



Crl.R.C(MD)No.747 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.747 of 2017

M.Sankar

... Revision Petitioner/
Appellant/Sole Accused

Vs.

The Inspector of Police,
Kennikkarai Police Station,
Ramanathapuram District.
(Crime No.632 of 2008).

... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to C.C.No.12 of 2014, dated 15.07.2015 passed by the learned Chief Judicial Magistrate, Ramanathapuram and modified by the learned Principal Sessions Judge, Ramanathapuram in Crl.A.No.24 of 2015, dated 06.07.2017 and set aside the same.

For Petitioner : Mr.V.Ajay Khose

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



Crl.R.C(MD)No.747 of 2017

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ORDER

This Revision has been filed to set aside the Judgment in C.C.No.12 of 2014, dated 15.07.2015, on the file of the learned Chief Judicial Magistrate, Ramanathapuram, modifying the order made in Crl.A.No.24 of 2015, dated 06.07.2017 on the file of the learned Principal Sessions Judge, Ramanathapuram.

2.The case of the prosecution is that the petitioner drove the bus bearing Registration No.TN-63-N-0917 belonged to the Tamil Nadu State Transport Corporation from Pattukottai to Rameshwaram North to South on 12.09.2008 at about 04.45 a.m without a headlight and on the light of the route board light, at a high speed and also in a rash and negligent manner near Jeyandra Saraswathi Arts College and dashed as against the Tipper lorry which was parked on the left hand of the road bearing Registration No.TN-65-H-4928. Therefore, the said lorry was moved forward and hit another Tipper lorry bearing Registration No.TN-65-H-6157, which was parked in front of the said lorry, which was broke down and its driver and cleaner were doing repair work in front of the lorry. Therefore, the driver of the lorry sustained grievous injuries



Crl.R.C(MD)No.747 of 2017

and died on the spot. The cleaner sustained fractures on both of his legs. After hitting the lorry, the bus which was driven by the petitioner hit the bridge and fell down from the bridge. Therefore, one of the passengers sustained grievous injuries and died, and other passengers sustained grievous and simple injuries. On the complaint, the respondent registered the F.I.R in Crime No.632 of 2008 for the offence under Section 279, 337, 338 and 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.12 of 2014 on the file of the learned Chief Judicial Magistrate, Ramanathapuram at Kumbakonam.

3.On the side of the prosecution, they had examined P.W.1 to P.W.35 and marked Exs.P.1 to P.30 and on the side of the accused, no one was examined and no exhibits were marked.

4.On perusal of oral and documentary evidence, the trial Court found the accused guilty for the offences under Sections 279, 337 (8 counts), 338 (3 counts) and 304(A) (2 counts) and sentenced to pay a fine of Rs.500/-, in default to undergo one month Simple Imprisonment for the offence under Section 279 of



Crl.R.C(MD)No.747 of 2017

I.P.C; sentenced to pay a fine of Rs.250/- each (Rs.250 X 8 = Rs. 2,000/-), in default to undergo one month Simple Imprisonment for the offence under Section 337 of I.P.C (8 counts); sentenced to pay a fine of Rs.500/- each (Rs.500 X 3 = Rs.1,500/-), in default to undergo one month Simple Imprisonment for the offence under Section 338 of I.P.C (3 counts) and sentenced to undergo two years Simple Imprisonment and to pay a fine of Rs.5,000/- each in default to undergo three months Simple Imprisonment for the offence under Section 304(A) of I.P.C (2 counts). The sentences shall run concurrently. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.24 of 2015 on the file of the learned Principal Sessions Judge, Ramanathapuram and the Appellate Court partly allowed the appeal confirming the conviction and sentence for the offences under Sections 279, 337 (8 counts) and 338 (3 counts) of I.P.C and reduced the sentence from two years to one year Simple Imprisonment for the offence under Section 304(A) of I.P.C. Hence, the present Revision.

