



Crl RC .No.1451 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

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K.Balakrishnan

..Appellant /Sole Accused

Vs.

State Rep. by
The Inspector of Police,
Paramathy police Station,
Paramathy Velur,
Namakkal District

..Respondent /
Complainant

Prayer: Criminal Revision case is filed under Section 397 (1) r/w 401 of Cr.PC to call for the entire records relating to the judgement passed in CA No.3 of 2017 dated 31.10.2017 by the Sessions (Fast Track Mahila) Judge, Namakkal confirming the judgement in part passed in CC No.60 of 2004 dated 07.12.2016 passed by the Judicial Magistrate, Paramathy and set-aside the same.

For Petitioner : Mr.D.Baskar



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For Respondent : Mr.C.Baskaran
Government Advocate
[Criminal Side]

ORDER

This Criminal Revision case has been filed against the judgement and order passed by the Court of Sessions (Fast Track Mahila) Judge, Namakkal, in Crl.A.No.3 of 2017, dated 31.10.2017, dismissing the appeal and confirming the judgement and order passed by the Judicial Magistrate, Paramathy, in C.C.No.60 of 2004 dated 07.12.2016, convicting and sentencing the petitioner in the following manner :-

<i>Sl.No.</i>	<i>Offence for which convicted</i>	<i>Sentence</i>
<i>1.</i>	<i>Section 279 IPC</i>	<i>To pay a fine of Rs.500/- and in default to undergo one month simple imprisonment.</i>
<i>2.</i>	<i>Section 337 IPC</i>	<i>To pay a fine of Rs.700/- for each</i>



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Sl.No.	Offence for which convicted	Sentence
	<i>(4 counts)</i>	<i>count and in default to undergo one month simple imprisonment.</i>
3.	<i>Section 338 of IPC (3 Counts)</i>	To pay a fine of Rs.800/- for each count and in default to undergo one month simple imprisonment.
4.	<i>Section 304(A) of IPC</i>	One year simple imprisonment and to pay a fine of Rs.1000/- and in default to undergo one month simple imprisonment.

2. The case of the prosecution is that the petitioner was a driver working in the Tamil Nadu State Transport Corporation. On 10.11.2003, at about 9.15 p.m., the petitioner was driving the vehicle from Namakkal to Vellore in NH7 main road. The further case of the prosecution is that the vehicle was driven in a rash and negligent manner and as a result, the bus dashed against the tractor which was parked on the left side of the road. In



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consequence to this incident, simple injuries were caused to four persons, grievous injuries were caused to three persons and one person named Chinnappan died.

3. PW1 who was travelling in the bus as a passenger, gave the complaint (Ex.P1). Based on the same, an FIR came to be registered (Ex.P12) by PW15 in Cr.No.417 of 2003 dated 10.11.2003 for offence under Section 279, 337, 338 and 304(A) of IPC.

4. PW14, who took up the investigation, went to the scene of occurrence and prepared the observation mahazar marked as (Ex.P2) and the rough sketch marked as (Ex.P13). PW14 also arrested the petitioner on 11.11.2003 and the petitioner was granted bail in the police station after getting sureties. Thereafter, PW14 proceeded to Government Hospital, Namakkal and conducted the inquest on the body of the deceased Chinnappan



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and prepared the inquest report marked as Ex.P14. Thereafter, the body was sent for post mortem.

5. The Post mortem was conducted by PW11. On examining the body of the deceased, the following injuries were recorded in the post mortem certificate marked as Ex.P4 :-

A body of a male lies on its back arms closed by its sides. Blood oozing through both the nostrils and mouth. Contusion over the right side of the back. Injury right ear lobe right clavicle fracture, fracture ribs right 1,2,3. Left side 2,3,4 Heart is empty. Hyoid bone is intact. Injury to both lungs. 400 ml of blood present in the right side and 500ml of blood present in the left side thoracic cavity. Stomach is empty. All the internal organs are hale fracture spheroid bone



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(left) is present.

6. The Post Mortem Doctor gave an opinion to the effect that the deceased would appear to have died due to shock and haemorrhage to the vital organs.

7. The injured persons were sent for treatment to PW12 and he gave treatment / First aid to the injured persons and the wound certificate that was prepared by PW12 was marked as (Ex.P5 to P11). It was found that totally four persons had sustained simple injuries and three persons had sustained grievous injuries.

8. PW14, thereafter sent the bus that was driven by the petitioner for examination by the Motor Vehicle Inspector and the Motor Vehicle Inspector was examined as PW10 in this case and his report was marked as Ex.P3. The Motor Vehicle Inspector has stated



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in the report that the accident was not caused due to Engine failure or defect in the vehicle.

9. PW14 collected all the reports and completed the formalities and ultimately, filed the final report before the Judicial Magistrate, Paramathy.

