



Crl. R.C.(MD)No.244 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 22.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.244 of 2019

and

Crl.M.P.(MD)No.3560 of 2019

Sudhakar

.. Petitioner

Vs.

State Represented by
The Inspector of Police,
Panthanallur Police Station,
Thanjavur District.
(Crime No.68 of 2006).

.. Respondent

Prayer : This criminal revision case is filed under Sections 397(1) r/w. 401 of Cr.P.C., to call for the records and set aside the conviction and sentence imposed upon the petitioner herein in Crl.A.No.77 of 2017 on the file of the learned Additional District and Sessions Judge, Kumbakonam, Thanjavur District by judgment dated 25.03.2019 confirming the judgment dated 04.11.2017 in C.C.No. 134 of 2006 on the file of the learned II Additional District Munsif cum Judicial Magistrate No.I, Kumbakonam, Thanjavur District and acquit the petitioner herein of the charges.

For Petitioner	: Mr.K.Veilmuthu
For Respondent	: Mrs.M.Aasha
	Government Advocate (Crl. Side)



Crl. R.C.(MD)No.244 of 2019

ORDER

WEB COPY This petition has been filed by the petitioner to set aside the judgment and conviction passed by the learned Additional District and Sessions Judge, Kumbakonam, Thanjavur District in Crl.A.No.77 of 2017 on 25.03.2019, in confirming the judgment and conviction passed by the learned II Additional District Munsif cum Judicial Magistrate No.I, Kumbakonam, Thanjavur District in C.C.No. 134 of 2006 on 04.11.2017.

2.The petitioner herein is accused in C.C.No.134 of 2006 and he was convicted under Section 304A of IPC and sentenced to undergo two years simple imprisonment. Aggrieved by the said judgment and conviction, the petitioner herein preferred an appeal in Crl.A.No.77 of 2017 before the learned Additional District and Sessions Judge, Kumbakonam, Thanjavur District and the learned Additional District and Sessions Judge also confirmed the judgment and conviction passed in C.C.No.134 of 2006, by dismissing the appeal by a judgment dated 25.03.2019.

3.According to the prosecution case, on 31.03.2006 at about 19.15 hours, in the main road of Kathiramangalam Vellaipillaiyar kovil Street, opposite to house of Ramalingam, when the deceased Balaya was proceeding from west to east by walk, a bus bearing registration No.TN-46-B-2799, which was came in opposite



Crl. R.C.(MD)No.244 of 2019

direction driven by the accused in a rash and negligent manner and dashed against the said Balaya and thereby, he sustained injuries and died on the spot. Thereafter, the petitioner was charged for the offence under Section 304A of IPC. After the occurrence, the complaint Ex.P1 was given by P.W.1 and based on the complaint given by P.W.1, P.W.9 registered FIR, Ex.P2. Thereafter, the case has been investigated by P.W.1 and after investigation, they filed final report as against the petitioner under Section 304A of IPC. Thereafter, the accused was served copies under Section 207 of Cr.P.C. Thereafter, the learned Judicial Magistrate after hearing both sides has framed charge under Section 304A of IPC and read over and explained about the charge and the accused denied the charge.

4.The prosecution had examined P.W.1 to P.W.11 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 to undergo two years simple imprisonment. Aggrieved by the same, the



Crl. R.C.(MD)No.244 of 2019

petitioner preferred an appeal in Crl.A.No.77 of 2017 on the file of the learned Additional District and Sessions Judge, Kumbakonam and the Appellate Court also dismissed the same, by a judgment dated 25.03.2019 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 Courts below failed to appreciate the fact that there is a delay of five days in reaching the FIR to Court. The eye witnesses P.W.1 to P.W.4 deposed that the vehicle was driven in high speed and there is no absolutely legal evidence to connect the petitioner herein with the present Crime. There is no evidence about the rash and negligence driving of the petitioner. In order to consider the offence under Section 304A of IPC, rash and negligent is essential and the prosecution has failed to prove the same but the Courts below have not considered above said aspects. There are major contradictions between prosecution witnesses with the manner of occurrence. As per the prosecution case, the occurrence took place but none of the witnesses have examined on the side of accused. The witnesses were examined by the prosecution and as per the Motor Vehicles Inspector Report, the left rear side of the bus was damaged. The deceased came from service road and hit the vehicle. Thereby, the left rear side of the bus was damaged. The aforesaid aspects have not



