



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.R.C.(MD).No.60 of 2019

Devaraj

... Petitioner

Vs.

The State of Tamil Nadu,
Rep. By the Inspector of Police,
Kanyakumari Police Station,
Crime No.756 of 2007,
through the Public Prosecutor

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C to call for the records relating to the order dated 11.06.2018 in Crl. A. No.29 of 2011 on the file of the Additional District and Sessions Judge (Fast Track Court) Kanniyakumari at Nagercoil confirming the order dated 22.02.2011 in C.C.No.6 of 2008 on the file of the Judicial Magistrate No.1, Nagercoil, Kanyakumari District, set aside the same.

For Petitioner

: Mr.R.Anand

For Mr.S.Xavier Rajni

For Respondent

: Mr.Vaikkam Karunanithi

Government Advocate (Crl. Side)

ORDER

This revision has been preferred as against the Judgment passed in Crl. A. No.29 of 2011 on the file of the Additional District and Sessions



Judge (Fast Track Court) Kanniyakumari at Nagercoil, dated 11.06.2018, confirming the conviction and sentence imposed in C.C.No.6 of 2008 on the file of the Judicial Magistrate No.I, Nagercoil, Kanyakumari District, dated 22.02.2011.

2.The case of the prosecution is that on 27.11.2007 at about 10 a.m., from Kottaram – Nagercoil Main Road, the first deceased drove his Maruti Car bearing registration No.TN-74-F-3364 towards Nagercoil along with his mother and his sister. When his car reached Mantharamputhooor, a bus belongs to Tamil Nadu State Transport Corporation bearing registration No.TN-74-N-0441 driven by the petitioner in the opposite direction in a rash and negligent manner and dashed against Maruti car. Thereafter, the car was dragged and pushed down in the water channel. Therefore, three persons who travelled in the car, sustained grievous injury and died by sinking into water channel. On complaint, the respondent police has registered the FIR. After completion of investigation, the same was taken on file on the side of the prosecution in order to prove the charges.

3.The prosecution had examined P.W.1 to P.W.14 and marked Exs.P.1 to P.12 and on the side of the accused, no one was examined and



photographs were marked as Ex.D.1.

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4. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence punishable under Section 304A (3 counts) and sentenced him to undergo one year rigorous imprisonment on each count. Aggrieved by the same, the petitioner preferred an appeal in CrI.A. No.29 of 2011 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari at Nagercoil and the Appellate Court also dismissed the same confirming the order of the trial Court. Hence, the present Revision.

5. The learned counsel for the petitioner would submit that Ex.D1 categorically proved that the bus was driven by the petitioner on extreme left hand side in the place of accident. Whereas the deceased has driven the car in a rash and negligent manner and that too in the turning point without even seeing the bus, which was coming in opposite direction, hit the right hand side of the bus and thereafter, rolled down and fell down in the water channel. Therefore, the driver of the car and also other passengers died. In fact one of the deceased died due to drowning. The Motor Vehicle Inspector also categorically deposed that the right hand side of the bus got damaged, which shows that the bus was driven by the



driver on the left side and the car was driven only in the rash and negligent manner. Therefore, the prosecution failed to prove that the petitioner drove the bus in a rash and negligent manner. No passenger who were travelled in the bus, was not examined by the prosecution to corroborate the evidence of P.W.1, P.W.2 and P.W.3 who were examined as eye witnesses. P.W.1 and P.W.2 are close relatives of the deceased. P.W.3 and P.W.10 who are coming behind the car by bicycle, deposed that when the car was driven by one of the deceased in front of their vehicle, the petitioner drove the bus in a rash and negligent manner and hit the car. Therefore, the car was dragged to water channel and three persons sustained grievous injuries and died. In fact they deposed that the bodies from the car were taken at about 02.15 p.m. Whereas the accident was occurred at about 10.00 a.m. The photographs were produced showing that the right hand side of the bus got damaged and to safeguard the passengers who travelled in the bus, the petitioner suddenly turned the bus in the extreme left side and also to avoid hit of the car. Unfortunately the car had fallen down in the water channel and due to which, three persons died. The Courts below has mechanically convicted the petitioner for the offence under Section 304A IPC.



the car also rolled down and fell into the water channel and drowned. In fact one of the deceased died due to drowning. The Doctor, who conducted autopsy examined as P.W.13 and she deposed that the second deceased died due to drowning.

9.A perusal of the photographs which were marked as Ex.D.1 reveals that the bus was driven by the petitioner on the left hand side of the road. The place of occurrence is turning, in which from the opposite side, the deceased had driven his car. The photographs revealed that the Maruti car hit the right hand side of the front of the bus and rolled down and fell into the water channel.

10.It is seen that if at all the bus was driven by the petitioner in the middle of the road or right hand side of the road, another front side of the bus could got damaged. Except right hand side of the road, there is no other damage to the bus. The Motor Vehicle Inspector categorically deposed that the accident was not occurred due to mechanical defect. The water channel is situated at left hand side of the road. The bus was also driven by the petitioner on the left hand side of the road. Therefore, the accident was not occurred due to rash and negligent driving of the petitioner. Further, admittedly 34 passengers were travelled in the bus.



The prosecution did not even examine any of the passenger in order to prove the charge under Section 304A against the petitioner.

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11. Admittedly P.W.1 and P.W.2 are close relatives of the deceased. According to them, they also travelled along with the car, which was driven by the first deceased by their bike. P.W.3 and P.W.10 were also travelled behind the car in a bicycle. Though they deposed in the Chief Examination that the bus was only driven by the petitioner in the rash and negligent manner and dashed against the car, in the cross examination, they admitted that they were not seen the occurrence and only after falling down in the water channel, they helped to drag the car out of the water channel. Therefore, no independent witness has settled the case of prosecution. P.W.1 and P.W.2 are close relatives of the deceased. Therefore, in order to prove the charges, the prosecution ought to have been examined any passenger who travelled in the bus which was driven by the petitioner to prove that the petitioner had driven his bus in a rash and negligent manner. The occurrence was happened in the morning. Therefore, all the passengers were travelled in a fresh morning and they could have been the best witness to prove the charges. Unfortunately the prosecution did not even record their statement under Section 161 Cr.P.C. Therefore, the maxim of '*res ipsa loquitur*' cannot be



applied in this case, since it is clear from the Motor Vehicle Inspector Investigation report and from the photographs produced by the petitioner.

Even at the first case, there was contra negligence on both the vehicles due to which the accident had taken place. Therefore, the petitioner cannot be convicted for the offence under Section 304A of IPC and he is entitled for acquittal, since the prosecution has failed to prove the case beyond any reasonable doubt.

12. Accordingly, the Criminal Revision Case is allowed and the conviction and sentence imposed by the Courts below is set aside. The petitioner is acquitted from all charges. Bail bonds if any executed, shall stand cancelled. The fine amount if any paid by the petitioner shall be refunded.

20.06.2023

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

- 1.The Additional District and Sessions Judge (Fast Track Court),
Nagercoil.
- 2.The Judicial Magistrate No.I, Nagercoil, Kanyakumari District.
- 3.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.



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G.K.ILANTHIRAIYAN, J.

Mrn

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