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CrI.R.C.No.314 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.314 of 2024 and
CrI.M.P.No.2932 of 2024

Tamilselvan

... Petitioner

Vs.

State by the Inspector of Police,
Uthukuli Police Station,
Crime No.984 of 2011,
Tiruppur District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the conviction imposed in the judgment dated 19.06.2023 made in C.A.No.42 of 2018 on the file of the learned Principal Sessions Judge, Tiruppur, confirming the sentence imposed in the judgment, dated 22.03.2018 made in C.C.No.499 of 2012 on the file of the learned Judicial Magistrate, Avinashi and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.C.Ramkumar

For Respondent : Mr.R.Kishore Kumar,
Government Advocate (CrI. Side)

ORDER

The petitioner was convicted by the learned Judicial Magistrate, Avinashi (trial Court) by judgment, dated 22.03.2018 in C.C.No.499 of



2012 for offence under Section 279 of IPC and sentenced to undergo Rigorous Imprisonment for one year and for offence under Section 304(A) of IPC, the petitioner sentenced to Rigorous Imprisonment for one year. Aggrieved over the same, an appeal was filed by the petitioner before the learned Principal Sessions Judge, Tiruppur (lower appellate Court) in Crl.A.No.42 of 2018. The lower appellate Court, by judgment, dated 19.06.2023 dismissed the appeal confirming the judgment rendered by the trial Court. Challenging the same, the present Criminal Revision Case is filed.

2.The case of the prosecution is that the deceased Chandran was working as a Mechanic in E.M.S Engineering Work Shop at Uthukuli, Chennimalai Road. On 24.06.2011, at about 15.30 hours, after his work, while he was going in his two wheeler bearing Reg.No.TN 33 A2 6541 Star City from Uthukuli R.S Road towards North to South Vellagoundenpudur Junction and on the souther side of the road, the bus bearing Reg.No.TN 33 AT 2300 TPS Jayaprakash driven by the petitioner came in rash and negligent manner driver and colluded with the vehicle driven by the



deceased. Due to which, the deceased was run over and he died on the spot.

On getting information from PW2 and PW3, PW1 relative of the deceased rushed to the place of occurrence, saw the body of the deceased and lodged the complaint (Ex.P1) to the respondent Police. PW7, the Sub Inspector of Police received the complaint (Ex.P1) and registered an FIR (Ex.P3) in Crime No.984 of 2011 for offence under Sections 279 & 304(A) of IPC. PW7 visited the scene of occurrence, prepared Observation Mahazar and Rough Sketch (Ex.P4) in presence of PW2 and PW3, sent the body for postmortem and also sent the two wheeler and bus to the Motor Vehicle Inspector for inspection. Thereafter, PW8 took up the investigation and examined further witnesses. On collection of Motor Vehicle Inspector reports (Exs.P6 & P7) and postmortem report (Ex.P8), PW8 filed the charge sheet before the trial Court.

3.During trial, on the side of the prosecution, nine witnesses examined as PW1 to PW9 and eight documents marked as Exs.P1 to P8. On the side of the defence, no witness examined and no document marked. On completion of trial, the trial Court had rendered a judgment of conviction



and the same was confirmed by the lower appellate Court.

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4.The learned counsel for the petitioner submitted that the petitioner examined nine witnesses, of whom, PW2 and PW3 projected as eye witnesses. But PW2 and PW3 not identified the petitioner is the driver of the bus and driven the bus in a rash and negligent manner. Added to it, the evidence of PW2 and PW3 are contradictory to each other. PW1 is the uncle of the deceased, who admits that he was informed about the accident by PW2, he is not an eye witness to the occurrence. PW4 and PW5 are the relatives of the deceased and witnesses for Observation Mahazar and Rough Sketch (Ex.P4). They admit that their signature in the Observation Mahazar and Rough Sketch (Ex.P4) obtained in the Police station. PW6 is the witness to the inquest and he is an hearsay witness. PW7 is the Sub Inspector of Police, received the complaint (Ex.P1), registered FIR (Ex.3), visited the scene of occurrence, prepared Observation Mahazar and Rough Sketch (Ex.P4) and sent the body for postmortem, arrested the petitioner on 24.06.2011 at about 07.00 p.m. PW8 is the Sub Inspector of Police who conducted further investigation and sent the bus and two wheeler before the



Motor Vehicle Inspector, received the inspection reports (Exs.P6 & P7) and obtained the postmortem certificate (Ex.P8) and filed the final report before the trial Court.

5.He further submitted that PW9 is an another projected eye witness to the occurrence, but his presence is not spoken by other two eye witnesses PW2 and PW3. In this case, PW3 admits that the place of occurrence is a slope and the vehicles used to gain speed. In this case, none of the witnesses identified the petitioner was the driver of the bus and the bus was driven in a rash and negligent manner causing accident. The trial Court as well as the lower appellate Court failed to consider contradictions of the witnesses. The Motor Vehicle Inspector and Postmortem Doctor were not examined and their reports were marked by the Investigating Officer. Hence, prays for setting aside the judgment of the Courts below.

6.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that it is the deceased who had driven the bus with rashness and negligently and caused the accident. On the complaint



(Ex.P1) of PW1, FIR (Ex.P3) was registered by PW7, the Sub Inspector of Police. Thereafter, PW7 visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch (Ex.P4), enquired the witnesses and made arrangement for postmortem on the body of the deceased, thereafter, seized the bus and the two wheeler from the scene of occurrence. PW8 took up further investigation, conducted inquest, examined the Doctor, sent the vehicles to the Motor Vehicle Inspector for inspection, received the inspection reports (Exs.P6 & P7), collected the postmortem report (Ex.P8) and thereafter, filed the charge sheet against the petitioner. Before the trial Court, nine witnesses examined as PW1 to PW9 and eight documents marked as Exs.P1 to P8 and on completion of the trial, the trial Court convicted the petitioner as stated above and the same was confirmed by the lower appellate Court.

7.Considering the submissions and on perusal of the materials, it is seen that PW2, PW3 and PW9 are projected as eye witnesses in this case. Except PW9, the other two witnesses not identified the petitioner. The presence of PW9 in the scene of occurrence not confirmed by PW2 and



PW3. None of these witnesses stated that the bus was driven by the petitioner in a rash and negligent manner and reason for the accident.

Added to it, there is contradictions whether the deceased was riding the bike in front of the bus or in the opposite direction. The eye witnesses projected by the prosecution are contradictory to each other which creates doubt. In this case, admittedly, PW4 and PW5, the Observation Mahazar and Rough Sketch (Ex.P4) witnesses admitted that they signed the same in the Police Station. It is to be noted that the Motor Vehicle Inspector, who conducted inspection on the bus and two wheeler, not examined. Likewise, the Postmortem Doctor also not examined. The Motor Vehicle inspection reports (Exs.P6 & P7) and postmortem report (Ex.P5) marked through the Investigating Officer.

8.In view of the above contradictions in the prosecution witnesses, this Court is inclined to modify the sentence of imprisonment imposed on the petitioner to the period already undergone by him. Accordingly, this Court modifies the sentence of imprisonment imposed on the petitioner to the period already undergone by him.



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9. In the result, this Criminal Appeal stands disposed of. The petitioner is directed to be released forthwith if he is not required in any other case. Consequently, the connected Criminal Miscellaneous Petition is closed.

19.02.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

1. The Principal Sessions Judge,
Tiruppur.
2. The Judicial Magistrate,
Avinashi.
3. The Inspector of Police,
Uthukuli Police Station,
Tiruppur District.
4. The Central Prison,
Coimbatore.



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M.NIRMAL KUMAR, J.

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