



Crl.R.C.No.126 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.126 of 2020

Viji@Vijayakumar

... Petitioner

Vs.

State by,
The Inspector of Police,
Thiruvarur Taluk Police Station,
Thiruvarur Distret.

... Respondent

Prayer:

Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., against the judgment dated 13.03.2019 made in C.A.No.27 of 2018 on the file of the Principal Sessions Judge, Thiruvarur, confirming the judgment dated 25.05.2018 made in C.C.No.256 of 2016 on the file of the Judicial Magistrate, Thiruvarur.

For Petitioner: Mr.S.K.Kannadasan

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



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ORDER

WEB COPY This Criminal Revision Petition has been filed against the judgment dated 13.03.2019 passed in C.A.No.27 of 2018 on the file of the District and Sessions Judge, Thiruvarur, confirming the judgment dated 25.05.2018 passed in C.C.No.256 of 2016 on the file of the Judicial Magistrate, Thiruvarur.

2. Respondent police registered the case against the petitioner in Crime No.402 of 2013 for the offence under Sections 279, 337, 338, 304(A) IPC. After investigation, laid a charge sheet before learned Judicial Magistrate, Thiruvarur. The learned Magistrate has taken charge sheet on file in C.C.No.256 of 2016. After trial, the learned Magistrate found the accused guilty for the offence under Section 279 IPC, convicted and sentenced him to pay fine of Rs.300/-, in default to undergo seven days simple imprisonment. Further, the accused was convicted for the offence under Section 337 IPC and sentenced to pay fine of Rs.300/-, in default to undergo seven days simple imprisonment. He was also convicted for the offence under Section 338 IPC and sentenced to pay fine of Rs.500/- in



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default to undergo seven days simple imprisonment. The petitioner was also convicted for the offence under Section 304(A) IPC and sentenced to undergo two years simple imprisonment and to pay fine of Rs.1,000/- in default to undergo one month simple imprisonment and also to pay fine of Rs.500/- for the offence under Section 3 read with 181 of Motor Vehicles Act, in default to undergo seven days simple imprisonment. Aggrieved over the said judgment of conviction and sentence, accused has preferred an appeal before the learned District and Sessions Judge, Thiruvarur and the same was taken on file in Crl.A.No.27 of 2018. The learned District and Sessions Judge, after hearing the arguments advanced on either side, dismissed the appeal, by confirming the conviction and sentence passed by the trial court. Aggrieved over the same, the accused has filed the present Criminal Revision Petition.

3. Specific case of the prosecution is that on 20.07.2013 at about 9.30 am, P.W.1 along with her husband and child travelled from Melasooranur to Thiruvarur, by two wheeler bearing Registration No.CT 100 KA 03ET 6212. The husband of P.W.1 was riding the two wheeler. P.W.1 was the



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pillion rider. P.W.1 was keeping her child on her lap. While they were proceeding from Mayiladuthurai to Thiruvarur, at Senthamangalam toll gate, the offender vehicle/ tractor with water tank proceeded from opposite side in a rash and negligent manner and dashed against the two wheeler which was riding by the husband of P.W.1. Due to the accident, P.W.1 sustained injury and her daughter sustained grievous injury and her husband died. The respondent police registered the case and investigated the matter and laid a charge sheet.

4. In order to substantiate the case of the prosecution, on the side of the prosecution, totally eight witnesses were examined as P.W.1 to P.W.8 and 13 documents were marked as Ex.P1 to Ex.P13. No material object was exhibited. On conclusion of trial and hearing the arguments advanced on either side, trial court convicted and sentenced the revision petitioner as stated above.



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5. Learned Counsel for the Revision Petitioner would submit that the prosecution has not proved its case beyond reasonable doubt. There is no eye witness in this case. At the place of occurrence, since there was a curve road and also speed brake, he cannot be driven the tractor with speed. The accident had not taken place due to rash and negligent driving of the revision petitioner. Further, he has submitted that P.W.1 in her evidence has stated that the child was sitting in front of the two wheeler. When the deceased tried to balance the child, the accident has taken place. There are contradictions between the evidence of the prosecution witnesses and the same are material contradictions which would go to the root of the case of the prosecution. All the witnesses examined by the prosecution are relative witnesses and they are interested witnesses. There is no independent witness in the case. In order to get more compensation, they have foisted a false case. The prosecution failed to prove its case beyond reasonable doubt. Unfortunately, both the Courts below failed to appreciate and re-appreciate the evidence and erroneously convicted the revision petitioner. Therefore, judgment of both the Courts below are liable to be set aside.