Crl. R.C.(MD)No.244 of 2019

been considered by the Courts below. Therefore, the conviction and judgment passed by the trial Court and confirmed by the appellate Court are liable to be set aside by allowing this revision.

7.The learned counsel appearing for the petitioner argued that the prosecution has proved the case beyond reasonable doubt. The evidence of P.W.1 to P.W.4 are contradictory to each other. P.W.1 to P.W.4 are said to be eye witnesses cannot be eye witnesses. The other witnesses also contradictory each other and none of the evidence stated about the rash and negligent driving of the petitioner. To consider the offence under Section 304A of IPC, the rash and negligent driving is essential. But in this case, the prosecution failed to prove the rash and negligent act of the petitioner. The Courts below failed to consider these aspects and wrongly convicted the petitioner. Therefore, the prosecution witnesses are highly doubtful and the offence under Section 304A of IPC was not proved beyond reasonable doubt. Hence, the revision case is liable to be allowed by setting aside the judgment and conviction of the Courts below.

8.The learned Government Advocate appearing for the respondent would contend that the prosecution has examined P.W.1 to P.W.11 and marked Ex.P1 to Ex.P8. The prosecution witness P.W.1 is the complainant as well as eye witness to



Crl. R.C.(MD)No.244 of 2019

the occurrence. P.W.2 to P.W.4 are eye witnesses to the occurrence. P.W.7 is the Motor Vehicle Inspector. P.W.8 registered FIR and P.W.10 Doctor conducted post mortem of the deceased. The witnesses have categorically deposed about the alleged occurrence. The vehicle came in high speed and dashed against the deceased. P.W.10 Doctor deposed that the deceased died due to shock and hemorrhage and due to injuries sustained by him. The Investigating Officer also went to the occurrence and prepared Observation Mahazer and rough sketch and arrested the accused and filed final report. Therefore, as per the evidence of P.W.16 and P.W.17, the occurrence took place in the extreme left side of the road. The prosecution has proved the charges as against the petitioner and the trial Court also after elaborate discussion convicted the accused and the appellate Court also after considering all the aspects, dismissed the appeal by confirming the judgment of the trial Court and the revision case is liable to be dismissed.

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 Additional District and Sessions Judge, Kumbakonam in Crl.A.No.77 of 2017 on 25.03.2019, in confirming the conviction and sentence imposed by the learned II Additional District Munsif cum Judicial Magistrate No.I, Kumbakonam, in C.C.No.134 of 2006 on 04.11.2017 is



Crl. R.C.(MD)No.244 of 2019

sustainable according to law and facts.

WEB COPY

Point:-

10.The prosecution case is that on 31.03.2006 at about 19.15 hours, in the main road of Kathiramangalam Vellaipillaiyar kovil Street, when the deceased was walking on the extreme left side of the road from west to east, bus bearing registration No.TN-46-B-2799 came in an opposite direction in a rash and negligent manner and dashed against the deceased and he died on the spot.

