



Crl.R.C.(MD)No.541 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.541 of 2016

G.Sureshkumar ... Petitioner/Appellant/Sole Accused

vs.

The Inspector of Police,
Traffic South Investigation P.S.
Cantonment Police Station Complex,
Trichy-1, Trichy District.
Crime No.28 of 2009

...Respondent/Respondent/Complainant

PRAYER : This Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the order made in Crl.A.No.03 of 2015 in C.C.No.59 of 2011 on the file of the III Additional District Judge, Trichy, dated 10.10.2015 in conforming the order made in C.C.No.59 of 2011 on the file of the learned Chief Judicial Magistrate, Trichy, dated 18.12.2014.

For Petitioner : Mr.R.Sundar

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. side)



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ORDER

This Criminal Revision Petition is directed against the Judgment passed by the learned III Additional District Judge, Trichy, in Crl.A.No. 03 of 2015 in C.C.No.59 of 2011 dated 10.10.2015 and by confirming the order made in C.C.No.59 of 2011 on the file of the learned Chief Judicial Magistrate, Trichy, dated 18.12.2014.

2.The case of the prosecution is that on 29.01.2009 at about 12.55 hours, the petitioner drove the private bus, bearing Registration No.TN-49-J-5865 from Trichy to Chennai on bye-pass road over bridge Senthannerpuram near “G Corner”, in a rash and negligent manner. While overtaking a bus went right side of the road and dashed a cyclist and while applying sudden break, the bus ran over a parked two wheeler bearing Registration No.TN-45-F-1401. Due to which, the bus was capsized. Due to the said accident, 14 passengers were sustained simple injuries and three passengers were sustained grievous injuries and caused death of one cyclist.



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3.On the complaint lodged by P.W.1, the respondent police has registered the First Information Report in Crime No.28 of 2009 against the petitioner for the offences under Sections 279, 337, 338 and 304(A) of IPC. After completion of investigation, the respondent police has filed a final report and the same has been taken cognizance by the trial Court.

4.During the trial, the prosecution has examined 28 witnesses as P.W.1 to P.W.28 and exhibited 30 documents as Ex.P1 to Ex.P30. On the side of the accused, no one was examined and no document was marked.

5.On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offences punishable under Sections 279, 337 (14 counts), 338(3 counts) and 304(A) (1 count) of IPC and he was sentenced to pay a fine of Rs.500/- for the offence under Section 279 IPC, in default to undergo Simple Imprisonment for 7 days; he was sentenced to pay a fine of Rs.500/- for the offence under Section 337 IPC (14 counts), in default to undergo Simple Imprisonment for 7 days; he was sentenced to pay a fine of Rs.1,000/- for the offence under Section 338 IPC (3 counts), in default to undergo Simple Imprisonment for 15 days; and he was sentenced to undergo Simple Imprisonment for a period of one year and to pay a fine of Rs.1,000/- in default to undergo Simple



Imprisonment for a period of one month for the offence under Section 304A IPC (1 count). Aggrieved by the same, the petitioner has preferred an appeal before the Appellate Court and the same was dismissed by confirming the judgment passed by the trial Court. Hence, the present revision.

6.The learned counsel for the petitioner would submit that some of the injured persons deposed that when the petitioner was applied sudden break, the cyclist namely, the deceased was crossing the road. Therefore, the bus was capsized. Due to which, the injured persons sustained injuries. Though some of the injured witnesses deposed that when the petitioner was over taking a bus, which was proceeded in the same direction, in front of the bus, the petitioner hit the cyclist (deceased) and due to which, he died. That apart, he also hit another two wheeler and caused damage to the two wheeler. Thereafter, the bus was capsized. Due to which, the injured persons suffered injuries. Some of the injured persons deposed that the petitioner was over taking a lorry, which was driven in the same directions, in front of the bus. Therefore, those contradictions between the prosecution witness are fatal to the case. That apart, no witness had spoken that the petitioner had driven the vehicle in a rash and negligent manner in order to prove the charge under Section



304A IPC. The person, who drove the vehicle which allegedly, the petitioner was overtaking and the driver and conductor were not enquired by the prosecution. It is fatal to the case of the prosecution. Therefore, the entire conviction cannot be erred as against the petitioner and prayed for acquittal of the petitioner from all the charges.

7.Per contra, the learned Government Advocate (Crl. side) would submit that due to the rash and negligent driving of the petitioner, that too, while over taking the bus, which was coming in front of the bus, he hit the cyclist, which was coming from opposite direction, on the left side of the road. Due to which, the cyclist died. Thereafter, the petitioner also hit the motorcycle and the bus itself was capsized. Due to which, 14 persons were sustained simple injuries and three persons were sustained grievous injuries and one persons died on the spot. The small contradictions of cause any fatal to the case of the prosecution, since the prosecution categorically proved its case beyond any doubt. Therefore, he prayed for dismissal of the revision.

8.Heard. Perused the materials available on record.



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9. Admittedly, the petitioner drove the bus bearing Reg.No.TN-49-J-5865 on 29.01.2009 at about 12.55 hours from Trichy to Chennai bypass road. While being so, the bus was going on the bridge at Senthannerpuram near “ G Corner”, the petitioner attempted to over take the bus, which was going in front of the vehicle on the same direction, he hit the cyclist (deceased), which was coming from opposite direction. Therefore, he sustained grievous injuries and died on the spot. After in order to avoid hitting the cyclist, the petitioner had put sudden break and due to which, the bus was capsized. Due to which, 17 persons totally suffered with simple and grievous injuries and one cyclist died, due to heavy injuries sustained him.

10. On perusal of deposition reveals that some of the injured persons deposed that when the petitioner was over taking the bus, which was going in front of the bus, he hit the cyclist and thereafter, the bus was capsized. Some of the witnesses deposed that when the petitioner was over taking the lorry going in front of the vehicle, he hit the cyclist and the bus was capsized. However, it is clear that when the petitioner was over taking the bus or lorry in front of the bus, he hit the cyclist. That apart, the petitioner was over taking the vehicle, which was going in front of the vehicle on the bridge. Therefore, only on the rash and



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negligent driving of the petitioner and also he drove the bus in a speedy manner on steeply slope of the bridge and without controlling the vehicle, he hit the cyclist. In order to avoid hitting the cyclist, he applied sudden break and due to over speed, the bus was capsized. Due to which, 17 persons got injured and one person died. That apart, the Motor Cycle Inspection Inspector's report reveals that the accident was not happened due to any mechanical defects of the bus, which was marked as Ex.P.2. Therefore, the accident was happened only due to the rash and negligent driving of the petitioner and this Court finds no infirmity or illegality in the orders passed by the Courts below.

11.However, the learned counsel for the petitioner would submit that the petitioner is sole breadwinner of the family and he has also incarcerated imprisonment for one month and prayed for reduce the sentence.

12.In view of the above, the conviction passed by the Courts below is hereby confirmed and insofar as the sentence is concerned and this Court feels to reduce the sentence.



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13. Accordingly, the sentence of imprisonment imposed under Section 304A IPC (1 count) is alone reduced from one year S.I. to four months S.I. The period of incarceration already undergone by the revision petitioner will be set off in terms of Section 428 of Cr.P.C.

14. With these modification in the matter of sentence, the Criminal Revision Petition is partly allowed.

17.03.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1. The III Additional District Judge, Trichy.

2. The Chief Judicial Magistrate, Trichy.

3. The Inspector of Police,
Traffic South Investigation P.S.
Cantonment Police Station Complex,
Trichy-1, Trichy District.

4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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

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G.K.ILANTHIRAIYAN , J.
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