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6. Learned Government Advocate (Criminal Side) appearing for the

respondent police submitted that on the date of occurrence, while the deceased, his wife and child were traveling in two wheeler bearing Registration No.CT 100 KA 03ET 6212 from Mayiladuthurai to Thiruvarur., at the place of occurrence, the petitioner has driven the tractor with speed and dashed against the vehicle in which the defacto complainant and her husband and child were travelling. Due to the accident, all of them sustained injury. Subsequently, they admitted in the hospital and took treatment. P.W.1 is the injured witness, who is the defacto complainant sets the law into motion has clearly stated the manner of the accident. P.W.1 has also identified the petitioner who is the person has driven the tractor in rash and negligent manner and dashed against the two wheeler. One of the eye witness was examined as P.W.2 has also clearly deposed that on 20.07.2013 at about 9.30 am, while P.W.1 along with his husband and child were traveling in two wheeler bearing Registration No.CT 100 KA 03ET 6212 from Mayiladuthurai to Thiruvarur, the tractor came with speed and dashed against the two wheeler. Due to the accident, deceased, wife and child were sustained injury and they also got hold of the revision petitioner.



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The deceased died on the spot itself. P.W.3 is also one of the eye witness in this case who has also spoken about the accident. P.W.4 has deposed that at the time of accident, he took the injured to the hospital. The doctor one who has given treatment to the injured was examined as P.W.5 has spoken about the injury sustained by the child. Combined reading of evidence of P.Ws.1 to 5, the prosecution has proved its case beyond reasonable doubt. The trial court rightly appreciated the evidence and convicted the accused and the appellate court also rightly re-appreciated the entire evidence. Hence, there is no merit in the Criminal Revision Petition and the same is liable to be dismissed.

7. Heard the learned counsel for the petitioner and the Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

8. At the time of accident, the revision petitioner has driven the tractor bearing registration number “nil” in a rash and negligent manner and dashed against the two wheeler, due to which, accident had occurred.



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The accident is not denied. It is not in dispute that at the time of accident, the deceased and P.W.1 and their child were travelling in two wheeler bearing Registration No.CT 100 KA 03ET 6212. In order to substantiate the case of the prosecution, on their side, totally eight witnesses were examined. Out of eight witnesses, P.W.1 is the wife of the deceased, who is also the pillion rider of the said two wheeler at the time of accident. She also sustained injury and she has clearly spoken about the manner in which the accident had occurred. P.Ws.1 to 3 are eye witnesses to the accident and they have also spoken about the incident. Their evidence is corroborated by the evidence of P.W.1. The Doctor who has given treatment to the injured, was also examined as P.W.5 has also stated about the injury sustained by the de-facto complainant's child.

9. Therefore, the trial Court appreciated the evidence and found the revision petitioner/accused guilty of the offences as stated above. The appellate Court also, while re-appreciating the evidence, found the revision petitioner/accused guilty and dismissed the appeal, by confirming the conviction and sentence passed by the trial court. In this case, injured



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witnesses and other eye witnesses were examined and they have also clearly narrated the incident. The evidence of the independent witnesses also corroborates with the evidence of the injured witnesses. Further, medical evidence is also supported the case of the prosecution.

10. 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 reappraise the entire materials. On a reading of the materials, both the Courts below passed the concurrent judgment based on evidence of the injured witness and 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 two years simple imprisonment to one year simple imprisonment for the offence under Section 304-A IPC.



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11. With the abovesaid modification, the Criminal Revision Case is dismissed. Since the revision petitioner on bail, the trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set off under Section 428 Cr.P.C.,

02.01.2023

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Index:yes/No

Internet:yes/No

To

1. The Principal Sessions Judge,
Principal Sessions Court,
Thiruvarur.
2. The Judicial Magistrate,
Judicial Magistrate Court,
Thiruvarur.
3. The Inspector of Police,
Thiruvarur Taluk Police Station,
Thiruvarur District.
4. The Public Prosecutor,
High Court, Madras.

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P.VELMURUGAN, J.

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