5.The learned counsel appearing for the petitioner would submit that no one had spoken that the petitioner driven the bus in a rash and negligent manner. Therefore, the prosecution failed to



Crl.R.C(MD)No.747 of 2017

prove that the petitioner had driven the bus in a rash and negligent manner. All the witnesses heard the noise after hitting the lorry and no one had seen that the petitioner drove the bus in a rash and negligent manner. Two tipper lorries were parked in the middle of the road. The repairing work was being carried out and one of the lorries was parked in the middle of the road. There was no reflective triangle warning sign kept behind the lorries indicating the sign of emergency breakdown. Further early morning at about 04.45 a.m the petitioner drove the bus at a slow speed and even then suddenly noted that the lorries were parked in the middle of the road and as such, he could not able to stop the bus, since the bus had only 60% of break. Therefore, there was no negligence on the part of the petitioner only because the lorries were parked in the middle of the road and on their negligence, the accident had occurred. They failed to follow the fundamental, precautionary and mandatory steps while parking the lorries when it broke down. That apart, there was a short curve on the Highways and as such, there was no feasibility to see the lorries which were parked in the middle of the road. After seeing the lorries which were parked in the middle of the road, in order to avoid the accident and also to save the lives of the passengers, he turned the bus. However, hit the lorry and the bus also fell down from the bridge. Therefore, the accident was not



Crl.R.C(MD)No.747 of 2017

happened solely due to the rash and negligent act of the petitioner and there are extraneous circumstances for the cause of the accident.

6.In support of his contention, he also cited the Judgment of this Court in ***Balamurugan Vs. The State*** reported in ***(MANU/TN/3659/2021)*** and held that the criminal jurisprudence says that unless there is a statutory burden, it is always on the prosecution to establish the guilt of the accused and prove its case beyond all reasonable doubt. The prosecution should let in evidence to prove that the ingredient necessary for a particular offence is made out. Merely because there was an accident and that two persons have lost their lives, the burden cannot be shifted on the accused to prove his innocence and there can be no presumption that the accused drove the vehicle in a rash and negligent manner. In ***M.Subramani Vs. State*** reported in ***MANU/TN/3138/2016***, this Court held that merely because the vehicle was being driven at a “high speed” does not speak of either negligence or rashness by itself. In the absence of any material on record, no presumption of rashness or negligence could be drawn by invoking the maxim “*res ipsa loquitur*”. Therefore, he prayed to acquit the petitioner herein.



Crl.R.C(MD)No.747 of 2017

7.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that the petitioner had driven the bus in a rash and negligent manner that too without the headlight and drove the bus on the light of the route board light and hit the lorries which were parked on the left side of the road in order to attend the repair works. Due to which, one passenger from the bus and lorry driver who was attending the repair works died on the spot. So many passengers had sustained grievous injuries and the cleaner also sustained grievous injuries. The passengers were examined by the prosecution and they categorically deposed that only because of the rash and negligent driving of the petitioner, the accident had occurred and all the witnesses also deposed that the petitioner without even a headlight even after their prevention drove the bus wantonly and hit the lorry which was parked on the left-hand side of the road. The petitioner only had driven the bus and hit the lorries. Therefore, only through the rash and negligent driving of the bus driver, the accident had taken place. Hence, both the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.



Crl.R.C(MD)No.747 of 2017

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

9. Admittedly, the petitioner had driven the bus bearing Registration No.TN-63-N-0917 belonged to the Tamil Nadu State Transport Corporation from Pattukottai to Rameshwaram North to South on 12.09.2008 at about 04.45 p.m and when the bus was proceeding near Jeyandra Saraswathi Arts College from Ramanathapuram to Devipattinam, hit the Tipper lorry which was parked on the left-hand side of the road bearing Registration No.TN-65-H-4928. Due to which, the said tipper lorry was moved forward and hit another Tipper lorry bearing Registration No.TN-65-H-6157, which was parked in front of the said lorry, due to breakdown. That apart, the driver and cleaner of the said lorry were attending repair works in front of the lorry. Because of the said hit, the driver of the lorry sustained grievous injuries and died on the spot. The cleaner also sustained grievous injuries and fractures on his both legs. One of the passengers has been sustained grievous injuries and died and other passengers sustained grievous injuries. Thus, it is clear that the bus was driven by the petitioner.



