



Crl.R.C.No.212 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.212 of 2022

Nadesan

... Petitioner

Vs.

State rep. by,
The Inspector of Police,
Perumanallur Police Station,
Tiruppur District.
Crime No.260 of 2015.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, to set aside the judgment passed by the learned Judicial Magistrate Court-IV, Tiruppur in C.C.No.127 of 2017 dated 29.05.2019 as confirmed by the judgment of the II-Additional District and Sessions Judge, Tiruppur in C.A.No.63 of 2019 dated 22.01.2022.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER



The petitioner was convicted by the learned Judicial Magistrate No.IV, Tiruppur (Trial Court) *vide* judgment, dated 29.05.2019 in C.C.No.127 of 2017 and sentenced to undergo three months Rigorous Imprisonment for offence under Section 297 IPC and to undergo three months Rigorous Imprisonment for offence under Section 338 IPC and to undergo six months Rigorous Imprisonment for offence under Section 304-A IPC. Challenging the judgment of Trial Court, dated 29.05.2019, the petitioner preferred an appeal before the learned II Additional District and Sessions Judge, Tiruppur (Lower Appellate Court) in Crl.A.No.63 of 2019 and the same was dismissed on 22.01.2022 confirming the judgment of Trial Court. Aggrieved over the same, the present criminal revision case is filed.

2.Gist of the case is that on 25.05.2015, at about 08.30 p.m, the petitioner had driven the State Transport Corporation Bus bearing Reg.No.TN-23-N-2111 in rash and negligent manner and dashed against the two wheeler *viz.*, Hero Honda Splendor Plus bearing Reg.No.TN-56-D-1971 driven by the deceased Balasubramaniam and pillion Rider Kalidoss/PW2 near Valliyur Bus Stop. The bus was proceeding from North to South Perumanallur-Kundrathur Road and the two wheeler was proceeding from



South to North. The petitioner to overtake a lorry, crossed the middle of the road and colluded head on with the two wheeler driven by the deceased Balasubramaniam. Due to which, the deceased Balasubramaniam sustained grievous injuries on his head and other parts of the body and pillion rider Kalidoss/PW2 sustained injury on his right knee and right eyebrow. PW1 & PW4 present near the scene of occurrence called 108 Ambulance and two Ambulance arrived. The deceased Balasubramaniam was taken to the Government Hospital, Thiruppur and Kalidoss/PW2 to Malar Priya Medical Centre, Thiruppur. The deceased Balasubramaniam pronounced brought dead.

3.On receipt of the complaint (Ex.P1) from PW1, PW6/Head Constable registered FIR (Ex.P4) in Crime No.260 of 2015 for offence under Sections 279, 338 and 304-A of IPC. PW7/Investigating Officer took up investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P2) in presence of PW4, Rough Sketch (Ex.P5), conducted inquest and sent the body for postmortem. PW5, Doctor of Government Hospital, Thirupur conducted postmortem, issued postmortem certificate (Ex.P3). PW7 conducted inquest on the body of the deceased and prepared



inquest report (Ex.P6) and thereafter sent both vehicles to the Motor Vehicle Inspector for inspection, received the Motor Vehicle Inspection Report (Exs.P7 & P8), collected wound certificate of PW2 (Ex.P9) and filed charge sheet before the Trial Court. During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and nine documents marked as Exs.P1 to P9. On the side of the defence, no witness examined and no document marked. On the evidence and materials produced, the Trial Court convicted the petitioner as stated above.

4.The learned counsel for the petitioner submitted that PW1 stated that the accident took place in left margin of the road, but the damage to the bus is on the steering side, hence his presence is highly doubtful. Likewise, the other projected eye witness PW4 admits that in the statement to the Police, he has not stated anything about he witnessed the accident. On the next day, at about 08.30 p.m, in his presence, Observation Mahazar (Ex.P2) prepared. He further submitted that PW2 is the rider of the two wheeler, he had no licence, due to his reckless riding of two wheeler, accident occurred. It is admitted that 500 meters before the accident, there is a bus stop and the bus started from there. In such circumstances, no person can drive the bus in



high speed within 500 meters and cause the accident. In this case, the Motor Vehicle Inspection Reports (Exs.P7 to P8) marked through the Investigating Officer/PW7, not through the concerned Motor Vehicle Inspector who inspected the vehicle. Likewise, the wound certificate of PW2 (Ex.P9) marked through the Investigating Officer/PW7, not through the concerned Doctor. Hence, Exs.P7, P8 and P9 cannot be taken as evidence. Hence, he prays for acquittal.

