



Crl.R.C(MD)No.172 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.172 of 2018

Rajasekar ... Petitioner/
Appellant/Sole Accused

Vs.

State represented by,
The Inspector of Police,
Mamsapuram Circle,
In Vanniampatti Police Station,
Virudhunagar District.
In Crime No.266 of 2009. ... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 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 the Principal District and Sessions Court, Virudhunagar District at Srivilliputtur in Crl.A.No.19 of 2011 on 15.11.2017, confirming the conviction and sentence imposed by the Judicial Magistrate Court No.II, Srivilliputtur in C.C.No.05 of 2010 on 13.01.2011 and allow this Criminal Revision Petition.

For Petitioner : Mr.M.Jothi Basu

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



Crl.R.C(MD)No.172 of 2018

WEB COPY

ORDER

This revision has been filed to set aside the conviction and sentence passed in Crl.A.No.19 of 2011, dated 15.11.2017 on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur, confirming the conviction and sentence passed in C.C.No.05 of 2010, dated 13.01.2011 on the file of the learned Judicial Magistrate No.II, Srivilliputtur.

2.The case of the prosecution is that on 24.11.2009 at about 10.00 p.m., when the deceased was riding his motorcycle bearing Registration No.TN-01-L-9410 along with his wife, who was travelling as a pillion rider, from Srivilliputtur to Rajapalayam in front of Avita Masala Mill, the petitioner had driven the Jeyavilas bus bearing Registration No.TN-59-AJ-0527 in a rash and negligent manner and dashed against the two-wheeler of the deceased. Therefore, both the deceased sustained grievous injuries and died. Hence, the complaint.



Crl.R.C(MD)No.172 of 2018

WEB COPY

3.On receipt of the complaint, the respondent registered the F.I.R in Crime No.266 of 2009 for the offence under Section 304(A) (2 counts) of I.P.C. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.05 of 2010, on the file of the learned Judicial Magistrate No.II, Srivilliputtur.

4.On the side of the prosecution, they had examined P.W.1 to P.W.17 and marked Exs.P.1 to P.11 and on the side of the petitioner, no one was examined and no documents were marked.

5.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 304(A) (2 counts) of I.P.C and sentenced him to undergo Rigorous imprisonment for one year each and imposed a fine of Rs. 1,500/- each and in default, to undergo three months Simple Imprisonment each for the offence punishable under Section 304(A) (2 counts) of I.P.C. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.19 of 2011 on the file of the learned Principal



Crl.R.C(MD)No.172 of 2018

District and Sessions Judge, Virudhunagar District at Srivilliputtur and the same was also dismissed confirming the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present Revision.

6.The learned counsel appearing for the petitioner would submit that P.W.1 to P.W.3 were examined as eyewitnesses. They had never seen the occurrence and as such, they could not be eyewitnesses to the occurrence. There were contradictions between them, and the prosecution failed to prove its case beyond any doubt. That apart, they are very close relatives of the deceased and as such, their witnesses cannot be relied upon by the prosecution in order to prove its case. In fact, P.W.1 to P.W.3 travelled behind the two-wheeler, which was driven by the deceased, in an Auto and even then, the Auto driver was not examined in order to prove the charge to home. It is also unbelievable that P.W.1 to P.W.3 travelled behind the deceased two-wheeler to reach Vadakarai from Srivilliputtur. The distance between both places is nearly 45 kilometres. Therefore, no prudent man will take the Auto to travel 45 kilometres. The prosecution had examined the conductor of the bus as P.W.14. He categorically deposed that already the deceased



Crl.R.C(MD)No.172 of 2018

met with an accident in their two-wheeler and fell down the right side of the road. The petitioner never hit the two-wheeler, and he was not the reason for causing the accident. Therefore, P.W.14 turned hostile and even then, the prosecution failed to cross-examine P.W.14. The width of the road is 30 feet and as such, there is absolutely no possibility for the driver of the bus to hit the two-wheeler on the extreme right-hand side. Unfortunately, both the Courts below, without considering the above facts and circumstances, mechanically convicted the petitioner. Further, no one had spoken that the petitioner had driven the bus in a rash and negligent manner and caused the accident. Hence, he prayed for acquittal of the petitioner.

