



Crl.R.C(MD)No.114 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.114 of 2019

S.Nagaraj

... Revision Petitioner/
Appellant/Accused

Vs.

The State through,
The Inspector of Police,
Dindigul Town West Police Station,
Dindigul.

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside the order in Crl.A.No. 45 of 2017, dated 09.11.2018 on the file of the learned Additional District cum Sessions Judge, Dindigul, confirming the order passed in C.C.No.4 of 2012, dated 01.03.2017, on the file of the learned Judicial Magistrate No.I, Dindigul.

For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl. Side)



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ORDER

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This revision has been filed to set aside the Judgment made in Crl.A.No.45 of 2017, dated 09.11.2018, on the file of the learned Additional District cum Sessions Judge, Dindigul, confirming the conviction and sentence passed in C.C.No.4 of 2012, dated 01.03.2017, on the file of the learned Judicial Magistrate No.I, Dindigul.

2.The case of the prosecution is that on 24.10.2011 at about 07.00 p.m., at Dindigul to Ramanathapuram Main Road backside of Muniappan Temple, the petitioner had driven his Hero Honda Splendor bearing Registration No.TN-67-W-6843 in a rash and negligent manner and hit the deceased aged about four years, who was walking in the same direction along with his parents. Therefore, he sustained grievous injuries and died. Hence, the complaint.

3.On the complaint, the respondent registered the F.I.R in Crime No.46 of 2011 for the offence under Section 304(A) of I.P.C. After completion of the investigation, the respondent filed a



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final report and the same has been taken cognizance by the trial Court in C.C.No.4 of 2012 on the file of the learned Judicial Magistrate No.I, Dindigul.

4.In order to prove the charges to home, the prosecution had examined P.W.1 to P.W.9 and marked Exs.P.1 to P.7 and on the side of the accused, no one was examined and no documents were marked.

5.On perusal of both the oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 304(A) of I.P.C and sentenced him to undergo six months Rigorous Imprisonment and also to pay a fine of Rs.5000/- and in default, shall undergo two months Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.45 of 2017, dated 09.11.2018, on the file of the learned Additional District cum Sessions Judge, Dindigul and the Appellate Court dismissed the appeal confirming the conviction and sentence imposed by the trial Court. Hence, the present Revision.



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6.The learned counsel appearing for the petitioner would submit that the prosecution failed to prove its case beyond any doubt. Even according to the case of the prosecution when the petitioner drove his vehicle from South to North behind the deceased, while he was walking along with his parents in the same direction that too, in the middle of the road, the petitioner hit the deceased. He mainly relied upon the rough sketch, which was marked as Ex.P.5, in which, the scene of crime is in the middle of the road. He further submitted that P.W.1 and P.W.2 are the parents of the deceased and they were walking from South to North on the right-hand side, that too in the middle of the road. Normally, the pedestrians have to walk on the left-hand side of the road. Therefore, only because of the negligence of the deceased boy and his parents, namely P.W.1 and P.W.2, the occurrence had taken place. Therefore, the accident was not occurred due to the rash and negligent driving of the petitioner. The parents of the deceased were examined as P.W.1 and P.W.2. They deposed that the petitioner had driven his motorcycle on their backside and hit the deceased.



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7.The learned counsel appearing for the petitioner further submitted that P.W.3 was also one of the eyewitnesses and deposed that he was also driving the Auto in the same direction behind the motorcycle and the petitioner had driven the motorcycle in a rash and negligent manner and hit the deceased. Immediately, he was taken to the Hospital in Auto and there he was declared dead. Though the rough sketch shows there are so many houses situated at the scene of crime on both sides, the prosecution failed to examine one of the persons, who is residing there. That apart, the F.I.R was registered on the date of occurrence, namely on 24.10.2011, whereas it was sent to the concerned Court namely, the learned Judicial Magistrate No.I, Dindigul only on 28.10.2011. The delay in sending the F.I.R was not explained by the prosecution. That apart, the motorcycle was subjected for Motor Vehicle Inspection only on 01.11.2011. Further, as per the report, no damage was caused to the vehicle. It shows that only because of the negligence on the part of the deceased, the accident had occurred and as such, prayed for acquittal of the petitioner.



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8.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W. 1 to P.W.3 were eyewitnesses to the occurrence and they had categorically deposed that only because of the rash and negligent driving of the petitioner, the accident had occurred and due to which, the deceased sustained grievous injuries. Due to the grievous injuries, the deceased died and he was only four years at the time of occurrence. The Motor Vehicle Inspection Report was marked through the Investigating Officer as Ex.P.7 and it revealed that the accident was not happened due to any mechanical defect. Therefore, the prosecution proved its case beyond any doubt and both the Courts below rightly convicted the petitioner for the offence punishable under Section 304(A) of I.P.C and the same does not warrant any interference by this Court.

9.Heard the learned counsel appearing on either side and perused the materials available on record.



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10. According to the case of the prosecution on 24.10.2011 at about 07.00 p.m., when the deceased along with his parents, namely P.W.1 and P.W.2 were walking on the right-hand side of the road from South to North on Dindigul – Ramanathapuram main road near the backside of the Muniappan Temple, the petitioner drove his motorcycle in a rash and negligent manner and hit the deceased. On perusal of the rough sketch, which was marked as Ex.P.5, revealed that the accident occurred in the middle of the road. The deceased along with P.W.1 and P.W.2 were walking on the right-hand side of the road that too in the middle of the road. Though they deposed as eyewitnesses to the occurrence, admittedly, the petitioner drove his motorcycle behind their back and hit the deceased. Therefore, they might not have seen the petitioner, who allegedly drove his motorcycle in a rash and negligent manner. However, P.W.3 deposed that the petitioner after overtaking his Auto had driven his motorcycle in a rash and negligent manner and hit the deceased. He also belonged to the same place and he is very well known to P.W.1 and P.W.2. The rough sketch also revealed that on both sides of the road, near the place of the accident, there are houses. However, the prosecution failed to examine any independent witness in order to prove the charge.



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11.Further, on perusal of the Motor Vehicle Inspection Report revealed that the motorcycle which was allegedly involved in the accident did not sustain any damage except the scratch on the left side vicar scratch. If at all the vehicle fell down on the deceased, it would have got damaged only on the front side. Further, the vehicle was subjected for vehicle inspection only on 01.11.2011, whereas, the accident was taken place on 24.10.2011. That apart, the F.I.R was registered on 24.10.2011, whereas it was sent to the concerned Court only on 28.10.2011. There is absolutely no explanation by the prosecution for the delay in subjecting the vehicle for Motor Vehicle Inspection and the delay in sending it to the Court. Therefore, the prosecution failed to prove its case beyond any doubt and the benefit of the doubt goes in favour of the accused and the conviction and sentence imposed on the petitioner cannot be sustained and the same is liable to be set aside.

12.Accordingly, the Criminal Revision Case is allowed and the Judgment made in Crl.A.No.45 of 2017, dated 09.11.2018, on the file of the learned Additional District cum Sessions Judge, Dindigul, confirming the conviction and sentence passed in C.C.No.4



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of 2012, dated 01.03.2017, on the file of the learned Judicial Magistrate No.I, Dindigul, is set aside. The petitioner/accused is acquitted. Bail bond if any executed by the petitioner/accused shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioner/accused forthwith.

20.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

- 1.The Additional District cum Sessions Judge,
Dindigul.
- 2.The Judicial Magistrate No.I,
Dindigul.
- 3.The Inspector of Police,
Dindigul Town West Police Station,
Dindigul.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.114 of 2019

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