Crl.R.C(MD)No.747 of 2017

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10. The passengers of the bus were examined by the prosecution as P.W.3, 5, 6, 7 and 8. All the witnesses categorically deposed that they boarded the bus at Pattukottai to go to Rameshwaram on the previous day at about 06.00 p.m. However, the headlight of the bus got repaired and it was not working. Therefore, all the passengers advised the petitioner not to take the vehicle and advised him to attend the repair work. Even then, the petitioner had taken the bus and proceeded to Ramanathapuram. Just 4 kms before Rameshwaram, he hit the lorry which was parked on the left hand side of the road. After hitting the lorry, the bus run over the bridge and fell down. Due to which, so many passengers sustained grievous injuries and they were immediately taken to the Hospital for treatment. Thus, it is clear that the bus was driven by the petitioner without a headlight. It was run by him with a light of route board light. It is not sufficient to drive the vehicle that too in National Highways. The route board light normally indicates the arrival place and departure place, including the route map. It is also fixed on the top of the window mirror. Therefore, without a headlight, no one can notice the vehicle which was parked or which was proceeding in the same direction on the road. Even then, the petitioner, after knowing the risk, had driven the vehicle. The motor



Crl.R.C(MD)No.747 of 2017

vehicle inspector was examined and he opined that the accident was not happened due to any mechanical fault.

11.The Doctor, who had treated the passengers, deposed that due to the injuries sustained in the accident, both persons died and others got injured. Therefore, the prosecution witnesses categorically deposed that only because of the rash and negligent driving of the petitioner, the accident had occurred, due to which two persons died and others got grievous injuries. Therefore, the Judgments cited by the learned counsel for the petitioner are not helpful to the case on hand, since there is clinching and cogent evidence to prove that the petitioner had driven the bus in a rash and negligent manner and hit the lorries. That apart, when the petitioner had taken the defence that both the lorries were parked in the middle of the road without any sufficient indication to show that they were parked in the road for break down and as such, the petitioner without noticing the lorries which were parked in the middle of the road in order to avoid the accident he turned the vehicle and even then, the petitioner hit with the lorry. Therefore, no negligence on the part of the driver, the petitioner ought to have examined himself to substantiate the said contention. In fact, the



Crl.R.C(MD)No.747 of 2017

petitioner did not even make any statement under Section 313 of Cr.P.C. Therefore, the Appellate Court rightly confirmed the conviction and sentence imposed by the trial Court as against the petitioner for the offence under Sections 279, 337 (8 counts) and 338 (3 counts) of I.P.C and reduced the sentence from two years to one year Simple Imprisonment for the offence under Section 304(A) of I.P.C. However, the learned counsel appearing for the petitioner would submit that considering the age of the petitioner, the sentence may be reduced for the offence under Section 304(A) of I.P.C as against the petitioner.

12.Considering the above submissions and facts and circumstances of the case, the conviction and sentence imposed by the Courts below as against the petitioner for the offence under Sections 279, 337 (8 counts) and 338 (3 counts) of I.P.C is hereby confirmed. Further, the conviction imposed as against the petitioner for the offence under Section 304(A) is hereby confirmed. In so far as the sentence is concerned, it is reduced from one year to six months for the offence under Section 304(A) of I.P.C.



Crl.R.C(MD)No.747 of 2017

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13. Accordingly, this Criminal Revision case is partly allowed. The trial Court is directed to take appropriate steps to secure the petitioner in order to serve the remaining period of sentence, if any.

19.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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Crl.R.C(MD)No.747 of 2017

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To

- 1.The Chief Judicial Magistrate,
Ramanathapuram.
- 2.The Principal Sessions Court,
Ramanathapuram.
- 3.The Inspector of Police,
Kennikkarai Police Station,
Ramanathapuram District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C(MD)No.747 of 2017

G.K.ILANTHIRAIYAN, J.

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Order made in
Crl.R.C(MD)No.747 of 2017

19.04.2023