10. The learned Judicial Magistrate served the copies on the appellant under Section 207 of Cr.PC. The Trial Court framed the charges against the petitioner for offence under Section 279 (4 counts), Section 338 of IPC (3 counts) and Section 304 A of IPC. When these charges were put to the petitioner, he denied the same.

11. The prosecution marked PW1 to PW14 and marked Ex.P1 to Ex.P14. The incriminating evidence that was gathered during the



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course of trial was put to the petitioner, he denied the same as false.

12. The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligence on the part of the petitioner and that the prosecution had proved the case beyond reasonable doubts and accordingly, the petitioner was convicted and sentenced by the Trial Court in the manner stated supra.

13. Aggrieved by the judgement and order passed by Trial Court, the petitioner filed an appeal and the same was heard in Crl.A No.3 of 2017 by the Appellate Court and this appeal came to be dismissed by judgement dated 31.10.2017 confirming the judgement and order of the Trial Court. Aggrieved by the same, this



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Criminal Revision case has been filed before this Court.

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14. Heard Mr.D.Baskar, learned counsel for the Appellant and Mr.L.Baskaran, learned Government Advocate (Crl. Side) for respondents.

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

16. PW1, who was the complainant in this case was sitting in the bus driven by the petitioner right behind the driver seat. He has deposed in his evidence that the petitioner had driven the bus in a rash and negligent manner and he had hit a tractor that was parked on the left side of the road. This culminated in four persons sustaining simple injuries and three persons sustaining grievous injuries and one person died in the accident.



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17. The Court below also took into consideration the evidence of PW2, which was in line with the evidence of PW1 and had corroborated the evidence of PW1.

18. PW3 was sitting in the Tractor at the relevant point of time and he ultimately died due to injuries sustained by him in the accident. He has also stated about the manner in which the driver had driven the bus and had dashed the tractor.

19. Both the Courts below also took into consideration the evidence of the Motor Vehicle Inspector, who has given a report to the effect that there was no defect in the vehicle and the accident was not caused due to any defect in the bus. Both the Courts below also took into consideration the nature of injuries sustained and found that four persons had sustained simple injuries and three



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persons had sustained grievous injuries.

20. On appreciation of the entire evidence available on record, the Trial Court proceeded to convict and sentence the petitioner in the manner stated supra and it was also confirmed by the Appellate Court.

21. In the considered view of this Court, the findings of the Courts below do not suffer from any perversity and such findings have been rendered on proper appreciation of the evidence available on record. Hence, there is no ground to interfere with the same and the conviction imposed by the Trial Court and confirmed by the Appellate Court, is further confirmed in this Criminal Revision case.

22. Insofar as the sentence is concerned, when the matter



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was taken up for hearing on 07.03.2023, this Court passed the following order :-

The learned counsel for the petitioner produced the medical report of the petitioner and it is seen that the petitioner has tested positive for HIV. This medical report is of the year 2021. The respondent police is directed to verify this report and ascertain the health status of the petitioner and report before this Court.

*2.Post this case under the caption adjourned cases on **16.03.2023**.*

23. The learned Government Advocate appearing on behalf of the state had taken instructions pursuant to the above order and the certificate issued by the ART Centre, Government Hospital, Omalur, was also produced before this Court. It is found that the petitioner is in fact suffering from HIV and he is being treated by the Government Hospital, Omalur.

24. In view of the above development, this Court is inclined



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to interfere with the sentence imposed by the Trial Court and as confirmed by the Appellate Court. Insofar as the sentence imposed for offence under Section 279, 337 and 338 of IPC is concerned, the same is reasonable and does not require the interference of this Court. That apart, the fine amount that was imposed for these offences were also deposited by the petitioner even at the time of granting bail. The only other offence for which the sentence has to be decided is the offence under Section 304(A) of IPC. For the said offence, the sentence of imprisonment or fine or both can be imposed by the Court. Hence, the sentence of imprisonment is not mandatory. Taking into account the medical condition of the petitioner which requires a life long treatment, this Court is inclined to modify the sentence for offence under Section 304 A of IPC and accordingly, the petitioner is sentenced to pay a fine of Rs.1,50,000/-. This fine amount can be paid by way of compensation to the family of the deceased under Section 357 (1)



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of Cr.PC. The fine amount shall be deposited by the petitioner on or before 20.04.2023. In case of default in depositing the fine amount, the petitioner shall undergo six months simple imprisonment.

25. This Criminal Revision case is partly allowed to the extent indicated herein above. No costs.

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Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order

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N. ANAND VENKATESH, J.

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To

1. The Sessions (Fast Track Mahila) Judge, Namakkal
2. The Judicial Magistrate, Paramathy

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