated. Learned counsel also brought to the notice of this Court the reports of the Motor Vehicle Inspector marked as Ex.P3 and Ex.P4 and submitted that it clearly reveals the fact that the accident had taken place only due to the rash and negligent driving of the two-wheeler by the deceased.

15. *Per contra*, learned Government Advocate [Crl.side] submitted



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that both the Courts below have properly appreciated the evidence of the eye witnesses coupled with the reports of the Motor Vehicle Inspector and have come to the conclusion that the accident had taken place only due to the rash and negligent driving of the bus driver. Learned Government Advocate [Crl.side] submits that this finding was rendered on proper appreciation of evidence and there is absolutely no ground to interfere with the same in this criminal revision case.

16. This Court has carefully considered the submissions made on either side and perused the materials available on record.

17. This Court must remind itself that while exercising the criminal revision jurisdiction, the scope of interference is very limited and a criminal revision case cannot be dealt with like a second appeal. Hence, re-appreciation of evidence is completely prohibited and this Court must only

see if the findings of both the Courts below are perverse due to improper



appreciation of evidence.

18. Both the Courts below have taken into consideration the evidence of PW-1, PW-3 and PW-4 and have carefully dealt with the same. All these three witnesses were the eye witnesses to the accident. On carefully going through the evidence of these three witnesses, this Court does not find any reason to discredit their evidence. Admittedly, the two-wheeler had hit the right hand side bumper of the bus and the deceased was thrown out from the two-wheeler and he sustained head injuries. Just because the bus did not sustain heavy damage, it cannot be concluded that the bus was not driven in a rash and negligent manner. The evidence of three eye witnesses coupled with the observation mahazar and rough sketch shows that the bus had moved to the extreme right in the road as a result of which the two-wheeler that was driven by the deceased had hit the right hand side bumper of the bus. The damage that was sustained by the two-wheeler is quite apparent from the report of the Motor Vehicle Inspector, which was marked as Ex.P4. Further, when the incriminating evidence was put to the petitioner when he



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was questioned u/s.313 Cr.P.C., he had merely denied the same as false and did not come forward to explain as to how the accident had actually taken place. The petitioner was admittedly the bus driver and he was the right person to explain about the incident and for the reasons best known to the petitioner, he has not come up with his version. This is yet another fact, which goes against the petitioner in this case.

19. In the considered view of this Court, the findings that were rendered by both the Courts below cannot be held to be perverse and such findings were rendered on proper appreciation of evidence. Just because there is an alternative possibility in appreciating the evidence, that does not in any way entitle this Court to interfere with the findings of both the Courts below. Considering the limited jurisdiction exercised by this Court in this revision, there is absolutely no scope to interfere with the findings of both the Courts below. In view of the same, the

conviction of the petitioner for offence u/s.304-A IPC and Section 184 of



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Motor Vehicles Act, is hereby sustained.

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20. The trial Court had sentenced the petitioner to undergo one year rigorous imprisonment and to pay fine of Rs.5,000/-, in default, to undergo one month simple imprisonment for offence u/s.304-A IPC. It is brought to the notice of this Court that the petitioner underwent the sentence for some time during the pendency of the appeal and thereafter, he was enlarged on bail. Considering the facts and circumstances of the case, this Court is inclined to modify the sentence that was imposed by the trial Court, which was further confirmed by the appellate Court.

21. The sentence imposed by the trial Court for offence u/s.304-A IPC is modified and the imprisonment is confined to the period already undergone by the petitioner. However, the fine amount is enhanced and the petitioner is directed to pay a total fine amount of Rs.2,50,000/- [Rupees Two Lakhs and Fifty Thousand only], in default, to undergo 6 months simple imprisonment. The fine amount shall be paid as compensation to the



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wife of the deceased u/s.357(3) Cr.P.C. The fine amount shall be deposited by the petitioner on or before 25.04.2023. On failure to deposit the same, the petitioner has to undergo the default sentence.

22. Insofar the conviction and sentence for offence u/s.184 of the Motor Vehicles Act is concerned, the same is confirmed.

23. In the result, this Criminal Revision Case is partly allowed to the extent indicated herein above.

Post this case under the caption 'FOR REPORTING COMPLIANCE' on 26.04.2023.

28.03.2023

Index : Yes/No
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
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To

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- 1.The XIX Additional Sessions Judge,
City Civil Court, Chennai.
- 2.The III Metropolitan Magistrate,
George Town, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

N. ANAND VENKATESH, J



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