



Crl.R.C.(MD)No.935 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

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Chenna Kesavan

...Petitioner/Appellant/Accused

Vs.

The State rep., by
The Inspector of Police,
Nalltinpudur Police Station,
Thoothukudi District.

(Crime No.289 of 2009)

... Respondent/Respondent/Complainant

PRAYER : This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records in connection with the judgment passed by the I Additional District and Sessions Court, Thoothukudi in CA.No.26 of 2016 dated 19.09.2017 by confirming the judgment passed in CC.No.5 of 2011 dated 03.06.2016 on the file of the learned Judicial Magistrate No.I, Kovilpatti and set aside the conviction and sentence imposed against the petitioner herein.

For Petitioner : Mr.D.Sivaraman

For Respondent : Mr.K.Sanjai Gandhi

Government Advocate (Crl.side)



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ORDER

This revision has been filed to set aside the judgment passed in C.A.No. 26 of 2016 dated 19.09.2017 on the file of the learned I Additional District and Sessions Court, Thoothukudi, thereby confirming the conviction and sentence imposed upon the petitioner in CC.No.5 of 2011 dated 03.06.2016 on the file of the learned Judicial Magistrate No.I, Kovilpatti.

2. The case of the prosecution is that on 28.08.2009 at about 12.30 pm., when the deceased was riding in his motorcycle on the left hand side of the road from East-West at Kovilpatti-Kazhukumalai road near Sankaralingapuram, the petitioner/accused had driven his lorry bearing Registration No.TN-76-H-0722 from West-East in a rash and negligent manner and hit the motorcycle, thereby, the deceased fell down, sustained grievous injury and died. On the complaint lodged by P.W.1, the respondent registered FIR in Crime No.289 of 2009 for the offence punishable under Section 304(A) IPC. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.5 of 2011 on the file of the learned Judicial Magistrate No.I, Kovilpatti.



3. On the side of the prosecution, they had examined P.W.1 to P.W.11 and marked Exs.P.1 to P.9 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 offence punishable under Section 304(A) I.P.C and sentenced him to undergo one year Simple Imprisonment and also imposed a fine of Rs.1000/-, in default, to undergo four weeks Simple Imprisonment for the offence under Section 255(2) I.P.C. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.26 of 2016 on the file of the I Additional District and Sessions Court, Thoothukudi and the same was also dismissed by confirming the conviction and sentence given by the trial Court. Hence, the present revision.

5. The learned counsel appearing for the petitioner raised ground that the prosecution failed to prove that the petitioner had driven his vehicle in a rash and negligent manner. There was contradiction in the evidence of P.W.1 to P.W.4 with regard to the place of accident. Therefore, there could not have been ocular witnesses and they were only set-up witnesses by the prosecution. There were some corrections in the FIR and no explanation on the side of the



prosecution with regard to the corrections, which is fatal to the case of the prosecution. Even then, the Courts below convicted the petitioner without any proper evidence.

6. The learned Government Advocate (Crl.side) appearing for the respondent submitted that P.W.1 to P.W.4 were eye-witnesses to the occurrence and they have deposed cogently and as such, there was absolutely no contradiction and a small contradiction between them is not fatal to the case of the prosecution. The motor vehicle inspection report, which was marked as Ex.P.4, revealed that the accident had not happened due to mechanical default. The petitioner also failed to make any statement that the accident had not happened due to his rash and negligent manner. Therefore, both the Courts below concurrently held that the petitioner was found guilty for the offence under Section 304(A) IPC and it does not require any interference by this Court.

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

8. On 28.08.2009 at about 12.30 pm., when the deceased was riding in his motorcycle bearing Registration No.TN-76-X-1706, a lorry came from the



opposite direction, namely, West-East in a rash and negligent manner and hit the motorcycle and thereby, the deceased sustained grievous injuries and died. A perusal of the deposition of P.W.1 and P.W.2 revealed that P.W.1 and P.W.2 were riding motorcycle in the same direction along with the deceased, after purchasing seeds from Kovilpatti. The deceased was riding his motorcycle in front of their vehicle. When that being so, the petitioner had driven his lorry in a rash and negligent manner and directly dashed against the deceased motorcycle. Therefore, the deceased sustained head injury and died. P.W.1 lodged complaint, in which, P.W.1 signed as witness. On receipt of the same, FIR was registered as against the petitioner. P.W.3 and P.W.4 were also coming from same direction in their motor cycle bearing Registration No.TN-64-H-6417. They also deposed categorically and corroborated the evidence of P.W.1 and P.W.2.

9. The motor vehicle inspection reports were marked as Ex.P.3 and Ex.P.4. A perusal of Ex.P.4 revealed that the accident had not happened due to any mechanical default. That apart, the right hand side of front of the lorry got damaged and it shows that the driver of the lorry hit the motorcycle, due to which, the deceased fell down and got injury on his head. The rough sketch prepared by the respondent was marked as Ex.P.8, which also shows that the



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deceased was riding his motor cycle on his left hand side of the road and the lorry, which was coming from the opposite direction hit against the motorcycle.

Therefore, the prosecution proved its case beyond any reasonable doubt against the petitioner herein. Hence, both the Courts below rightly convicted the petitioner for the offence punishable under Section 304(A) IPC. However, considering the age of the petitioner and the manner in which, the accident had taken place, this Court is inclined to reduce the sentence alone. Accordingly, the conviction for the offence punishable under Section 304(A) IPC imposed by both the Courts below is hereby confirmed and the sentence of one year of Simple Imprisonment is hereby reduced to six months of Simple Imprisonment. The respondent is directed to take steps to secure the petitioner to serve the remaining period of sentence forthwith.

10. In result, the Criminal Revision Case is partly allowed.

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NCC : Yes/No
Index: Yes/No
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To

- 1.The I Additional District and Sessions Judge, Thoothukudi.
- 2.The Judicial Magistrate No.I, Kovilpatti.
- 3.The Inspector of Police,
Nalltinpudur Police Station,
Thoothukudi District.
- 4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN , J.,

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