



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14 .07.2023

Pronounced on : 31.07.2023

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl.R.C(MD) No.69 of 2019

Ilayaraja

... Petitioner

-Vs-

The Inspector of Police
Naducavery Police Station,
Thanjavur District
Crime No.187 of 2013

... Respondent

PRAYER:- Criminal Revision Petition is filed under section 397 and 401 of Cr.P.C to call for the records pertaining to the impugned order passed by the learned Principal Sessions Judge, Thanjavur dated 07.12.2018 made in C.A.No.56 of 2018 confirming the judgment of conviction and sentence imposed by the learned Judicial Magistrate, Thiruvaiyaru made in C.C. No.64 of 2015 dated 30.05.2018 and allow the above revision.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : Mrs. M.Aasha
Government Advocate(Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the conviction and sentence imposed by the learned Principal Sessions



Judge, Thanjavur dated 07.12.2018 made in C.A.No.56 of 2018, in confirming the conviction and sentence passed by the learned Judicial Magistrate, Thiruvaiyaru made in C.C. No.64 of 2015 dated 30.05.2018.

2. The prosecution case is that on 28.09.2013 at about 7.30 am., the father of the complainant Dharmaraj after purchasing things from the shop when he was standing near Thanjavur-Thiruvaiyaru main road, at that time the accused drove the cement lorry bearing Reg. No. TN 01 H 4636 and while he was overtaking another vehicle dashed against the deceased , thereby he sustained injuries and later died. Thereafter P.W.1 who is the son of the deceased lodged complaint/Ex.P.1 before the respondent police and based on the complaint the Sub Inspector of Police/P.W.9 registered First Information Report/Ex.P.3 in Crime No.187 of 2013 for the offence under Section 304(A) of IPC. Thereafter P.W.9 went to the place of occurrence, prepared rough sketch and observation Mahazhar, examined some of the witnesses and recorded the statement. Thereafter she arrested the accused on 01.10.2013 at about 12.00 pm., and she released the accused on station bail. Thereafter she handed over the case for further investigation to P.W. 10/Inspector of Police. Thereafter P.W.10 took the case for



investigation and examined some of the witnesses and filed final report as against the accused.

3. After filing final report and the same was taken on file in C.C. No.64 of 2015. The trial Court framed charge under Section 304(A) of IPC and read over the charges and the accused denied and claimed to be tried thereby prosecution examined witnesses P.W.1 to P.W.14 and marked documents Ex.P.1 to Ex.P.7 and no material object was marked. On the side of the defence no one was examined and no document was marked.

4. After analyzing the evidence the trial Court had convicted the accused for the offence under section 304 (A) of IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo three month simple imprisonment.

5. Aggrieved by the said judgement and conviction the petitioner/accused preferred an appeal before the learned Principal Sessions Judge, Thanjavur in C.A. No.56 of 2018 and the same was dismissed confirming the judgment and conviction of the trial Court.



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6. Aggrieved by the same, the petitioner has preferred the present revision before this Court on the following grounds:

a) The judgment of the Courts below is opposed to law, weight of evidence and probabilities of the case.

b) The trial Court has convicted the petitioner based on presumptions and assumptions and conjunctures and it not completely relevant to the circumstances of the case.

c) Both the Courts below failed to consider the main aspect that the deceased who is aged 75 years old and the accident took place in front of one Palanichamy Grocery Shop but the police official did not enquire from the said shop or from the surrounding place.

d) The Courts below failed to consider the fact that P.W.7 Murugesan was investigated by the police on 29.09.2023 but P.W.7 stated in this statement on 30.09.2013 in the morning hours the Inspector of Police, Thiruvaiyaru enquired him. Hence there is again serious contradictory statements regarding the recording date of statement of P.W.7



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e) The Courts below failed to appreciate the fact none of the witnesses cited by the prosecution have deposed to establish the fact that such occurrence took place in their presence and further no witness has given any statement as if they have seen the alleged occurrence and identity of the accused.

