



Crl.R.C(MD)No.21 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.21 of 2019

Ravi ... Petitioner/Appellant/Accused

Vs.

State through,
The Inspector of Police,
Nesamony Nagar Police Station,
Traffic Investigation Wing,
Nagercoil,
Kanyakumari District.

In Crime No.53 of 2005 ... Respondent/
Respondent/Complainant

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, Kanyakumari at Nagercoil in Crl.A.No.136 of 2006, dated 26.07.2018 confirmed the conviction and modifying the sentence of imprisonment imposed on the petitioner by the learned Judicial Magistrate No.III, Nagercoil in C.C.No.111 of 2005, dated 14.06.2012.

For Petitioner : Mr.P.T.Ramesh Raja

For Respondent : Mr.K.Sanjai Gandhi
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.136 of 2006, dated 26.07.2018 on the file of the learned Additional District and Sessions Judge, Kanyakumari at Nagercoil, confirming the conviction and modifying the sentence of imprisonment imposed on the petitioner made in C.C.No.111 of 2005, dated 14.06.2012, on the file of the learned Judicial Magistrate No.III, Nagercoil.

2.The case of the prosecution is that on 30.04.2005 at about 08.00 pm., in Vettornimadam – Chungankdai Road when the deceased along with his son/P.W.1 proceeded towards Parvathipuram, the petitioner drove the Mahindra Van bearing Registration No.TN-74-Z-5506 in a rash and negligent manner and dashed against the deceased. Therefore, he sustained injuries on the head, right foot, right cheek, and left knee and there were injuries all over the body and succumbed to the injuries. Hence, the complaint.

3.On the complaint, the respondent registered the F.I.R in Crime No.53 of 2005 for the offence under Section 304A of I.P.C. as against the petitioner. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance by



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the trial Court in C.C.No.111 of 2005 on the file of the learned Judicial Magistrate No.III, Nagercoil.

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4.On the side of the prosecution, they had examined P.W.1 to P.W.11 and marked Ex.P.1 to Ex.P.7 and on the side of the accused, no one was examined and no documents were produced.

5.On perusal of 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 three months Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.136 of 2006 on the file of the learned Additional District and Sessions Judge, Kanyakumari at Nagercoil and the Appellate Court partly allowed the appeal confirming the conviction and modified the sentence from three months to one month Rigorous Imprisonment and fine amount from Rs.1,000/- to Rs.5,000/-. In other aspects, the Judgment passed by the trial Court stands confirmed. 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. P.W.1 and P.W.2 were examined as eyewitnesses to the occurrence. They could not be eyewitnesses to the occurrence, since they are close relatives of the deceased. According to P.W.3, who is the son-in-law of the deceased, also walked along with him, after getting down from the bus and they proceeded to see the daughter of the deceased. The petitioner in the same direction drove his van in a rash and negligent manner and dashed against the deceased. He mainly relied upon the rough sketch produced by the prosecution. It shows that when the deceased walking on the thar road, the petitioner had driven the van and dashed against him adjacent to the thar road and there is a mud road for pedestrians. Therefore, the accident had taken place at the time of crossing the road without noticing the van driven by the petitioner herein. Therefore, the accident had occurred only because of the rash and negligent act of the deceased and not due to the rash and negligent driving of the petitioner herein. There was no tyre mark in order to prove that the van was stopped suddenly after hitting the deceased. That apart, the deceased person was aged about 76 years at the time of the accident and he had no eyesight. It was also admitted by P.W.3, who is none other than the son-in-law of the deceased. P.W.2 is none other than his neighbour. Therefore, all are set-up witnesses and as such, the prosecution failed to prove its case beyond any doubt. Even then, both the Courts below mechanically convicted the petitioner.



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7.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that in order to bring the charge under Section 304(A) of I.P.C., the prosecution had examined P.W. 1 to P.W.11 and marked Ex.P.1 to Ex.P.7. P.W.1 to P.W.3 are eyewitnesses to the occurrence and they categorically deposed that only because of the rash and negligent driving of the petitioner, he had dashed against the deceased, due to which, he sustained injuries and died. That apart, both the Courts below concurrently held and confirmed the conviction and as such, it does not warrant any interference by this Court.

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

9.Admittedly, when P.W.1 and his father, namely the deceased, got down from the bus and proceeded towards Paravthipuram to his daughter's house on the road, the petitioner drove his van and dashed against the deceased. According to the petitioner, they were crossing the road without noticing the vehicle which was driven by the petitioner and as such, the petitioner dashed against the deceased. Further, P.W.2 and P.W.3 are also relatives to P.W.1. Though the place of occurrence far away, by co-incidence P.W.2 and P.W.3 were happened to be the eyewitnesses to the occurrence. However, they corroborate the



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evidence of P.W.1. On perusal of the rough sketch which was marked as Ex.P.6 revealed that the deceased and P.W.1 were walking on the left side of the road, which is a thar road and also it has pedestrian road. Therefore, the deceased without walking on the Pedestrian along with P.W. 1, walked on the main thar road, namely Nagercoil to Thiruvananthapuram road. Therefore, it cannot be completely ruled out only because of the rash and negligent driving of the petitioner, the accident happened.

10.In ***Peter Anthony Durairaj Vs. The Inspector of Police [Crl.R.C(MD)No.372 of 2012, dated 14.03.2013]***, this Court held as follows:-

"9.The requirement of Section 304A of IPC is that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words, there must be proof that the rash or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused. The act causing death must be the Causa causans and it is not enough that it may have been the Causa Sine qua non, meaning that the death must be the direct result of the rash and negligent act of the accused and that act must be the proximate and affluent cause without the intervention of another's negligence and it must be the causa causans.



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10.It is no doubt true that the doctrine of contributory negligence well known as a defence in the law of torts, has no place in criminal law, though it may minimize damages in a civil case. The fact that the victim has also contributed a little by his negligence is immaterial where there is ample proof that the accused brought about the accident by his own negligent and rash driving. In criminal juris prudence, if the victim has also contributed to the causation of the accident by contributory negligence and in the absence of any material to show that only on account of rash and negligent driving of the accused driver that the accident occurred, it would not be permissible under such circumstances to hold the accused driver guilty of committing an offence Section 304A of IPC, since contributory negligence of the victim affords as intervening circumstances, i.e. without the intervening circumstance the accident could not have happened."

11.By applying the said principle to the case on hand and the reasons discussed above, this Court is of the opinion that the prosecution miserably failed to prove the case beyond any doubt. Without considering the above and without an appreciation of the evidence in a proper manner, the Courts below convicted the petitioner. Therefore, the impugned Judgment of the conviction and sentence passed by the Courts below are liable to be set aside.



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12. Accordingly, the Criminal Revision Case is allowed and the Judgment made in Crl.A.No.136 of 2006, dated 26.07.2018 on the file of the learned Additional District and Sessions Judge, Kanyakumari at Nagercoil, confirming the conviction and modifying the sentence of imprisonment imposed on the petitioner made in C.C.No.111 of 2005, dated 14.06.2012, on the file of the learned Judicial Magistrate No.III, Nagercoil, are set aside. The petitioner is acquitted. Bail bond if any executed by the petitioner shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioner forthwith.

12.06.2023

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



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To

- 1.The Additional District and Sessions Judge,
Kanyakumari at Nagercoil.
- 2.The Judicial Magistrate No.III,
Nagercoil.
- 3.The Inspector of Police,
Nesamony Nagar Police Station,
Traffic Investigation Wing,
Nagercoil,
Kanyakumari District.
- 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.21 of 2019

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