



Crl.R.C.(MD).No.452 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 20.12.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.452 of 2019

Palanichamy

... Petitioner/Appellant/Accused

Vs.

The State through Rep by
The Inspector of Police,
Thevathanampatti Police Station,
Theni District.
Crime No.50 of 2013

... Respondent/ Respondent
/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and to set aside the order passed by the learned Additional District and Sessions Judge, Theni in C.A.No.42 of 2018 dated 17.12.2018 by confirming the order of conviction and sentence passed by the Judicial Magistrate Court, Periyakulam in C.C.No.133 of 2013 dated 22.06.2018.

For Petitioner : Mr.R.Rajamohan

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor



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ORDER

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The petitioner is the sole accused in C.C.No.133 of 2013, filed this petition to set aside the order passed by the learned Additional District and Sessions Judge, Theni in C.A.No.42 of 2018 dated 17.12.2018 by confirming the order of conviction and sentence passed by the Judicial Magistrate Court, Periyakulam in C.C.No.133 of 2013 dated 22.06.2018.

2. According to the prosecution, the petitioner is the driver of the harvesting machine bearing Registration No.TN 60 J 7476. On 05.04.2013, at about 08.00 a.m, when the deceased aged about 5 years was standing in the mud road near Kovilpuram Community Hall situated near Jeyamangalam to Kullapuram main road, the petitioner drove the said harvesting vehicle in a rash and negligent manner and hit the deceased. Due to which, he died on the spot. In the said circumstances, the respondent Police registered a case in Crime No.50 of 2013 for the offence under Section 304(A) of IPC. Thereafter, P.W.7 completed the investigation by examining all the witnesses, preparing observation Mahazar, rough sketch and filed the final report. The said final report was taken on file in C.C.No.133 of 2013, by the learned Judicial Magistrate Court, Periyakulam. The learned trial Judge issued summons to the



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accused and after his appearance, served the copies under Section 207 Cr.P.C. Thereafter, he framed necessary charges and questioned the accused. The accused pleaded not guilty and he stood for trial.

3.To prove the case, the prosecution examined P.W.1 to P.W.10 and exhibited 7 documents as Ex.P.1 to Ex.P.7. The learned trial Judge thereafter questioned the accused under Section 313 Cr.P.C., proceedings by putting the incriminating evidence available from the evidence prosecution witnesses and documents against him and he denied the same as false and thereafter, the case was posted for examination of the witnesses on the side of the accused. On the side of the accused, he neither examined any witnesses nor produced any documents.

4.The learned trial Judge, on considering the oral and documentary evidences, convicted the petitioner for the offence under Section 304(A) of IPC., and sentenced him to undergo Simple Imprisonment for a period of six months. Aggrieved over the same, he filed an appeal before the Appellate Court, in C.A.No.42 of 2018, and the same was confirmed by the learned Additional District and Sessions Judge, Theni, dated 17.12.2018. Challenging the same, the petitioner filed this Criminal Revision Case.



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5.The learned counsel appearing for the petitioner submitted that there is a material contradiction between the evidence of P.W.2 and the other witnesses. In view of the material contradiction, the deposition of P.W.1, is to be disbelieved.

5.1.The learned counsel further submitted that there are two versions relating to the registration of the case. According to P.W.1, he gave the complaint. Per contra, P.W.8 stated that he gave the complaint before the respondent Police. In view of the said contradiction, the registration of the FIR itself is doubtful and hence, the above aspect was not considered by both the Courts below. Hence, he seeks for acquittal.

6.The learned Additional Public Prosecutor on instructions and also perusing the records, made the following submissions:-

6.1. The occurrence took place on 05.04.2013 and all the witnesses, have spoken about the incident said to have been happened in the year 2013. Due to the passage of time, there is some contradiction between the witnesses, which is not material one;



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6.2. He further submitted that P.W.1 clearly deposed before the Court below that the petitioner had driven the vehicle, while taking reverse, without noticing the child, in a rash and negligent manner and hit the deceased. The act itself constitutes the offence. In the case of a child, extra caution to be taken by the driver of the vehicle. The same was not done by the petitioner. Hence, the principle maxim '*res ipso loquitur*' is applicable to the present case;

6.3. He further submitted that though P.W.2 never stated about the petitioner, he speaks to the extent of involvement of the vehicle and that should to be taken into consideration. Apart from that, P.W.8 also clearly deposed the same before the Court below. In view of the above evidence the concurrent finding by the both Court below need not be interfered. Hence, there is no perversity in the finding of the learned trial Judge as well as the Appellate judge;

6.4. This Court considered the rival submission and also perused the materials placed before the learned trial Judge and the impugned judgment;



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7. P.W.1, who is the father of the deceased deposed that on 05.04.2013, when he was chatting with his neighbours, the petitioner had driven the vehicle without taking care, in a rash and negligent and while taking reverse, he hit the boy and caused injury. The said version of P.W.1 corroborated with the version of P.W.8. Further, the evidence of P.Ws.2, 4 and 5 were no way challenged by the petitioner during his cross examination. For the evidence of P.W.1, there is no cross examination relating to the complaint made by him and also there is no question relating to the complaint made by him to the police officer, who registered the case. In the said circumstances, the submission of the learned counsel for the petitioner that there is material contradiction before the Court below is not material one. Further, as rightly argued by the learned Additional Public Prosecutor the occurrence took place in the year 2013 and examination was conducted in the year 2018. In the said circumstances, this type of the minor contradiction is likely happen. The above said contradiction is not material to disbelieve the evidence of P.W.1 and there is no motive for P.W.1 against the petitioner/accused. In this case, the evidence of P.W.1 that the petitioner/accused is known to him and hence, there is no false implication of the petitioner. Further, during the course of questioning under Section 313 of



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Cr.P.C., there is no plea regarding the false implication. In the said circumstances, this Court finds that P.W.1 and P.W.8 clearly deposed about the rash and negligent driving on the part of the petitioner. Apart from that, as rightly pointed out by the learned Additional Public Prosecutor, the principle '*res ipso loquitur*' is applicable to the present case. As per the Maxim, the petitioner drove the heavy vehicle, and while backing up the said vehicle, he has not verified the object behind the back side of the vehicle. Without noticing the back side, he had taken reverse which itself amounts to rash and negligent driving on the part of the petitioner. Hence, this Court finds no merits in the contention of the petitioner. So far as the sentence is concerned, the trial Court granted only six months imprisonment and hence, there is no reason to interfere with the same also.

8. Accordingly, this Criminal Revision Case is dismissed by confirming the judgment passed by the learned Additional District and Sessions Judge, Theni, dated 17.12.2018, in C.A.No.42 of 2018.

20.12.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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- To
1. The Additional District and Sessions Judge,
Theni.
 2. The Judicial Magistrate,
Periyakulam.
 3. The Inspector of Police,
Thevathanampatti Police Station,
Theni District.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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