7. The learned counsel for the petitioner contended that the trial Court has failed to consider the oral and documentary evidence adduced on the side of the prosecution had convicted the accused based on presumptions and assumptions. There are so many contradiction between the prosecution witnesses regarding the place of occurrence and the alleged eye witnesses could not be the eye witnesses and their evidence are not cogent. All the witnesses belongs to the same village and the villagers of the locality where the accident took place have not been examined by the prosecution, thereby serious doubt arises over the case of prosecution and the accused is entitled for acquittal by allowing this revision.

8. The learned Government Advocate(Crl.Side) appearing for the State contended that eye witnesses have categorically deposed about the rash and negligent driving of the accused and also



identified the accused. The trial Court has also correctly appreciated the prosecution case and rightly convicted the accused. The appellate Court also elaborately discussed all the above facts and dismissed the appeal. Therefore there is no infirmity or illegality in the judgments passed by the Courts below and the petition is liable to be dismissed.

9. Upon perusing the documents and evidences adduced on both sides and upon perusing the judgments of the Courts below, the only point for determination in this petition is whether the judgement of the learned Principal Sessions Judge, Thanjavur in C.A.No.56 of 2018, in confirming the conviction and sentence passed by the learned Judicial Magistrate, Thiruvaiyaru in C.C. No.64 of 2015 dated 30.05.2018 is sustainable according to law and facts.

10. According to the prosecution on 28.09.2013 at about 7.30 p.m., when the deceased Dharmaraj was standing near Thanjavur-Thiruvaiyaru main road the vehicle bearing Reg.No. TN 01 H 4636 lorry driven by the petitioner came in a rash and negligent manner and dashed against the deceased, due to which he sustained injuries and thereafter he died. Hence the accused was charged for the offence under Section 304(A) of IPC. There is no contravention that the deceased died in a road accident and the accused only drove the



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vehicle on the date of occurrence. The accused has only denied the rash and negligent driving in this case.

11. P.W.1 is the defacto complainant in this case who gave complaint on 29.09.2013 and thereafter First Information Report has been registered. According to prosecution P.W.2 is the eye witness and he deposed that on 28.09.2013 at about 7.30 pm., when he was standing near Palanichamy grocery shop , the deceased Dharmaraj was also standing there in the eastern side. At that time a lorry came from Thanjavur – Thiruvaiyaru and the said lorry attempted to overtake another vehicle and dashed against the said Dharmaraj, due to which he fell down. After seeing him he passed information to the family members of the deceased. Thereafter the deceased was taken to hospital through ambulance . During cross examination of P.W.2 stated that when he was purchasing things in the grocery shop the said Dharmaraj was standing behind him. Whiles, it is not possible to witness the occurrence. When specific question was put to him in the cross examination he stated that since he was purchasing things he could not witness the occurrence since the deceased was behind him for that he denied and stated that he witnessed the occurrence, therefore reasonable doubt would arise about the evidence of P.W.2 as to whether he was present at the place



of occurrence or not. Further he did not state anything about the rash and negligent driving of the said lorry. He only stated that while overtaking another vehicle the said lorry hit against the deceased but in the cross examination he admitted that the deceased was standing behind him while so it is not possible to witness the occurrence as stated by him. Further according to P.W.1 one Manickam informed him about the accident but P.W.2 stated that he informed about the accident to the family of the deceased. This also creates serious doubt over the evidence of P.W.2.

12. P.W.3 in his chief examination stated that on 28.09.2023 at about 7.30 pm., when he was having tea he saw that the deceased was purchasing things in the bunk shop and after purchasing things when he returning from the shop the lorry which came from Thanjavur while overtaking another vehicle dashed against the said Dharmaraj, due to which he sustained injuries. He also did not say anything about the rash and negligent driving of the accused, only stated when the lorry attempted to overtake the vehicle it dashed and hit against the deceased. The same P.W.3 during the cross examination stated that the vehicle was attempted to overtake the bus at that time the accident had occurred. According to the evidence of PW.3 deceased was purchasing things from the bunk shop but according to



P.W.2 the deceased was purchasing things from Palanichamy grocery shop . Therefore the above said evidences created doubts over the case of prosecution. Further according to P.W.1 after information received from one Manickam he rushed to the spot and called 108 Ambulance and then taken to Government Hospital, but either the, P.W.2 or P.W.3 who are alleged to be eye witnesses not even tried to inform P.W.1 about the accident and they did not go to hospital. Had they witnessed the occurrence as alleged by them they being relatives of the deceased would have informed to P.W. 1 about the accident and then they would have gone to the hospital. Per contra the available evidence shows that P.W.1 and one Manickam took the deceased to the hospital through 108 Ambulance. Therefore serious doubt would arise about the prosecution witnesses.

