



Crl. R.C.(MD)No.207 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.07.2023

Delivered On : 31.07.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.207 of 2019

and

Crl.M.P.(MD)No.3137 of 2019

Palpandi

.. Petitioner

Vs.

The State rep. by
The Inspector of Police,
Ettaiyapuram Police Station,
Thoothukudi District.
(Crime No.176 of 2010).

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records pertaining to the order passed in Crl.A.No.133 of 2017 dated 02.08.2018 on the file of the II Additional District and Sessions Court, Thoothukudi confirming the judgment and conviction passed in C.C.No.369 of 2010 dated 20.10.2017 on the file of the Judicial Magistrate No.II, Kovilpatti and set aside the same.

For Petitioners
For Respondent

: Mr.A.Jayaramachadran
: Mrs.M.Aasha
Government Advocate (Crl. Side)



Crl. R.C.(MD)No.207 of 2019

ORDER

WEB COPY

This petition has been filed by the petitioners to set aside the judgment and conviction passed by the learned II Additional District and Sessions Judge, Thoothukudi in Crl.A.No.133 of 2017 on 02.08.2018, in confirming the judgment and conviction passed by the learned Judicial Magistrate No.II, Kovilpatti in C.C.No. 369 of 2010 on 20.10.2017.

2.The petitioner herein is accused in C.C.No.369 of 2010 and he was convicted and sentenced to undergo one year simple imprisonment for the offence under Section 304A of IPC. Aggrieved by the said judgment and conviction, the petitioner herein preferred an appeal in Crl.A.No.133 of 2017 before the District Sessions Court, Thoothukudi and the same was made over to the II Additional District and Sessions Court, Thoothukudi and the learned II Additional District and Sessions Judge also confirmed the judgment and conviction passed in C.C.No.369 of 2010, by dismissing the appeal by a judgment dated 02.08.2018.

3.According to the prosecution case, on 23.09.2010 at about 07.00 p.m., when the deceased Mapillai samy was proceeding from south to north in Thoothukudi – Etayapuram main road, East Earl Bazaar, at that time, Tata Sumo car bearing registration No.TN-69-Q-0288 came in a rash and negligent manner and



Crl. R.C.(MD)No.207 of 2019

dashed against the deceased Mapillai samy and thereafter, he was taken to Government Hospital, Kovilpatti. After the accident, the defacto complainant P.W.1 had given a complaint before the Ettaiyapuram Police Station. The said Police registered FIR in Ex.P3 in Crime No.176 of 2010 under Sections 279 and 337 of IPC. P.W.9 Veyilmayil Raja investigated the case and went to the place of occurrence and prepared observation mahazer and rough sketch and thereafter examined the witnesses and thereafter, investigated the case and in the meantime, on 27.09.2010, the injured victim who was admitted in the Government Hospital, Kovilpatti died and hence, Sections were altered from Sections 279 and 337 of IPC to Section 304A of IPC. Thereafter, P.W.9 Veilmayilraja has sent the case files to the Inspector of Police for further investigation. P.W.12 Natarajan had taken the case for further investigation and examined the witnesses and filed final report as against the accused before the learned Judicial Magistrate No.II, Kovilpatti, for the offence under Section 304A of IPC. The learned Magistrate No.II, Kovilpatti had taken cognizance for the offence under Section 304A of IPC and furnished copies under Section 207 of Cr.P.C. Thereafter, the learned Magistrate has framed charges under Section 304A of IPC and read over and explained about the charges and the accused denied the charges and posted the case for trial.



Crl. R.C.(MD)No.207 of 2019

4.The prosecution had examined P.W.1 to P.W.14 and marked Exs.P.1 to P.8 and on the side of the accused, no one was examined and no document was marked. After examination of prosecution witnesses, the accused were examined under Section 313(1)(b) of Cr.P.C., with regard to incriminating circumstances found in the prosecution evidences. The accused denied the evidences.

5.Upon perusing the oral and documentary evidences, the trial Court found the petitioner guilty for the offence punishable under Section 304A of IPC and sentenced him to undergo one year simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.133 of 2017 on the file of the learned II Additional District and Sessions Judge, Thoothukudi and the Appellate Court also dismissed the same, by a judgment dated 02.08.2018 and confirmed the conviction and sentence imposed by the trial Court.

6.Aggrieved by the said judgment, the petitioner has filed the present revision case on the following grounds:

The order passed by the Courts below is contrary to law and weight of evidence and probability of the case. Both the Courts below have failed to appreciate the infirmities and vital contradictions in the evidences adduced on the side of the prosecution. Both the Courts below have erred in non consideration of the material



Crl. R.C.(MD)No.207 of 2019

fact that P.W.1, P.W.2 & P.W.3 who are alleged to have witnessed the occurrence have categorically admitted in cross examination that they did not witness the occurrence and the deceased was crossing the road from west to east at the time of occurrence. Both the Courts below have failed to consider the fact that P.W.1, P.W.3, P.W.4 and P.W.9 are close relatives of the deceased and the prosecution has failed to adduce independent witnesses inspite of presence of public at the time of accident. Both the Courts below have failed to take into account the unexplained delay of four days in dispatching the FIR by the respondent to the trial Court. Both the Courts below have miserably failed to see the vital contradiction between the evidences of P.W.1 and P.W.2 with regard to the author of Ex.P1 the complaint.

