



Crl.R.C(MD)No.37 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.37 of 2018

D.Joison

... Revision Petitioner/
Appellant/Accused

Vs.

The Inspector of Police,
Tiruchuli Circle,
M.Reddiapatty Police Station,
In Crime No.109 of 2010,
Virudhunagar District.

... Respondent/
Respondent/Complainant

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 Judgment of the Appellate Court passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur in C.A.No.137 of 2011, dated 15.11.2017, confirming the Judgment of the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District in C.C.No.125 of 2011, dated 26.08.2011 by allowing this revision.



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For Petitioner : Mr.S.Titus

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

ORDER

This revision has been filed to set aside the Judgment made in C.A.No.137 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 made in C.C.No.125 of 2011, dated 26.08.2011 on the file of the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District.

2.The case of the prosecution is that on 26.12.2010 at about 06.30 p.m., when the deceased was proceeding in his TVS-XL heavy-duty two-wheeler bearing Registration No.TN-67-AY-4101 in Aruppukkottai – Sayalkudi main road from South to North after crossing the Mandapasalai bus stop, the petitioner was driving his Tata Saloon vehicle bearing Registration No.TN-59-AT-3400 from the opposite direction in a rash and negligent manner and dashed against the deceased. Therefore, he sustained grievous injuries and died, due to the injuries sustained by him during the accident. On



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the complaint, the respondent registered the F.I.R in Crime No.109 of 2010 for the offence under Section 304(A) 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.125 of 2011 on the file of the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District.

3.On the side of the prosecution, they had examined P.W.1 to P.W.7 and marked Ex.P.1 to Ex.P.6 and on the side of the accused, no one was examined and no documents were marked.

4.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 304(A) of I.P.C and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months Rigorous Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.137 of 2011 on the file of the learned Principal District and Sessions Judge, Virudhunagar District 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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5.The learned counsel appearing for the petitioner would submit that the prosecution did not even prove that the petitioner only dashed against the two-wheeler, which was driven by the deceased. The identity of the vehicle was not proved by the prosecution. In fact, the prosecution failed to seize the vehicle which was involved in the accident. In order to prove the accident, the prosecution examined P.W.1 and P.W.2, who were the eyewitnesses to the occurrence. P.W.1 and P.W.2 deposed that the petitioner had driven his vehicle in a rash and negligent manner and hit the deceased two-wheeler. Therefore, he sustained injuries and died. There were contradictions between them, and in fact, the mahazar witnesses P.W.3 and P.W.4 were turned hostile. The Doctor who treated the victim was examined as P.W.5. However, the post-mortem report was also not marked and the post mortem Doctor was also not examined by the prosecution. In fact, the Investigating Officer was also not examined by the prosecution. The prosecution also failed to mark the rough sketch before the trial Court. All the witnesses had deposed that when the petitioner was proceeding from North to South in Aruppukottai – Sayalkudi main road, dashed against the deceased two-wheeler, who was proceeding from South to North on the same road immediately after the Mandapasalai bus



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stop. On perusal of the rough sketch shows that the accident was taken place away from the bus stop of Mandapasalai bus stop. In the charge-sheet, the respondent stated that after dashing against the two-wheeler, he was dragged up to 40 feet on the same road. When the petitioner was coming from the Northern side, it could not be possible to drag the deceased 40 feet in the opposite direction, namely the deceased was proceeding from the South to the North direction. Therefore, the prosecution failed to prove its case beyond any doubt and prayed for setting aside the conviction and sentence imposed by the Courts below.

6.Per contra, the learned Government Advocate (Criminal Side) would submit that P.W.1 and P.W.2 categorically deposed about the occurrence and the accident had occurred only due to rash and negligent driving of the petitioner herein, due to which he sustained grievous injuries and he died. In order to disprove the case of the prosecution, the petitioner also did not examine anybody and he also failed to make any statement under Section 313 of Cr.P.C. Therefore, the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.



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

8.The case of the prosecution is that on 26.12.2010 at about 06.30 p.m., when the petitioner was proceeding from North to South Aruppukottai – Sayalkudi main road, dashed against the deceased two-wheeler, who was coming from South to North on the same road near Madapasalai bus stop. The prosecution had examined eyewitnesses as P.W.1 and P.W.2. On perusal of their evidence revealed that they along with the deceased were proceeding from Sayalkudi to Aruppukottai from the Southern side to the Northern side, in the opposite side, the petitioner drove his car in a rash and negligent manner against him and therefore, he sustained injuries. Though they requested the petitioner to board the deceased into the Hospital, he refused to board the deceased into the Hospital. After calling upon the Ambulance, he was taken to the Government Hospital, Aruppukkottai. Thereafter, he was taken to Government Hospital, Madurai for higher treatment. However, he was declared as brought dead.



