



Crl.R.C(MD)No.753 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

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Thangavel

... Revision Petitioner/
Appellant/Accused

Vs.

The Inspector of Police,
Lalpettai Police Station,
Karur District.
(Crime No.182 of 2014)

... 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 and set aside the order in Crl.A.No.69 of 2017, dated 12.09.2017 on the file of the learned Principal Sessions Judge, Karur, confirming the order passed by the learned Judicial Magistrate No.1, Kulithalai, Karur District in C.C.No.90 of 2014, dated 02.05.2017 and allow the above Revision Petition.

For Petitioner : Mr.B.Jameel Arasu

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



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ORDER

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This Revision has been filed to set aside the Judgment in Crl.A.No.69 of 2017, dated 12.09.2017 on the file of the learned Principal Sessions Judge, Karur, partly modifying the order in C.C.No.90 of 2014, dated 02.05.2017 on the file of the learned Judicial Magistrate No.1, Kulithalai, Karur District.

2.The case of the prosecution is that on 31.03.2014 at about 06.45 p.m., the deceased was waiting on the Northern side of Trichy to Karur Main Road near Veeravalli Bus stop to cross the road. The petitioner had driven his car bearing Registration No.TN-49-AP-7601 in a rash and negligent manner from West to East and hit the deceased. Therefore, the deceased sustained grievous injuries and died. On the complaint lodged by P.W.1, the respondent registered the F.I.R in Crime No.182 of 2014 for the offences under Sections 279 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.90 of 2014 on the file of the learned Judicial Magistrate No.1, Kulithalai, Karur District.



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3.On the side of the prosecution, they had examined P.W.1 to P.W.10 and marked Exs.P.1 to P.8 and on the side of the accused, no one was examined and no documents were marked.

4.On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offences punishable under Sections 279 and 304(A) of I.P.C and sentenced him to undergo one month Simple Imprisonment and also imposed a fine of Rs.500/-, in default to undergo one week Simple Imprisonment for the offence under Section 279 of I.P.C and sentenced him to undergo one year Simple Imprisonment and also imposed a fine of Rs.1,000/-, in default to undergo two weeks Simple Imprisonment for the offence under Section 304(A) of I.P.C. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.69 of 2017 on the file of the learned Principal Sessions Judge, Karur and partly modified the same by confirming the conviction recorded by the trial Court and set aside the offence under Section 279 of I.P.C and modified the sentence for the offence under Section 304(A) of I.P.C. Hence the present Revision.



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5.The learned counsel appearing for the petitioner would submit that no witness had spoken about the rash and negligent driving of the petitioner herein. There was a Vinayagar procession and after the procession when the deceased was trying to cross the road that too in the bye pass road without seeing the vehicle on either side, unfortunately, the petitioner hit the deceased. Even assuming that the petitioner had driven the car in a speed manner, it does not amount to a rash and negligent manner. Therefore, the prosecution miserably failed to prove the offence under Section 304(A) of I.P.C., when no one had spoken, that the petitioner had driven a car in a rash and negligent manner. Though the motor vehicle inspection report revealed that the accident was not happened due to mechanical fault, and it was not marked through the vehicle inspector, it is fatal to the case of the prosecution. In support of his contention, he relied upon the Judgment of the Honourable Supreme Court of India in **State of Karnataka Vs. Sathish** reported in **(1998) 8 SCC 493**.

6.The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the prosecution had examined P.W.1 to P.W.10 in which P.W.1 to P.W.5 are the



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eyewitnesses. They categorically and cogently deposed that when the deceased was standing on the Northern side of the road that too in a mud, the petitioner had driven a car in a rash and negligent manner and hit her. Therefore, she sustained grievous injuries and died. Though the motor vehicle inspection report was not marked by the motor vehicle inspector, it is not fatal to the case of the prosecution, since the prosecution proved its case beyond any doubt. Therefore, both the Courts below rightly convicted the petitioner for the offence under Sections 279 and 304(A) of I.P.C.

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

8.When the deceased was standing left-hand side of the road to cross the bye-pass road, the petitioner had driven his car and hit her. Therefore, she sustained a head injury. Immediately, she was taken by the petitioner in his car along with P.W.1 to Kulithalai Government Hospital. She was referred to Trichy Government Hospital and as such, she was again taken to Government Hospital, Trichy. She was declared dead due to the injuries sustained by her. P.W.1 to P.W.5 were eyewitnesses to the



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occurrence, and they cogently deposed that when the deceased was standing on the extreme left side of the road, that too on the mud to cross the road, the petitioner had driven his car in a rash and negligent manner and hit her. Therefore, she sustained head injuries and died. It is true that high speed does not amount to negligence or rashness. In the absence of any material on record, no presumption of rashness or negligence could be drawn by invoking the maxim "*res ipsa loquitur*". The evidence of P.W.1 to P.W.5 would show that when the deceased was standing on the extreme left-hand side of the road, she was hit by the petitioner's vehicle. Therefore, it can be presumed that the petitioner had driven his car in a rash and negligent manner. Further, except P.W.1, P.W.2 to P.W.5 are independent witnesses, and they do not need to give false evidence as against the petitioner. Therefore, both the Courts below rightly convicted the petitioner for the offence punishable under Sections 279 and 304(A) of I.P.C and sentenced the petitioner for the offence under Section 304(A) of I.P.C. In so far as the sentence is concerned, this Court is inclined to reduce the sentence for the offence under Section 304(A) of I.P.C from six months to three months as imposed by the Appellate Court.



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9. Accordingly, the conviction recorded by the Courts below is confirmed. The sentence for the offence under Section 304(A) of I.P.C is modified from six months to three months as imposed by the Appellate Court. The period of detention already undergone by the petitioner/accused will be set off against the sentence. The trial Court is directed to take appropriate steps to secure the petitioner in order to serve the remaining period of sentence.

17.04.2023

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

1. The Principal Sessions Judge,
Karur.
2. The Judicial Magistrate No.1,
Kulithalai,
Karur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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