11.In this case, P.W.1 to P.W.11 are eye witnesses. P.W.1 has deposed that on 31.03.2006 at about 07.00 p.m., when her husband was came to his house in the main road, a bus came in high speed and dashed against her husband and he fallen down and he died on the spot and P.W.1 during her cross examination stated that she did not know whether her husband was proceeding towards the left side of the road. Further she admitted that after hearing noise only, she rushed to the spot. In this context, it is stated that in the cross examination, she stated that 'எனது கணவர் சம்பவ சமயத்தில் மேற்கேயிருந்து கிழக்கு நோக்கி போனார். அவர் சாலையில் போது இடதுபக்கமாகப் போனாரா, வலதுபக்கமாக போனாரா என்று நான் பார்க்கவில்லை. நான் என் பெண் தண்ணீர் எடுக்க போயிருந்தது இன்னும் வரவில்லையே என்று எட்டிப்பார்க்கும்போதுதான் இந்த சம்பவம் நடந்தது. நான்



Crl. R.C.(MD)No.244 of 2019

சத்தம் கேட்டு சம்பவதிடத்திற்கு ஓடிச்சென்று பார்த்தபோது என் கணவர் உடம்பில்

காயங்கள் இருந்தது நான்தான் போய்ப்பார்த்தேன்". Therefore, from the evidence of

P.W.1, it reveals that after the occurrence and after hearing noise only, she rushed to the spot and she cannot be eye witness to the occurrence.

12.P.W.2 in her evidence stated that on 31.03.2006 at about 07.00 p.m., her father proceeded from the grocery shop, at that time, a bus came in opposite direction and dashed against her father. There is no whisper about the rash and negligent driving of the driver except the bus came in high speed. P.W.2 in her cross examination stated that more than 15 persons witnessed the occurrence. But the Investigating Officer has not examined any other independent witness. Even according to the P.W.2, there is no rash and negligent driving of the driver.

13.Yet another witness P.W.3 also deposed that on 31.03.2006 at about 07.00 p.m., when he was standing in front of the house, the deceased Balaya was proceeding towards east to west, at that time, a bus also came towards east to west and dashed against the deceased Balaya and he sustained injuries. At that time, the bus came in speedy manner. Though the witness stated about the speed of the bus, he has not stated what was the speed and the evidence of P.W.3 also does not disclose the rash and negligent act of the petitioner.



Crl. R.C.(MD)No.244 of 2019

WEB COPY 14. Yet another eye witness P.W.4 also stated before the trial Court that on 31.03.2006 when he was standing near compound wall, the deceased Balaya was proceeding from grocery shop, at that time, the bus came in a speedy manner and dashed against Balaya and he died on the spot itself.

15. According to the evidence of P.W.2, the deceased came from west to east but according to the evidence of P.W.3, the deceased came from south to north. According to the evidence of P.W.4, the deceased came from west to east. Therefore, there are major contradictions between the prosecution witnesses with regard to scene of occurrence. Therefore, the prosecution has failed to prove the rash and negligent driving of the accused.

16. At this juncture, the learned counsel appearing for the petitioner relied on the judgment of this Court in the case of Selvamani v. State reported in 2022-1-L.W. (Crl.) 126, wherein this Court in para no.13 held as follows:-

“Thus, in this case, in the background of the statement of PW.1 to PW.3 that the Bus was driven fast, the above principles should have been borne in mind, while deciding the culpability. Admittedly, no negligence can be attributed in the instant case. However, the question is whether the driving of the Bus in a high speed amounted to culpable



Crl. R.C.(MD)No.244 of 2019

rashness. In this context, a perusal of Ex.P6/rough sketch, demonstrates that the width of the Thar road was 12 ft., and there was 5 ft., of Mud road on the eastern side of the road. In this context, PW.1 states that :

“நாங்கள் ரோட்டில் இடது பக்கமாக சென்றுக்கொண்டிருந்தோம். அந்த அரசு பஸ் வேகமாக வந்து நாங்கள் சென்ற மோட்டார் சைக்கிள் மீது மோதியது ரோட்டின் இடது பக்கத்தில் ஒதுங்க எங்களுக்கு இடம் இல்லை.”