5.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the respondent Police registered FIR (Ex.P4) in Crime No.260 of 2015 for offence under Sections 279, 338 and 304-A of IPC on 26.03.2015 on the complaint (Ex.P1) given by PW1. PW7 took up investigation, visited scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P5), conducted inquest on the body of the deceased, sent the body for postmortem and also sent the two vehicles for Motor Vehicle Inspection and thereafter received the Motor Vehicle Inspection Reports (Exs.P7 & P8). From Exs.P7 & P8, it is confirmed the damage caused to the front centre grill and front bumper middle portion of the bus and two wheeler front side completely damaged.



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6.He further submitted that the bus was proceeding in Perumanallur-Kundrathur Road from North to South and the bike was coming from South to North. It is an head-on collusion. From the Rough Sketch (Ex.P5), it is seen that to overtake a lorry, the bus crossed the middle portion of the road and dashed against the two wheeler driven by the deceased on right side. PW2/pillion rider, injured eye witness confirmed the accident. PW2's injury proved by Ex.P9. The death of the deceased is confirmed by the Doctor/PW5. PW5 in his evidence stated about the injuries sustained by the deceased and the reason for the death is “*The deceased would have died of shock of haemorrhage due to head injury.*” and issued postmortem certificate (Ex.P3). Thus, from the medical evidence, Motor Vehicle Inspection Reports and Rough Sketch, it is confirmed that the petitioner had driven the bus in a rash and negligent manner to the extreme right and caused the accident, due to which, the deceased died and PW2 injured. Considering all the aspects, the Trial Court convicted the petitioner and the same was confirmed by the Lower Appellate Court. In support of his submissions, the learned Additional Public Prosecutor relied on the decision of the Hon'ble Apex Court in the case of “*State of Punjab vs Dil Bahadur* reported in 2023



LiveLaw (SC) 267”, wherein it is held that undue sympathy not to be shown to the persons who are driving the vehicle in a rash and negligent manner and causing the death of innocent rider of the vehicle in a public road.

7.Considering the submissions and on perusal of materials, it is seen that in this case, PW2 is the injured eye witness and pillion rider of the two wheeler driven by the deceased Balasubramaniam. Immediately after the accident, PW2 was taken to Malar Priya Medical Centre, Thirupur and took treatment as inpatient which is confirmed by Ex.P9. PW2 in his evidence clearly stated that the deceased was the rider of two wheeler and he was the pillion rider. When they were proceeding from South to North, the State Transport Corporation Bus driven by the petitioner came in opposite direction from North to South, overtaken a lorry in a rash and negligent manner and dashed against the two wheeler. Ex.P8 confirms the damage to the bus is on the front centre grill and front bumper middle portion. The postmortem certificate (Ex.P3) confirms that the reason for the death is “*The deceased would have died of shock of haemorrhage due to head injury.*” and the Wound Certificate (Ex.P9) confirms the injuries sustained by the pillion rider/PW2 on his right knee and right eyebrow.



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8.The contention of the petitioner that Exs.P7 to P9 not marked through the concerned Motor Vehicle Inspectors and Doctor, hence, the same not to be considered, cannot be considered at this stage for the reason that while marking such documents through the Investigating Officers, no objection raised during trial. Thus, from the evidence of PW2 and other contemporaneous documents, the prosecution proved the manner in which the accident had taken place and the death of the deceased. The petitioner, Driver of the State Transport Corporation Bus is the reason and cause for the accident.

9.In view of the above, this Court is not inclined to interfere with the impugned judgment, dated 29.05.2019 in C.C.No.127 of 2017 passed by the learned Judicial Magistrate No.IV, Tiruppur and the judgment, dated 22.01.2022 in Crl.A.No.63 of 2019 passed by the learned II Additional District and Sessions Judge, Tiruppur and the same are hereby affirmed.

10.Accordingly, this criminal criminal case stands dismissed.



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Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

1.The II Additional District and Sessions Judge,
Tiruppur.

2.The Judicial Magistrate No.IV,
Tiruppur.

3.The Inspector of Police,
Perumanallur Police Station,
Tiruppur District.

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4.The Public Prosecutor,
Madras High Court.

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