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Crl.R.C.(MD)No.452 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.452 of 2018

V.Ganesan

... Petitioner

vs.

The Inspector of Police
Sivagiri Police Station,
Tirunelveli District
Crime No.626 of 2007

... Respondent

PRAYER : This Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the learned I Additional District and Sessions Judge, Tirunelveli in Crl.A.No.17 of 2015 by judgement dated 05.01.2018 by which confirming the conviction and sentence of imprisonment imposed by the learned District Munsif cum Judicial Magistrate, Sivagiri in CC No.7 of 2008 by the judgement dated 17.02.2015 and set aside the judgement of the Courts below and acquit the petitioner.

For Petitioner : Mr.S.Deenadhayalan

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



ORDER

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This Criminal Revision case is directed against the conviction imposed as against the petitioner by the learned I Additional District and Sessions Judge, Tirunelveli in Crl.A.No.17 of 2015 confirming the judgment passed in CC No.7 of 2008 on the file of the learned District Munsif cum Judicial Magistrate, Sivagiri.

2. The case of the prosecution is that on 08.10.2004 at 4.20 pm., in the north of Vadugapatty Village on Rayagiri Vadugatty main road, the accused drove his omni car bearing Reg. No. TN 72 E 8446 from west to east in a rash and negligent manner and dashed against the deceased. After dashing against the deceased the car went to some extent and got capsized and the persons who travelled in the omni car also sustained injuries.

3. On the complaint lodged, the respondent police registered a case in Crime No.626 of 2007 for the offences under sections 279,337,338 and 304(A) of IPC. After completion of investigation, the respondent filed the final report and the same has been taken cognizance in C.C. No.7 of 2008 by the trial Court.

4. On the side of the prosecution they had examined twelve witnesses as P.W.1 to P.W. 12 and marked exhibits Ex.P.1 to Ex.P.10 and no material



object was marked. On the side of the accused neither oral nor documentary evidence was let in.

5. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offences under sections 279,337,338 and 304 (A) of IPC and sentenced the petitioner to pay a fine of Rs.500/- in default to undergo one month rigorous imprisonment for the offence under section 279 of IPC and sentenced the petitioner to pay a fine of Rs.500/- in default to undergo one month rigorous imprisonment for the offence under section 337 of IPC and sentenced the petitioner to pay a fine of Rs.1000/- in default to undergo one month rigorous imprisonment for the offence under section 338 of IPC and sentenced to undergo six months rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo one month rigorous imprisonment for the offence under section 304(A) of IPC. Aggrieved by the same, the petitioner has preferred an appeal in C.A. No.17 of 2015 before the learned I Additional District and Sessions Judge, Tirunelveli. The appellate Court confirmed the conviction imposed by the trial Court. Hence, the present revision has been filed.

6. The learned counsel for the petitioner would submit that P.W. 1 and P.W.2 who were eye witnesses to the said occurrence turned hostile and they failed to support the case of prosecution. The person who was riding the



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cycle behind the deceased was examined as P.W.7 and he deposed that when the deceased was walking from east to west the petitioner drove his car negligently and dashed against the deceased, therefore he sustained injuries and died. However in the complaint given by P.W.7 he has stated that when the deceased was walking from west to east the petitioner drove his car behind him and dashed against him, therefore he sustained injuries and died. Thereafter the car got capsized and two persons who were travelling in the car also sustained injuries. These contradictions are vital to the case of prosecution. That apart no one have deposed that the petitioner had driven his car in a rash and negligent manner. Further road condition was worst and as such while he applied sudden brake the car got capsized and due to which two persons got injured. When the deceased all of a sudden crossed the road the incident had happened and as such it was not happened due to rash and negligent driving of the petitioner and he further submitted that P.W.7 could not have witnessed the occurrence, since contradictions there are contradictions in his own statement and he failed to support the case of prosecution. Infact other witnesses P.W.3 and P.W.4 did not even depose about the presence of P.W.7 in the scene of occurrence. Though P.W.7 lodged complaint, he had not admitted the deceased in the hospital and one Ponraj had only admitted the deceased in the hospital and even then the said Ponraj was not examined. Therefore he prayed for acquittal.



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7. The learned Government Advocate(Crl.Side) would submit that both the courts below have concurrently convicted the petitioner and it does not warrant any interference by this Court. The petitioner drove his car in a rash and negligent manner and that too in a high speed while he was on the extreme right of the road hit behind the back of the deceased and as such he sustained injuries and died. Minor contradictions would not disprove the case of prosecution, therefore he seeks dismissal of the petition.

8. Heard both sides and perused the materials available on record.

9. On 08.10.2004 at 4.20 pm., when the deceased was walking from east to west on the extreme left hand side of the road and in the same direction the petitioner drove his case in a rash and negligent manner and dashed against him due to which he sustained injuries and died. That apart the petitioner drove his vehicle in a high speed and after dashing against the deceased the entire car got capsized , due to which two persons sustained injuries who travelled along with the petitioner. After hearing the huge sound they came to know that the accident had happened, whereas P.W.3,P.W.4 and P.W.7 who were witnesses to the occurrence have categorically deposed that only because of the rash and negligent act of the petitioner the car dashed against the deceased, due to which he sustained injuries and died. The contradictions pointed out by the learned counsel for the petitioner are not



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helpful to the defence side since that contradictions are no way connected with the incident. The first contradiction pointed out by the learned counsel for the petitioner that P.W3 and P.W.4 did not whisper about the presence of P.W.7 and another contradictions is that P.W. 1 and P.W.2 who travelled in the car failed to support the case of prosecution. A perusal of the evidence reveals that while hearing the noise that the petitioner after hitting the deceased had got capsized due to which they sustained injuries. Further Motor Vehicle Inspection Report also reveals the fact that the incident had not happened due to any mechanical fault. The prosecution had proved its case beyond any reasonable doubts that the petitioner only drove his car in a rash and negligent manner. and caused the accident. This Court finds no illegality or infirmity in the order passed by both the courts below.

10. The learned counsel for the the petitioner would submit that considering the age of the petitioner and his family the sentence may be modified into compensation.

11. In view of the above, the conviction imposed on the petitioner is confirmed and the conviction is reduced to the period already undergone by the petitioner, considering the age of the petitioner the sentence imposed on the petitioner for the offence under sections 279,337,338 and 304(A) of IPC is hereby modified into compensation. Accordingly the petitioner is directed to



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deposit a sum of Rs.50,000/- (Rupees Fifty thousand only) to the credit of C.C. No.7 of 2008 on the file of the learned District Munsif cum Judicial Magistrate, Sivagiri on or before **17.07.2023**. On such deposit being made, the legal heirs of the deceased are permitted to withdraw the same by filing proper application. It is made clear that if the petitioner fails to deposit the said amount on or before 17.07.2023, the respondent is at liberty to secure the petitioner and subject him to serve the remaining period of sentence as imposed by the Courts below.

12. This Criminal Revision case is partly allowed to the extent indicated above.

12.06.2023

aav

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1. The I Additional District and Sessions Judge, Tirunelveli
2. The District Munsif cum Judicial Magistrate, Sivagiri
3. The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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