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9. On perusal of the charge sheet revealed that after hitting the deceased vehicle, the deceased was dragged along with a two-wheeler for 40 feet. On perusal of the rough sketch, which was not marked by the prosecution, revealed that the accident had occurred far away from the bus stop of Mandapasalai bus stop that too on the direction from South to North. Whereas, according to the prosecution, the petitioner proceeded from North to South side of Aruppukkottai to Sayalkudi main road. If the petitioner after hitting the deceased vehicle and dragged him 40 feet, it should be towards the Southern side, since the petitioner was proceeding from the Northern side, whereas, the rough sketch shows as if the petitioner was proceeding from the Southern side to the Northern side and after hitting the two-wheeler, the petitioner dragged the deceased along with the vehicle towards Northern side. There is absolutely no material to charge with the allegation that the petitioner after hitting the deceased dragged him along with his vehicle for 40 feet. No one had spoken about the same in order to bring the said charge. It is also pertinent to note that the prosecution failed to mark the rough sketch. Therefore, the prosecution failed to prove the very accident itself.



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10. In so far as the rash and negligent is concerned, though P.W.1 and P.W.2 deposed that the petitioner was driving his car in a rash and negligent manner, the direction of the vehicle and also the place of the accident also differ and as such, their evidence cannot be believed. That apart, they are close relatives of the deceased and the prosecution failed to examine any independent witness. According to the prosecution, the accident had occurred near the bus stop that too evening at 06.45 p.m. Therefore, there would have been so many persons available and even then the prosecution failed to examine any independent witnesses. The mahazar witnesses were also turned hostile and were examined as P.W.3 and P.W.4.

11. The prosecution also did not mark the postmortem report. Therefore, the prosecution failed to prove that the death was caused only due to the injuries sustained during the accident. In fact, the postmortem Doctor was not examined by the prosecution to prove the death. However, the prosecution also failed to examine the Investigating Officer, who conducted the investigation in order to prove the case. It is very unfortunate to state the respondent conducted a shabby investigation. Therefore, this Court condemns the shabby investigation done by the respondent.



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12.It requires departmental proceedings as against the Investigating Officer. Therefore, the Deputy Inspector General of Police, Madurai is directed to take appropriate departmental action as against the Investigating Officer in Crime No.109 of 2010 on the file of the respondent. If the Investigating Officer retired from service, he shall pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) as compensation to the legal heirs of the deceased victim within a period of eight weeks from the date of receipt of a copy of this order. If not paid the said compensation, the legal heirs of the deceased are at liberty to initiate appropriate proceedings to recover the said compensation from the Investigating Officer in the manner known to law.

13.The Investigating Officer, who visited the place of the accident, had drawn a rough sketch. Even then, the rough sketch was not marked and the Investigating Officer was not examined by the prosecution. Therefore, no plausible explanation for the non-examination of the Investigating Officer. Thus, necessary interference has to be drawn in favour of the petitioner and extended the benefit of the doubt on account of this serious lapse/omission on the part of the prosecution. Unfortunately, both the Courts below ignored the said vital fact. That apart, the



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postmortem report was not marked and in fact, the Doctor, who conducted the postmortem, was not examined in order to prove the cause of death due to the injuries sustained during the accident. Therefore, the cause of death is not proved by the prosecution. Hence, the conviction and sentence imposed on the petitioner cannot be sustained and the same is liable to be set aside.

14. Accordingly, the Criminal Revision Case is allowed and the Judgment made in C.A.No.137 of 2011, dated 15.11.2017 on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur, confirming the Judgment made in C.C.No.125 of 2011, dated 26.08.2011 on the file of the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District, are set aside. The petitioner/accused is acquitted. Bail bond, if any executed by the petitioner/accused, shall stand cancelled and the fine amount if paid is ordered to be refunded to the petitioner/accused forthwith.

21.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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1.The Principal District and Sessions Court,
Virudhunagar District at Srivilliputtur.

2.The Judicial Magistrate,
Aruppukkottai,
Virudhunagar District,

3.The Inspector of Police,
Tiruchuli Circle,
M.Reddiapatty Police Station,
Virudhunagar District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:-

4.The Deputy Inspector General of Police,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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