It appears to be incorrect and as stated above in the Judgment of the Hon-ble Supreme Court of India, the evidence on record does not rule out the possibilities that the victim could have also been a reason for the accident. Further no tyre marks were also noted in the rough sketch. As held by the Hon-ble Supreme Court of India in the aforementioned Judgment of State of Karnataka Vs. Sathish, the phrase “high speed” is a relative term and the prosecution has not brought any other material on record to establish what is meant by high speed. Further the manner of the accident that is the Bike got hit in the Bumper, impacting the number plate and the injuries mentioned in the Post-mortem report, viz., there was a cut on the nose, a lacerated injury up to the eye-brow region and right upper side lip a cut, split and contusion over the left cheek leading to the internal head injury, all cumulatively shows that the speed cannot be projected as a case of culpable rashness and as the evidence on record does not rule out the action of the victim would also be the reason behind the event, the finding of the Trial Court as well as the Lower Appellate Court is by an interpretation of the statement of the witnesses and therefore, this is a fit case for interference by this Court.”



Crl. R.C.(MD)No.244 of 2019

17.The learned counsel appearing for the petitioner relied on the judgment of this Court in the case of C.H.Kesava v. State of Kerala in Crl.Rev.Pet.No.219 of 2012, wherein this Court in para no.20 held as follows:-

“20. In this context, it is relevant to quote a decision of this Court in Thomas M.R. v. State of Kerala [2015 KHC 889] wherein while dealing with Sections 279 and 304A IPC it has been held that in a case of rash and negligent driving, the duty of the prosecution does not end by alleging the rashness or negligence on the part of the driver. It must also be proved that the rashness and negligence was responsible for the accident and the consequent injury or death. It is also held that there is no presumption of negligence under Section 304A IPC from the mere fact that a man is knocked down and killed by a motorist. It is further held that the presumption of law is that a person is innocent unless and until his guilt is proved and simply because an accident occurred which resulted in injury or death to a pedestrian or cycle rider, it cannot be taken for granted that the driver of the vehicle involved in the incident is guilty of the crime. So the principles laid down in the above decision is squarely applicable to the case in hand. Both the courts below by improper appreciation of facts and circumstances and evidence adduced, found the accused guilty and that has caused miscarriage of justice and hence it is liable to be interfered with.

18.On careful reading of the aforesaid judgments, it is clear that mere speed cannot be projected as the case of high speed. In this case, none of the witnesses have stated about the rashness and negligence on the part of the accused.



Crl. R.C.(MD)No.244 of 2019

But they stated that bus came in a speedy manner. Mere evidence that the bus was driven by the driver in a high speed is not sufficient to prove the evidence under Section 304A of IPC.

19.The aforesaid aspect has not been considered by the trial Court. The trial Court discussed about the evidence adduced on the prosecution side and failed to consider that the prosecution have not witnessed about the rash and negligent driving of the accused. The appellate Court failed to consider the absence of evidence with regard to rash and negligent driving of the accused. With the available evidence, it is unsafe to convict the petitioner for the offence under Section 304A of IPC. Therefore, the judgment and conviction passed by the trial Court and also confirmed by the appellate Court are unsustainable and liable to be set aside.

20.In the result, the Criminal Revision Petition is allowed and the judgment and the conviction passed as against the petitioner in C.C.No.134 of 2006 dated 04.11.2017 by the learned II Additional District Munsif cum Judicial Magistrate No.I, Kumbakonam and confirmed in Crl.A.No.77 of 2017 dated 25.03.2019, on the file of the learned Additional District and Sessions Judge, Kumbakonam are set aside. 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



Crl. R.C.(MD)No.244 of 2019

any executed by the petitioner shall stand cancelled. Consequently, connected miscellaneous petition is closed.

22.09.2023

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

To

- 1.The Additional District and Sessions Judge, Kumbakonam, Thanjavur District.
- 2.The II Additional District Munsif cum Judicial Magistrate No.I, Kumbakonam, Thanjavur District.
- 3.The Inspector of Police,
Panthanallur Police Station,
Thanjavur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl. R.C.(MD)No.244 of 2019

P.DHANABAL, J.

Mrn

Crl. R.C.(MD)No.244 of 2019

22.09.2023