7.The learned counsel appearing for the petitioner argued that in this case, the lower Court failed to appreciate the evidence of P.W.1 to P.W.4. According to the prosecution, P.W.1 to P.W.3 are eye witnesses but during cross examination, they admitted that after hearing noise, they rushed to the place of occurrence and thereby, these could not be eye witnesses. Only based on the evidence of eye witnesses, the trial Court has convicted the accused and further, the appellate Court also failed to consider the same. There are major discrepancies with the prosecution witnesses in respect of the scene of occurrence. The prosecution failed to prove the rash and negligent driving of the accused. In fact the deceased while crossing the road without



8. The learned Additional Public Prosecutor appearing for the respondent contend that P.W.1 to P.W.3 are eye witnesses and they categorically deposed in the manner of the occurrence and rash and negligent driving of the accused. The accused also voluntarily surrendered before the Police and the Police also examined the accused. More over there is no dispute regarding the identification of the accused and on the date of occurrence, this accused only drove the vehicle. The vehicle was also examined and he categorically deposed about that on the date of occurrence, this accused had driven the vehicle. Therefore, the trial Court analyzing the evidences correctly convicted the accused and the appellate Court on analyzing the facts confirmed the judgment and conviction of the trial Court and there is no any scope to interfere with the judgment and conviction passed by the trial Court and confirmed by the appellate Court. Hence, this petition is liable to be dismissed.



Crl. R.C.(MD)No.207 of 2019

WEB COPY

9. Upon perusing the documents and evidences adduced on both sides and upon perusing the judgments of lower Courts, the points for determination in this petition is whether the judgment of the learned II Additional District and Sessions Judge, Thoothukudi in Crl.A.No.133 of 2017 on 02.08.2018, in confirming the conviction and sentence imposed by the learned Judicial Magistrate No.II, Kovilpatti, in C.C.No.369 of 2010 on 20.10.2017 is sustainable according to law and facts.

10. The prosecution case is that on 23.09.2010 at about 07.00 p.m., when the deceased Mapillai samy was proceeding from south to north in Thoothukudi – Etayapuram main road, East Earl Bazaar, at that time, Tata Sumo car bearing registration No.TN-69-Q-0288 came in a rash and negligent manner and dashed against the deceased Mapillai samy and thereafter, he died and hence, the petitioner was charged for the offence under Section 304A of IPC.

11. According to the prosecution, P.W.1 to P.W.4 and P.W.9 are the eye witnesses. The trial Court as well as the appellate Court relied upon the evidence of the eye witnesses and came to the conclusion that the prosecution evidences are cogent and the eye witnesses categorically deposed about the manner of the accident



Crl. R.C.(MD)No.207 of 2019

and the rash and negligent driving of the accused.

WEB COPY

12.The defacto complainant, P.W.1 during chief examination, deposed that on 23.09.2010 at about 07.00 p.m., when he was standing near East Earl auto stand, the said Velmayilraja and Muniyasamy were also standing there and at the time, the deceased Mappillaisamy was proceeding towards south to north on the left side of the road, at the time a car bearing registration No.TN-69-Q-0288 came in a rash and negligent manner and without applying horn dashed against the deceased Mappillaisamy. One Palpandi drove the vehicle and the vehicle was flee away. The same P.W.1 in his cross examination, stated that the deceased was working as Watchman in Jeening Factory and at about 06.30 p.m., he used to go to his job and he has to cross the road for going to Jeening Factory. While he was crossing the road at about 07.00 p.m., the occurrence was happened. Further he admitted that after hearing the noise only, he saw the occurrence at that time, the deceased Mappillaisamy was fell down in the middle of the road. Therefore, there are major discrepancies in the evidence of P.W. 1. In the chief examination, he stated that the deceased was proceeding on the left side of the road at that time the vehicle came in the rash and negligent manner and in the cross examination, he stated that while the deceased was crossing the road, the accident was happened. After hearing noise only, he saw that the deceased fell down in the middle of the road and hence, reasonable



Crl. R.C.(MD)No.207 of 2019

doubt would rise as to whether P.W.1 really witnessed the occurrence.

WEB COPY

13. Another eye witness is P.W.2, he also in his chief examination stated that on 23.09.2010, when he along with P.W.1 and one Mayilsamy and Muniyasamy were standing on the road, the deceased Mappillaisamy was proceeding on the left side of the road from south to north, the Tata Sumo Car from south to north came in a rash and negligent manner and dashed against the deceased. Thereafter, the deceased was taken to hospital through auto. The same P.W.2 in his cross examination, stated that the deceased was working as Watchman in Jeening Factory. It is situated at eastern side of the road and on the date of occurrence, he crossed the road to go to Jeening Factory and further, he stated that after hearing the noise, he rushed to the spot and saw the deceased. P.W.2 in the chief examination stated that the deceased was proceeding from south to north on the left side of the road, the car came in a rash and negligent manner from south to north and dashed against the deceased and the same was changed by him in the cross examination. In the cross examination, he stated that the deceased was crossed road for going to his job to Factory. Further he stated that after hearing the noise only he came to the place of occurrence. Further P.W.2 has not witnessed about the time of the occurrence. Therefore, reasonable doubt would arise as to whether P.W.2 saw the occurrence as alleged in his chief examination.



