



Crl.R.C.(MD)No.159 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2023

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.159 of 2018

Vijayakumar

... Petitioner

Vs.

State rep by
The Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District
In Crime No.65 of 2007

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence imposed by the Court of Principal District and Sessions Court, Virudhunagar District at Srivilliputtur in Crl.A.No.07 of 2010 on 24.11.2017 in confirming the conviction and sentence imposed by the Judicial Magistrate Court No.II, Srivilliputtur in C.C.No.248 of 2007 on 08.12.2009 and allow this criminal revision petition.

For Petitioner : Mr.M.Jothi Basu



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

ORDER

This Criminal Revision Case has been filed to set aside the conviction and sentence imposed by the Principal District and Sessions Court, Virudhunagar District at Srivilliputtur in Crl.A.No.07 of 2010 on 24.11.2017 in confirming the conviction and sentence imposed by the Judicial Magistrate Court No.II, Srivilliputtur in C.C.No.248 of 2007 on 08.12.2009.

2.The case of the prosecution is that on 20.01.2007, the defacto complainant and his family members went to worship Pulukandi Kovil at Mamsapuram. After worshipping the God, when they were returned to their native, at about 04.15 pm, when the deceased along with her family members were standing in front of temple, the petitioner was driving his Tata Sumo car bearing Reg.No.TN/67/M/6437, without any horn and any signal, in a rash and negligent manner, reversed his vehicle and dashed against the deceased and due to the same, the deceased sustained injuries

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all over the body and she was taken to the hospital. However, she died on the way to the hospital. Hence, the complaint was lodged and on receipt of the complaint, the respondent police registered FIR in Cr.No. 65 of 2007 for the offence under Section 304(A) IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the Judicial Magistrate Court No.II, Srivilliputtur in C.C.No.248 of 2007.

3.On the side of the prosecution, they had examined P.W.1 to P.W. 12 and marked Ex.P.1 to Ex.P.8. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence punishable under Section 304(A) IPC and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.2,000/- in default to undergo further period of two months simple imprisonment for the offence punishable under Section 304(A) IPC. Aggrieved over the same, the petitioner preferred an appeal and the same was also dismissed by confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.



4.The learned counsel appearing for the petitioner would submit that no independent witness was examined by the prosecution, though there were so many persons standing in front of the temple. Eye witnesses were examined as P.W.1 to P.W.4 and and they did not even say that they had seen the occurrence, when the deceased was hit by the petitioner. All the witnesses stated that when the petitioner reversed his car without any horn and without any indication and hit the deceased. That apart, all were deposed that the petitioner drove his car in a speed manner. At the time of accident, the deceased aged about 60 years. The prosecution also failed to prove that the deceased died only due to the injuries sustained during the accident, since she had not sustained multiple injuries on her body. There were discrepancies in the evidences and the manner in which accident had taken place. Therefore, the prosecution failed to prove its case beyond any doubt and the benefit of doubt goes in favour of the petitioner.

5.Per contra, the learned Government Advocate(Crl.side) appearing for the respondent police would submit that in order to bring the charged home, the prosecution examined P.W.1 to P.W.12. P.W.1



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and P.W.4 were eye witnesses and they were categorically deposed that only because of the rash and negligent driving of the petitioner, the accident had occurred. Due to the said accident, the victim sustained grievous injuries and immediately she was taken to the hospital and however, she was died. The Doctor, who conducted autopsy, was examined as P.W.7 and he categorically deposed that only because of the injuries sustained during the accident, she died. Therefore, the prosecution proved its case beyond any doubt and both the Courts below rightly convicted and sentenced the petitioner and it does not warrant any interference by this Court.

6.Heard both sides and perused the materials available in the record.

7.P.W.1, who lodged the complaint, is none other than the son of the deceased. His wife was examined as P.W.2 and the brother-in-law of P.W.1 was examined as P.W.3. Another close relative of P.W.1 was examined as P.W.4. All the four were eye witnesses to the occurrence. However, they wee deposed that they did not see when the vehicle was



coming on reverse side and hit the deceased. Only after hearing the noise, they had seen that the petitioner's vehicle hit the deceased on rior side. Therefore, she sustained injuries and she was taken to the Government Hospital, Rajapalayam. Accident register was marked as Ex.P.3 and statement of P.W.2 was recorded by P.W.6. It revealed that when the victim was walking on the right side, the petitioner's vehicle hit her. Therefore, P.W.2 did not state that when the petitioner was reversing his car in a rash and negligent manner and hit the deceased. Thereafter, P.W.1 lodged complaint. According to P.W.1, when they were standing in front of the temple, the petitioner had reversely driven his car in a rash and negligent manner and hit the deceased. Therefore, she sustained injuries and died. He also categorically deposed that at the time of accident, thee were so many persons were standing in front of the temple. However, the prosecution failed to examine any independent witness. Even though, there were eye witnesses in this case, they are all close relatives of the defacto complainant and in fact, they went together to the temple. P.W.2 deposed that when the petitioner was driving his car reversely without any indication, in a rash and negligent manner and hit the deceased. Therefore, the prosecution failed to prove as to whether



the petitioner had driven his car on its reverse side and its front side.

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8.Further, according to the accident register, when the deceased was walking on the right side, the petitioner drove his vehicle in a rash and negligent manner and hit the deceased, whereas, P.W.1 to P.W.4 deposed that when they were standing in front of the temple, vehicle was driven by its reverse side and hit the deceased. On perusal of rough sketch, which was marked as Ex.P.7 also does not reveal the place of accident and whether the vehicle was driven by its reverse side or its front side.

9.Further, all the witnesses deposed that the petitioner had driven his vehicle without any horn and in a speed manner. It is settled position of law that merely because the car was being driven at a “high speed” does not bespeak of either “negligence” or “rashness” by itself. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "*res ipsa loquitur*". Further, the prosecution failed to prove its case beyond any doubt and the benefit of doubt goes in favour of the petitioner.



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10.In the result, the conviction and sentence imposed by both the Courts below is hereby set aside and this criminal revision case is allowed. If any bail bond executed by the petitioner, the same shall be returned.

25.04.2023

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

- 1.The Principal District and Sessions Court,
Virudhunagar District at Srivilliputtur
- 2.The Judicial Magistrate Court No.II,
Srivilliputtur.
- 3.The Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,

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Madurai.

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