



Crl.R.C.(MD)No.495 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2023

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.495 of 2017

K.Durai

... Petitioner

Vs.

State rep.by
The Inspector of Police,
Velayuthampalayam Police Station,
Karur District.
(Crime No.532 of 2012)

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the learned Additional Sessions Judge, Karur in Crl.A.No.39 of 2017 by judgment dated 27.04.2017 confirming the conviction and modifying the sentence imposed by the learned Chief Judicial Magistrate, Karur in C.C.No.67 of 2014 by the judgment dated 03.02.2017 and set aside the judgment of the Courts below and acquit the petitioner.

For Petitioner : Mr.M.Karunanithi



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

ORDER

This Criminal Revision has been filed to set aside the order passed by the learned Additional Sessions Judge, Karur in Crl.A.No.39 of 2017 by judgment dated 27.04.2017 confirming the conviction and modifying the sentence imposed by the learned Chief Judicial Magistrate, Karur in C.C.No.67 of 2014 by the judgment dated 03.02.2017.

2.The case of the prosecution is that on 06.12.2012, at about 02.15 pm., the petitioner drove his terrace lorry bearing Reg.No.TN 66 D 9662 from west to east in a rash and negligent manner at Karur-Salem Highway road and without any signal, all of a sudden, he turned the lorry to his left side. Therefore, the lorry hit two motorcycles, bearing Reg.No.TN 47 AC 0788 and TN 47 AC 6322, which were driven by the deceased and injured, due to the same, one person got grievous injuries and one person succumbed to the injuries.



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3. On receipt of the complaint, the respondent police registered FIR in Crime No.532 of 2012 for the offence punishable under Sections 279, 338 and 304-A IPC. After completion of investigation, the respondent police filed final report and the same has been taken cognizance by the trial Court in C.C.No.67 of 2014 for the offence under Sections 337, 304(A) IPC. On the side of the prosecution, they had examined P.W.1 to P.W.12 and marked Ex.B1 to Ex.B11. The prosecution did not produce any material object. On the side of the accused, no one was examined and no exhibits marked. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty under Section 337 and 304(A) IPC and sentenced him to undergo one year simple imprisonment and to pay fine amount of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 304(A) IPC and to pay Rs.500/- in default one month simple imprisonment for the offence under Section 337 IPC. Aggrieved by the same, the petitioner preferred an appeal. The appellate Court confirmed the conviction and sentence imposed by the trial Court and reduced the sentence imposed under Section 304(A) from one year to six months simple imprisonment. Hence, the present revision has been filed.



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4.The learned counsel appearing for the petitioner would submit that even according to the case of the prosecution, the riders of the two wheelers themselves hit the lorry and sustained injuries. Unfortunately, one person succumbed to injuries. Therefore, no offence made out under Section 304(A) and 337 IPC. There is absolutely no evidence that the petitioner drove lorry in rash and negligent manner. According to the prosecution, the petitioner drove his lorry on his left hand side without signal, for which also no evidence.

5.The learned Government Advocate(Crl.side) appearing for the respondent police would submit that the petitioner had driven his lorry in rash and negligent manner and turned his left hand side without any signal. Therefore, two persons, who came in two wheeler hit the lorry's back side and sustained injuries, in which person succumbed to the injuries and one got grievous injuries. One eye witness examined as PW.1 and he categorically spoken that only because of the rash and negligent driving of the lorry driver, the accident has taken place. Therefore, the Court below rightly convicted the petitioner for the



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offence punishable under Sections 337 and 304(A) IPC and it does not require interference.

6.Heard both sides and perused the materials available in the records.

7.It is seen that on 06.12.2012, at about 02.15 pm., the petitioner drove his terrace lorry bearing Reg.No.TN 66 D 9662 from west to east in a rash and negligent manner at Karur-Salem High way road and without any signal, all of a sudden, he turned the lorry to his left side. Therefore, the lorry hit two motorcycles, bearing Reg.No.TN 47 AC 0788 and TN 47 AC 6322, which were driven by the deceased and injured, due to the same, one person got grievous injuries and one person succumbed to the injuries. Admittedly, the prosecution failed to examine the injured person. One eye witness was examined as PW.1 and he deposed that when he was in his working place, the petitioner drove his lorry and turned his lorry on his left hand side. He never deposed that the petitioner had driven the lorry in a rash and negligent manner. This Court can easily visualize the occurrence. When the petitioner was



driving his lorry on his left hand side, there is no possibility to his the two wheelers, which were came from back side. One of the witnesses also deposed that 2 two wheeler were driven by the deceased and injured behind the lorry. Without noticing the lorry, which was turning left side, they themselves hit the lorry and due to the same, they sustained injuries.

8. That apart, non-examination of the injured person is fatal to the case of the prosecution. As rightly pointed out by the learned counsel for the petitioner that the prosecution failed to prove that the petitioner had driven his lorry in a rash and negligent manner. Therefore, no charge is made out as against the petitioner for the offence under Sections 337 and 304(A) IPC. Though PW.1 and PW.2 deposed that the lorry hit two wheelers, FIR shows that the two wheelers hit the lorry and fell down. Therefore, the prosecution failed to prove the charges levelled against the petitioner. Hence, the conviction and sentence imposed by the Courts below for the offence under Sections 337 and 304(A) IPC is hereby set aside and the petitioner is acquitted from the charges. If the petitioner paid any fine amount, the same shall be returned to him.



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9.In the result, this criminal revision case is allowed.

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

1.The Additional Sessions Judge, Karur.

2.The Chief Judicial Magistrate, Karur.

3.The Inspector of Police,
Velayuthampalayam Police Station,
Karur District.

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



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G.K.ILANTHIRAIYAN,J.

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