13. Yet another witness is P.W12 but he did not speak about the case of prosecution and he stated that nearly about three years ago when he was proceeding towards bazaar there was crowd near the tea shop and when he went there, he saw the deceased, who died due to accident. Further the prosecution failed to examine the independent witness who are present in near the place of occurrence. All the witnesses belong to the village of the deceased i.e.,Ammanpettai. The Investigation Officer failed to examine any



witnesses who were working in the grocery shop and tea shop situated near the place of occurrence. Per contra all the eye witnesses are relatives of the deceased and they belong to the same village. This creates serious doubt over the case of prosecution. Even according to Ex.P.5 rough sketch the place of occurrence shown on the right side of the road. As per the prosecution witness the deceased was standing near the shop of Palanisamy, at the time the lorry dashed against him but Ex.P.5 shows the accident took place at right side of the road. The doctor also suggested that there is a chance to sustain injuries when the deceased dashed in the side of the lorry body. Therefore we can infer from the said evidence that the deceased hit on the side of lorry. The P.W.1 also during cross examination stated that his father dashed in the side of the lorry.

14. According to PW.1 accident was intimated to him through one Manickam, he was also not examined in this case. Further on the side of the prosecution Motor Vehicle Inspector who inspected the vehicle involved in the accident was examined as P.W.11 and he stated that there was no damage for the vehicle. Even according to the evidence of the eye witness they did not say anything about which part of the lorry dashed against the deceased and thereby the



prosecution witness have not established the rash or negligent driving of the accused. Mere overtaking alone is not sufficient to prove the rash or negligent driving. P.W.10 who conducted preliminary investigation had admitted in her evidence that Manickam is also eye witness and the said Manickam was not examined as witness. Further she admitted that she did not examine any local witness of the place of occurrence. This also create serious doubt about the proper investigation of the Investigation Officer. The main ingredients to constitute the offence under Section 304(A) of IPC is rash or negligence act, in this case the prosecution failed to prove the rash or negligent driving of the accused and the prosecution evidence are filled with doubts. Therefore the available evidence are not sufficient to prove the case of rash or negligent driving of the accused and it is unsafe to convict the accused based on their evidence. The trial Court without analysing the evidence of prosecution in a proper manner convicted the accused for the offence under Section 304(A) of IPC and the appellate Court has also confirmed the same. Though the Courts below discussed about the evidences prosecution witnesses failed to note that those witnesses are close relatives of the deceased and further failed to consider that the main eye witness Manickam was not examined by the prosecution and the prosecution failed to examine any independent local witnesses. Thereby the conviction



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imposed on the petitioner is un-sustainable and judgment and conviction passed in C.C. No.64 of 2015 dated 30.05.2018 passed by the learned Judicial Magistrate, Thiruvaiyaru and the judgement and conviction confirmed by the learned Principal Sessions Judge, Thanjavur in C.A.No.56 of 2018 dated 07.12.2018 are liable to be set aside.

15. Accordingly the Criminal Revision Petition is allowed and the judgement of the learned Principal Sessions Judge, Thanjavur in C.A.No.56 of 2018, dated 07.12.2018 in confirming the conviction and sentence passed by the learned Judicial Magistrate, Thiruvaiyaru in C.C. No.64 of 2015 dated 30.05.2018 are hereby set aside and the accused is acquitted from the charge under Section 304(A) of IPC. The petitioner be set at liberty subject to other cases if any. The bail bond if any executed by the petitioner shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded forthwith.

31 .07.2023

Index : Yes/No
Internet : Yes/No
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To

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1. The Principal Sessions Judge, Thanjavur
2. The Judicial Magistrate, Thiruvaiyaru
3. The Inspector of Police
Naducavery Police Station,
Thanjavur District
4. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
5. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P.DHANABAL, J.

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