



Crl.R.C(MD)No.97 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.97 of 2019

and

Crl.M.P(MD)No.1854 & 1855 of 2019

Pitchai Muthu

... Revision Petitioner/
Appellant/Sole Accused

Vs.

The State represented by,
The Inspector of Police,
Dindigul Town North Police Station,
Dindigul District.
(In Crime No.220 of 2010).

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the Judgment made in Crl.A.No.36 of 2017, dated 20.12.2018 on the file of the learned Additional District and Sessions Judge, Dindigul, confirming the conviction and sentence imposed in C.C.No.350 of 2010, dated 24.01.2017 on the file of the learned Judicial Magistrate No.III, Dindigul and set aside the same.

For Petitioner : Mr.C.Mayil Vahana Rajendran

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



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ORDER

This revision has been filed to set aside the Judgment made in Crl.A.No.36 of 2017, dated 20.12.2018, on the file of the learned Additional District and Sessions Judge, Dindigul, confirming the conviction and sentence made in C.C.No.350 of 2010, dated 24.01.2017 on the file of the learned Judicial Magistrate No.III, Dindigul.

2.The case of the prosecution is that on 10.06.2010, when the defacto complainant went to her relative house and while returning to her home along with P.W.2 at about 02.30 p.m., the deceased returned home for lunch in his bicycle, near Odai bridge, Govindasamy Nagar, Mettupatti Road, the petitioner had driven the lorry in a rash and negligent manner and hit the cycle. Therefore, the deceased sustained grievous injuries and died. Hence, the complaint.

3.On the complaint, the respondent registered the F.I.R in Crime No.720 of 2010 for the offence under Section 304A of I.P.C. After completion of the investigation, the respondent filed a



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final report and the same has been taken cognizance by the trial Court in C.C.No.350 of 2010 on the file of the learned Judicial Magistrate No.III, Dindigul.

4.In order to prove the charges to home, the prosecution had examined P.W.1 to P.W.10 and marked Exs.P.1 to P.10 and on the side of the accused, no one was examined and no documents were marked.

5.On perusal of both 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 one year Simple Imprisonment and also to pay a fine of Rs.5000/- and in default in payment of fine, shall undergo two months Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.36 of 2017 on the file of the learned Additional District and Sessions Judge, Dindigul, and the Appellate Court dismissed the appeal confirming the conviction and sentence imposed by the trial Court. 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. In fact, no witnesses had identified the petitioner, as if he only drove the lorry and he and his lorry were only involved in the accident. No one also deposed that only because of the rash and negligent driving of the petitioner, the accident had occurred. Though the prosecution had examined P.W.1 and P.W.2 as eyewitnesses, they could not be the eyewitnesses, since they did not even find the deceased while he was going in a bicycle. The occurrence had taken place on 10.06.2010, whereas the F.I.R was sent to the learned Judicial Magistrate No.III, Dindigul only after four days, namely on 14.06.2010. That apart, the vehicle which was allegedly involved in the accident was inspected by the Motor Vehicle Inspector only on 16.06.2010. Even according to the report submitted by the Motor Vehicle Inspector, the windscreen of the lorry only got damaged and no other damage was caused in the front side of the lorry. If at all the lorry hit the cycle, there would have been some damage in the front side of the lorry. Further, if the petitioner hits the cycle by his lorry, there is absolutely no possibility of damage to the windscreen because the windscreen is located above 4 feet from the road. He further submitted that when the



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Investigating Officer had taken blood-stained soil and ordinary soil in order to prove that the blood belonged to the deceased, however, he failed to take any pieces of damaged windscreen of the lorry. Whereas, the Motor Vehicle Inspector deposed that the lorry's windscreen got damaged. If at all any damage was caused in the road, there would have been broken particles available in the road. No witnesses had supported the case of the prosecution and as such, the conviction cannot be sustained as against the petitioner.

