



Crl.R.C(MD)No.537 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.537 of 2018

Pominathan

... Petitioner/Appellant/
Sole Accused
Vs.

State of Tamil Nadu,
Rep by the Inspector of Police,
Pasuvanthanai Police Station,
Tuticorin District.
Crime No.61 of 2011.

... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgment by convicting the petitioner passed by the learned II-Additional District Sessions Court, Tuticorin, dated 27.08.2018 in Crl.A.No.116 of 2017 by modifying the order of conviction and sentence passed by the learned Judicial Magistrate No.II, Kovilpatti, in C.C.No.142 of 2011 dated 10.08.2017 and set aside the same as illegal and acquit the petitioner by allowing this Criminal Revision Petition.

For Petitioner : Mr.K.Sivabalan

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Criminal Side)



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ORDER

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The revision has been filed to set aside the the judgment passed by the learned II-Additional District Sessions Court, Tuticorin, in Crl.A.No.116 of 2017, dated 27.08.2018, by modifying the order of conviction and sentence passed by the learned Judicial Magistrate No.II, Kovilpatti, in C.C.No.142 of 2011 dated 10.08.2017.

2.The case of the prosecution is that on 17.04.2021, at about 05.00 p.m, when the deceased was riding his motorcycle bearing Reg.No.TN-01-AK-6373 from Pasuvanthanai to Kovilpatti main road on extreme left side of the road by following the traffic rules, the petitioner drove his Taras Lorry bearing Registration No.TN-59-AB-3232 in a rash and negligent manner and hit the deceased's motorcycle. Therefore, the deceased sustained grievous injuries and died on the spot.

3.On the complaint, the respondent registered an F.I.R in Crime No.61 of 2011. After completion of the investigation, they filed a final report before the learned Judicial Magistrate No.II, Kovilpatti, and the same has been taken cognizance in C.C.No.142 of 2011 for the offence under Section 304(A) of I.P.C.



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4.On the side of the prosecution, they had examined P.W.1 to P.W.10 and marked Exs.P.1 to P.7 and 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 offence under Section 304(A) of I.P.C and sentenced him to undergo 1 year Simple Imprisonment.

6.Aggrieved by the same, the petitioner preferred an appeal in C.A.No.116 of 2017 before the II Additional District Sessions Court, Tuticorin. The Appellate Court also confirmed the order of conviction and sentence imposed by the trial Court and also imposed fine of Rs.5,000/-, in default, he was directed to serve further 2 months Simple Imprisonment. Hence, the present revision.

7.The learned counsel for the petitioner submitted that P.W.1 is one of the eye-witness. He is none other than the brother of the deceased. He did not whisper about P.W.4 also travelled with P.W.1 as billion rider. Another eye-witness was examined as P.W.2, who was also riding his motorcycle behind the deceased's motorcycle. He also did not whisper about P.W.1 and 4. He further submitted that there was contradiction between the FIR and enquiry



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report. The deceased's body was found in right side of the road, whereas the accident taken place left side of the road. It shows that only because of the rash and negligent driving of the deceased, the said accident had happened. He further submitted that in fact, the deceased did not possess any license to drive two wheeler. He further submitted that the petitioner is aged about 55 years. As such, he seeks relief under the probation of good conduct as contemplated under Section 360 of Cr.P.C.

8.Per contra, learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1, 2 and 4 are the eye-witnesses to the occurrence. They had ride their respective motorcycles behind the deceased's motorcycle. When the deceased was proceeding towards Kovilpatti main road from Pasuvanthanai, the petitioner drove his Taras Lorry in a rash and negligent manner and hit the deceased's motorcycle. Therefore, the deceased died on the spot. All the eye-witnesses have also corroborated each other deposition. Hence, both the Courts below rightly convicted the petitioner for the offence under Section 304(A) of IPC. Hence, it does not require any interference and prays for dismissal of this petition.



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

10.It is seen that on 17.04.2011, at about 05.00 p.m, after celebrating Car festival, P.W.1, P.W.2 and P.W.4 and the deceased were proceeding to Kovilpatti to Pasuvanthanai by their respective motorcycles. When the deceased was proceeding in front of P.W.1 and P.W.2's vehicle, the petitioner drove his Taras Lorry in the opposite direction in a rash and negligent manner and hit the deceased's motorcycle. Therefore, he fell down and sustained grievous injuries and died on the spot. It is corroborated by P.W.1, P.W.2 and P.W.4. The Motor Vehicle Inspector was examined as P.W.5. He categorically deposed that the accident had not happened due to any mechanical fault. Therefore, the Trial Court rightly convicted the petitioner for the offence under Section 304(A) of I.P.C., and the same was confirmed by the First Appellate Court. Hence, this Court finds no illegality or infirmity in the order passed by the Courts below.

11.However, the learned counsel for the petitioner submitted that the petitioner never involved in any accident before the present occurrence and as such, seeks relief under Section 360 of Cr.P.C.



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12.Considering the facts and circumstances, this Court is inclined to modify the sentence alone by invoking the provision under Section 360 of Cr.P.C and also by imposing compensation to be paid to the legal heirs of the deceased.

13.In view of the above, the conviction passed by the trial Court for the offence under Section 304(A) of I.P.C is hereby confirmed. In so far as the sentence for the offence under Section 304(A) of I.P.C is concerned, it is modified as compensation. Hence, the petitioner is directed to deposit a sum of Rs.1 lakhs (Rupees One Lakh Only) to the credit of C.C.No.142 of 2011 on or before 10.07.2023, failing which, the sentence imposed by the Court below is hereby restored and the respondent is directed to secure the petitioner and send him for serving remaining period of sentence. On such deposit being made, the legal heirs of the deceased are permitted to withdraw the same.

14.With the above direction, this Criminal Revision Case is disposed of.

02.06.2023

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



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To

- 1.The II-Additional District Sessions Court,
Tuticorin.
- 2.The learned Judicial Magistrate No.II,
Kovilpatti,
- 3.The Inspector of Police,
Pasuvanthanai Police Station,
Tuticorin District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

dss

Order made in
Crl.R.C(MD)No.537 of 2018

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