



Crl.R.C.(MD)No.180 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.180 of 2019

and

Crl.M.P.(MD)No.2743 of 2019

Senthil

... Petitioner

Vs.

The Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the learned Additional District and Sessions Judge, Srivilliputhur in Crl.A.No.2 of 2012 by the judgment dated 31.01.2019 confirmed by the learned Judicial Magistrate No.II, Srivilliputhur in C.C.No.30 of 2011 by the judgment dated 22.12.2011 and set aside the judgments of the Courts below and acquit the petitioner.

For Petitioner : Mr.P.T.Rameshraj

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



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CrI.R.C.(MD)No.180 of 2019

ORDER

This Criminal Revision Case has been filed to set aside the judgment passed by the learned Additional District and Sessions Judge, Srivilliputhur in CrI.A.No.2 of 2012 dated 31.01.2019 by confirming the order passed by the learned Judicial Magistrate No.II, Srivilliputhur in C.C.No.30 of 2011 dated 22.12.2011.

2.The case of the prosecution is that on 31.05.2011, at about 09.00 pm., when the deceased and P.W.1 came from Nathampatti Chathiram auto stand at Rajapalayam-Madurai Highway, on the left hand side of the road, the accused came in a lorry from the back side of the deceased, in a rash and negligent manner and dashed against them. Therefore, the deceased died on the spot and the defacto complainant sustained injuries. Thereafter, both were taken to the hospital and lodged complaint.

3.On the complaint, the respondent registered FIR in Cr.No.72 of 2011 for the offences under Sections 279, 337, 304(A) IPC. After completion of investigation, the respondent police filed final report and



Crl.R.C.(MD)No.180 of 2019

the same has been taken cognizance by the trial Court. On the side of the prosecution, they had examined P.W.1 to P.W.11 and marked Ex.P.1 to Ex.P.9. On the side of the accused, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Sections 279, 337, 304(A) IPC. He was sentenced to undergo one month simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo one week simple imprisonment for the offence punishable under Section 279 IPC and to undergo one month simple imprisonment and to pay a fine of Rs.500/- in default to undergo one week simple imprisonment for the offence punishable under Section 337 IPC and to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment. Aggrieved over, the petitioner preferred an appeal and the same was dismissed by confirming the order passed by the trial Court. Hence, the petitioner filed the present revision.

4.The learned counsel appearing for the petitioner would submit that the occurrence took place on 31.05.2011 and on the same day,



complaint was lodged and FIR was also registered. However, FIR was reached the learned Magistrate only on 02.06.2011 and there was delay of two days. There was two complaints. Even according to P.W.1, in the first complaint, lorry dashed against them and due to which, he sustained grievous injuries and another person died. In the said complaint, P.W.1 did not identified the driver of the lorry, whereas, in FIR, they fixed the petitioner herein as driver of the lorry and his vehicle was offending vehicle. However, the petitioner was shown arrest only on 02.06.2011 and his lorry was subjected for motor vehicle inspection only on 02.06.2011. Therefore, the prosecution failed to prove that who drove the lorry.

5.The learned counsel for the petitioner would further submit that no independent witness was examined by the prosecution. One of the injured was examined as P.W.1 and he was under the influence of alcohol and as such, while they were crossing the road, they were hit by the lorry. Hence, the accident was not happened due to the rash and negligent driving of the petitioner and it was happened only because of the negligence on the part of the deceased and P.W.1. Therefore, the



Crl.R.C.(MD)No.180 of 2019

prosecution failed to prove its case beyond any doubt. The conviction and sentence imposed by both the Court below cannot be sustained.

6.The learned Government Advocate(Crl.side) appearing for the respondent would submit that in order to prove the charges, the prosecution examined P.W.1 to P.W.11 and marked Ex.P.1 to Ex.P.9. The injured person was examined as P.W.1 and he categorically deposed that while he was walking along with the deceased from Nathampatti Chathiram auto stand at Rajapalayam-Madurai Highway, on the left hand side of the road, a lorry, which was driven by the petitioner in a rash and negligent manner and also without any horn, dashed against them. Therefore, the deceased sustained injuries and died on the spot. P.W.1 also sustained grievous injuries. The offending vehicle was subjected for motor vehicle inspection and the Motor Vehicle Inspector was examined as P.W.5. He categorically deposed that the accident was not happened due to any mechanical default. In fact, the lorry also got damaged on its front side. Therefore, the prosecution categorically proved its case beyond any doubt and as such, both the Court below rightly convicted the petitioner and it does not warrant any interference by this Court.



CrI.R.C.(MD)No.180 of 2019

WEB COPY 7. Heard both sides and perused the materials available in the records.

8. According to the case of the prosecution, on 31.05.2011, at about 09.00 pm., when the deceased and P.W.1 walking on the left hand side of the road in Rajapalayam-Madurai Road, to proceed to their house, after stopping the auto in the auto stand, on the same direction, the petitioner had driven his lorry in a rash and negligent manner and dashed against them. Due to the same, the deceased died on the spot and P.W.1 sustained grievous injuries. Thereafter, they were taken to the hospital. On the very same day itself FIR was registered. FIR does not revealed the name of the vehicle's driver, which was involved in the accident, whereas, P.W.1 categorically deposed that only after the information given by the respondent, he came to understand that the petitioner herein only drove the said lorry.

9. According to the according to the case of the prosecution, after two days, ie., on 02.06.2011, the petitioner voluntarily surrendered



before the respondent along with lorry for committing accident on 31.05.2011. However, FIR was registered with the name of the petitioner and registration number of the lorry. It is also evident from the motor vehicles inspection report dated 02.06.2011 that the lorry was subjected for inspection only on 02.06.2011. If at all, the lorry was found on the date of accident, i.e., on 31.05.2011, the respondent would have subjected the lorry for inspection on the very next day itself. Therefore, the prosecution failed to prove its case beyond any doubt. The Doctor, who examined P.W.1, was examined as P.W.8 and he deposed that P.W.1 and the deceased were under the influence of alcohol. Even according to P.W.1, he along with the deceased came in auto and parked their auto and thereafter, they proceeded to their house by walking. Therefore, the accident was not happened only due to the rash and negligent driving of the petitioner and also due to the negligence on the part of the deceased and P.W.1.

10.It is also seen from the motor vehicle inspection report that there was bent in the front left hand side corner of the lorry. It seems that after the deceased was hit by the lorry, he was thrown out and the rear



CrI.R.C.(MD)No.180 of 2019

wheel of the lorry ran over him. Therefore, he sustained grievous injuries and died. Hence, the accident was not happened due to the rash and negligent driving of the petitioner and the prosecution failed to prove its case beyond any doubts.

11.In view of the above, the conviction and sentence imposed by both the Courts below is hereby set aside. Accordingly, this criminal revision case is allowed. Consequently, connected miscellaneous petition is closed.

23.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To



CrI.R.C.(MD)No.180 of 2019

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



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CrI.R.C.(MD)No.180 of 2019

G.K.ILANTHIRAIYAN,J.

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CrI.R.C.(MD)No.180 of 2019

23.06.2023