Crl. R.C.(MD)No.207 of 2019

WEB COPY

14. Yet another witness is P.W.3 in his evidence stated that on 23.09.2010 at about 07.00 p.m, When P.W.3 along with the defacto complainant and Muthukumar were talking at that time, the deceased Mappillaisamy was proceeding on the road from south to north at that time a car bearing registration No.TN-69-Q-0288 came in a rash and negligent manner and dashed against the deceased Mappillaisamy. P.W.3 along with Muthukumar taken the injured Mappillaisamy to the Government Hospital. The same P.W.3 in his cross examination, stated that at the time of occurrence, the deceased crossed the road and after hearing noise only, he rushed to the place of occurrence and he found that the deceased was fell down on the middle of the road. Therefore, P.W.3 also in his chief examination, stated that the deceased was proceeding towards south to north on the left side of the road at that time, the vehicle came in the rash and negligent but in the cross examination, the deceased while crossing road for going to job, the occurrence was happened and further he admitted that after hearing the noise only he came to the place of occurrence. Hence, reasonable doubt to would arise as to whether P.W.3 has witnessed the occurrence or not.

15. Yet another witness P.W.4 also in his chief examination stated that on 23.09.2010 at about 11.00 p.m, when he was standing in bus stand, a car bearing



Crl. R.C.(MD)No.207 of 2019

registration No.TN-69-Q-0288 was proceeding from south to north at that time, hit the deceased Mappillaisamy on the left side of the road. Thereafter the vehicle was flee away and they informed to the police about the vehicle number. According to the evidence of P.W.4, he also witnessed the occurrence and thereafter taken the deceased to the Government Hospital, Kovilpatti. The same P.W.4 in his cross examination stated that the accident took place in the bus stop and after hearing the noise, only he saw the accident. Therefore, the reasonable doubt would arise as to whether P.W.4 was present in the place of occurrence and witnessed the occurrence.

16.Yet another witness is P.W.9 and he also in his chief examination stated that on 23.09.2010 at about 07.00 p.m., when he was standing, the deceased Mappillaisamy was proceeding from left side of the road from south to north, a car bearing registration No.TN-69-Q-0288 came in a rash and negligent manner from south to north dashed against the petitioner on the left side of the road. But the same P.W.9 in his cross examination deposed that the deceased Mappillaisamy while crossing the road, this occurrence was happened and also he admitted that at the time of occurrence, there is no barrier in the road and he also stated that after hearing noise only, he saw the occurrence. PW.9 is none other than son of the deceased. He himself admitted that after hearing the noise only, he saw the occurrence. Therefore, reasonable doubt would arise about the prosecution case as to whether the



Crl. R.C.(MD)No.207 of 2019

occurrence was happened as alleged by the prosecution.

WEB COPY

17. In this case, there is no dispute regarding the death of the deceased and cause of death and identification of the accused and accident also not denied. The main question is whether the said accident was happened due to rash or negligent driving of the accused. The alleged eye witnesses of the prosecution evidence are not cogent and their evidence are filled with doubts and thereby, the charges against the accused for the offences under Section 304A of IPC has not been proved by the prosecution beyond reasonable doubts. Though the other witnesses and official witnesses who conducted investigation and conducted post mortem and other formalities are cogent, the main eye witnesses evidences are filled with doubts and thereby, it is unsafe to convict the accused with the available evidences. But the trial Court failed to analysis the evidences of prosecution witnesses and the trial Court has only considered the chief examination of the witnesses and failed to note the cross examination of the witnesses. The appellate Court also failed to consider the cross examination of the eye witnesses and only relied on the chief examination of the eye witnesses. Therefore, the judgment and conviction passed by the trial Court and also confirmed by the appellate Court are as unsustainable and liable to be set aside.



Crl. R.C.(MD)No.207 of 2019

18.In the result, the Criminal Revision Petition is allowed and the judgment and the conviction passed as against the petitioner in C.C.No.369 of 2010 dated 20.10.2017 by the learned Judicial Magistrate No.II, Kovilpatti confirmed in Crl.A.No.133 of 2017 dated 02.08.2018, on the file of the learned II Additional District and Sessions Judge, Thoothukudi are set aside and the petitioner is acquitted from the charge under Section 304A of IPC and he be set at liberty subject to other cases if any. The bail bond if any executed by the petitioner shall stand cancelled. Consequently, connected miscellaneous petition is closed.

31.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn

To

- 1.The II Additional District and Sessions Judge, Thoothukudi.
- 2.The Judicial Magistrate No.II, Kovilpatti.
- 3.The Inspector of Police,
Ettaiyapuram Police Station,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl. R.C.(MD)No.207 of 2019

P.DHANABAL, J.

Mrn

Crl. R.C.(MD)No.207 of 2019

31.07.2023