7.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that both the Courts below concurrently held that the petitioner is liable to be punished for the offence under Section 304(A) (2 counts) of I.P.C and sentenced him to undergo Rigorous Imprisonment for one year each. Therefore, it does not warrant any interference by this Court. In order to bring the charges to home, the prosecution had examined eyewitnesses as P.W.1 to P.W.3. They categorically



Crl.R.C(MD)No.172 of 2018

deposed that when they were proceeding in the same direction of the deceased by their Auto, the bus came from the opposite side in a rash and negligent manner and dashed against the two-wheeler. Due to which, both the deceased fell down and sustained grievous injuries. Immediately, they were taken to the hospital and declared dead. Therefore, the prosecution had proved its case beyond any doubt and prayed for dismissal of the revision.

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

9.On 24.11.2009 at about 10.00 p.m., when both the deceased were proceeding to Rajapalayam from Srivilliputtur in their motorcycle, the petitioner had driven the bus in a rash and negligent manner and hit the two-wheeler. Therefore, both were sustained grievous injuries. From the evidence, it is also clear that one of the policemen was travelling in the bus, which was driven by the petitioner. Immediately after the accident, he called 108 Ambulance and had taken the deceased to the hospital. P.W.1 to P.W.3 were also accompanied by the deceased in the Ambulance. The accident register recorded by the Doctor also very clear that



Crl.R.C(MD)No.172 of 2018

both the deceased met with an accident and due to which, they sustained grievous injuries. The conductor of the bus was examined as P.W.14. He categorically deposed that the petitioner had only driven the bus. That apart, the motor vehicle inspection report of the bus and two-wheeler were marked as Ex.P.2 and Ex.P.3. The motor vehicle inspection report of the bus was marked as Ex.P.2 and it is clearly proved that the accident had occurred on the extreme right-hand side of the road. The front right-hand side of the bumper and other parts of the bus got damaged due to the accident, and the accident was not happened due to any mechanical defect. Though the petitioner had taken a specific stand that even before reaching the scene of the crime, there was an accident, due to which, the deceased fell down, therefore, the petitioner did not commit any accident as alleged by the prosecution. However, in order to substantiate the same, the petitioner had not made any statement under Section 313 of Cr.P.C before the trial Court. He also failed to examine any witnesses in order to disprove the case of the prosecution. Whereas the prosecution had examined eyewitnesses P.W.1 to P.W.3. Though they were relatives of the deceased, they categorically and cogently deposed that because of the rash and negligent driving of the driver of the bus, the accident had happened and due to which, both the deceased sustained grievous



Crl.R.C(MD)No.172 of 2018

injuries and died. Therefore, both the Courts below rightly convicted the petitioner for the offence punishable under Section 304(A) (2 counts) of I.P.C and this Court finds no infirmity or illegality in the order passed by the Courts below. However, considering the age of the petitioner, this Court is inclined to reduce the sentence alone.

10. Accordingly, the conviction imposed by the Courts below under Section 304(A) (2 counts) of I.P.C against the petitioner is hereby confirmed. In so far as the sentence is concerned, it is reduced from one year to six months each for the offence under Section 304(A) (2 counts) each of I.P.C .

11. In fine, this Criminal Revision Case is partly allowed. The respondent is directed to secure the accused to serve the remaining period of sentence for the offence under Section 304(A) (2 counts) of I.P.C. Both the sentences shall run concurrently.

06.06.2023

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



Crl.R.C(MD)No.172 of 2018

WEB COPY

ps

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 Circle,
In Vanniampatti Police Station,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C(MD)No.172 of 2018

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.172 of 2018

06.06.2023