7.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that in order to prove the charge, the prosecution had examined P.W.1 to P.W.10 and marked Ex.P.1 to Ex.P.10. The Motor Vehicle Inspection Report was marked as Ex.P.2. It revealed that the accident was not happened due to any mechanical defect. The Motor Vehicle Inspector also deposed that the lorry's windscreen got damaged due to the accident. P.W.1 and P.W.2 were eyewitnesses to the occurrence and they categorically deposed that only because of the rash and negligent driving of the petitioner, he hit the deceased. Due to which, he sustained grievous injuries and died. Therefore, both the Courts below rightly convicted the petitioner for the



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offence punishable under Section 304(A) of I.P.C and the same does not warrant any interference by this Court.

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

9.The case of the prosecution is that when the deceased was riding his bicycle to his home for lunch at 10.06.2010 at about 02.30 p.m., near Odai bridge, Gandhiji Road, Govindasamy Nagar, Mettupatti Road, the petitioner had driven the lorry in a rash and negligent manner from the opposite side and hit the bicycle. Therefore, the deceased sustained grievous injuries and died. His wife was examined as P.W.1. She deposed that when she along with P.W.2 went home expecting that her husband would come for lunch, she had heard a huge noise and found that the lorry which was driven by the petitioner in a rash and negligent manner and hit one cyclist. Later she found that the person, who was injured is her husband. Immediately, she called the ambulance and had taken to the Government Hospital, Dindigul. According to her, she was walking along with P.W.2 behind the cyclists. When she heard the noise of the accident, she could have very well found out the cyclists



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as if her husband. However, even according to her, she did not know that the cyclist was her husband. P.W.2 also deposed that only after hearing the noise, she found that the Cyclist was hit by lorry. However, both did not even whisper about the driver of the lorry at the time of the accident. Only thereafter, they came to understand that the petitioner only drove the lorry.

10.The Motor Vehicle Inspector was examined as P.W.8. He deposed that the lorry which was allegedly involved in the accident got damaged on its windscreen. He deposed that the accident was not occurred due to any mechanical defect. Except the damaged windscreen no other damage was noted in the lorry. According to the case of the prosecution, the lorry came from the opposite side and hit the cyclists. If at all the lorry hit the bicycle, there would have some damage in the front side of the lorry. Further, if the lorry hit the cycle, there would not be a chance of any damage for the windscreen because the windscreen is located above 4 feet road. If the lorry hit the cyclists directly, the cyclist would have been thrown out for long distance. However, it is not the case of the prosecution that the cyclist was thrown out after hitting by the lorry from the place of the accident. It is curious to note that the



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lorry was subjected for Motor Vehicle Inspection only after six days.

The occurrence had allegedly taken place on 10.06.2010, whereas the lorry was inspected by P.W.8 on 16.06.2010. The prosecution failed to explain the delay in sending the lorry for Motor Vehicle Inspection.

11.That apart, there is no evidence to show that the vehicle was seized on the same day, namely on the date of the accident. Further, the F.I.R was registered on 10.06.2010, whereas it was sent to the concerned Magistrate Court on 14.06.2010. It shows that it is a put-up case in order to claim insurance. Hence, the prosecution failed to prove its case beyond any doubt. Further, no witnesses identified the petitioner that he only drove the lorry in a rash and negligent manner. The prosecution witnesses also failed to note the registration number of the lorry and they identified its colour as yellow and green. Except this identity, no one identified the vehicle to the effect that it only dashed against the deceased cycle. Therefore, the prosecution failed to prove its case beyond any doubt and the conviction and sentence imposed on the petitioner cannot be sustained and the same is 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.36 of 2017, dated 20.12.2018, on the file of the learned Additional District and Sessions Judge, Dindigul, confirming the conviction and sentence made in C.C.No. 350 of 2010, dated 24.01.2017 on the file of the learned Judicial Magistrate No.III, Dindigul, is set aside. The petitioner/accused is acquitted. Bail bond if any executed by the petitioner/accused shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioner/accused forthwith. Consequently, connected Miscellaneous Petitions are closed.

20.06.2023

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

1. The Additional District and Sessions Court,
Dindigul.
2. The Judicial Magistrate No.III,
Dindigul.
3. The Inspector of Police,
Dindigul Town North Police Station,
Dindigul 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.97 of 2019

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