



Crl.R.C.No.210 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.210 of 2021

Santhakumar

... Petitioner

Vs.

State rep. By
The Inspector of Police,
J-3 Guindy Police Station,
Chennai.

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records relating to the judgment by the learned IV Additional Sessions Judge, City Civil Court, Chennai in Crl.A.No.123 of 2016 dated 17.02.2021 confirming the judgment of the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.CNo.1068 of 2010 dated 11.04.2016.

For Petitioner : Mr.Habeeb Rahman

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

The petitioner/accused was convicted by the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.10698 of 2010 dated 11.04.2016 and sentenced to undergo six months simple imprisonment for the offence under Section 279 IPC and two years simple imprisonment for the offence under Section 304(A) IPC. Aggrieved against the same, the petitioner preferred an appeal before the learned IV Additional Sessions Judge, City Civil Court, Chennai in C.A.No.123 of 2016. The Sessions Court by judgment dated 17.02.2021 dismissed the appeal confirming the conviction and sentence imposed by the Trial Court. Against which, the present criminal revision petition is filed.

2.The gist of the case is that on 12.12.2009 at about 12.45 p.m., one Haridoss and his wife hailing from Madipakkam were proceeding in their two wheeler Honda Activa bearing registration No.TN-09-AS-5167. The said Haridoss was riding the bike with his wife as a pillion rider. When they were nearing Ganesan Matriculation School, Vijayanagaram, Velachery Main Road, from north to south, a tipper lorry bearing registration No.TN-



72-E-5136 came in a rash and negligent manner and dashed against the two wheeler from behind. Haridoss fell on the right side of the road, the tipper lorry ran over him, the pillion rider/P.W.7 fell on the left side of the platform and she sustained only simple injuries. A complaint was lodged by P.W.1. P.W.8/Inspector of Police registered FIR/Ex.P5 for the offence under Sections 279 and 304(A) IPC, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses, examined the witnesses, recorded their statements, visited the hospital, conducted inquest and thereafter, sent the body for postmortem. P.W.9 took up further investigation in the case, arrested the accused on 14.12.2009, sent the tipper lorry and the two wheeler for inspection and thereafter, filed the final report.

3.During trial, P.W.1 to P.W.9 examined and Ex.P1 to Ex.P8 marked on the side of the prosecution and on the side of the accused, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner/accused as stated above which was confirmed by the Lower Appellate Court.



4.The contention of the learned counsel for the petitioner is that in this case, three persons projected as eye witnesses, namely, P.W.1, P.W.2 and P.W.7. P.W.1 and P.W.2 admit that they are the relatives of the deceased Haridoss and they claimed that at the time of accident, they were also on the same road and the tipper lorry ran over Haridoss and his wife sustained injuries. But P.W.1 admits that after hearing the loud noise, he turned around and went near the accident spot where he found Haridoss dead and his wife/P.W.7 lying injured. P.W.2, the other relative stated that after seeing some crowd near Ganesan Matriculation School, he and P.W.1 went there where they saw Haridoss and P.W.7. He would submit that though P.W.7 claims that she sustained injuries, she had not taken any treatment and no medical records produced. In the Accident Register/Ex.P3A, there is no mention about P.W.7. It is recorded that one HC23401, J3 PS denoting Head Constable from J3 Police Station brought the dead body which is confirmed by P.W.5/Doctor. Added to it, referring to the memo of evidence filed along with charge sheet, he submitted that initially only ten witnesses were listed as witnesses and the names of the witnesses are written in a different ink and font in English, but the name of P.W.7 was interpolated as L.W.8 and her name and the reason for examination was written in Tamil



which causes serious doubt about her presence in the scene of occurrence.

Further, the reason for examining P.W.7 as given in the charge sheet is only to the limited purpose of identifying her husband's body and nothing more. P.W.7 had given an improved version implicating the tipper lorry. He further submitted that in this case, none of the witnesses identified that the petitioner driven the lorry at the time of accident. P.W.4, who is the owner of the lorry, admits that he had four lorries and ten drivers and not maintained any trip sheet, on the date of accident, he was out of station and he has not aware as to who driven the lorry at that point of time. Further, in this case, the Motor Vehicle Inspector/P.W.3 and the Postmortem Doctor not examined as witnesses. The Motor Vehicle reports/Ex.P2 & Ex.P3 and the Postmortem report/Ex.P8 marked through Investigating Officer. Hence, prayed for setting aside the conviction and sentence.

5.In support of his contention, the learned counsel for the petitioner relied upon the decision of the Apex Court in the case of ***Darshan Singh vs. State of Punjab*** reported in ***2024 Live Law (SC) 13*** for the principle that if the PWs have failed to mention in 161 Statement about the involvement of the accused, their subsequent statement before the Court during trial



regarding involvement of that particular accused cannot be relied upon and the prosecution cannot seek to prove a fact during trial through a witness when such witness had not stated to Police during investigation. The evidence of that witness regarding improved fact is of no significance.

6.The learned Additional Public Prosecutor filed his counter and submitted that on 12.12.2009 at about 12.45 hours, the deceased Haridoss was riding two wheeler bearing registration No.TN-09-AS-5167 with his wife/P.W.7 as a pillion rider, near Ganesan Matriculation School, Vijayanagaram, Velachery Main Road, Chennai. When they were proceeding from north to south, a tipper lorry bearing registration No.Tn-72-E-5136 driven on the same direction by the petitioner in a rash and negligently manner, dashed the two wheeler from behind. P.W.7 fallen on the left side of the road and sustained minor injuries whereas the deceased fallen on the right side of the road and the tipper lorry run over the head of the deceased and he was rushed to the hospital where he was declared brought dead. On receipt of the complaint from P.W.1, P.W.8 registered FIR in Crime No.482/S1/2009 for the offence under Section 279 and 304(A) IPC, visited the scene of occurrence, prepared observation mahazar and



rough sketch in the presence of witnesses, examined the witnesses and recorded their statements. Thereafter, P.W.8 conducted inquest, prepared inquest report in the presence of witnesses and sent the body for postmortem. The tipper lorry and the two wheeler were sent for inspection and P.W.3/Motor Vehicle Inspector gave the reports/Ex.P2 and Ex.P3. On 14.12.2009, P.W.8 arrested the petitioner, recorded his confession statement in the presence of witnesses and remanded to judicial custody. P.W.2/brother of P.W.1, who was present at the time of accident, deposed about what he saw at the time of occurrence. On completion of investigation, charge sheet filed. He further submitted that the prosecution proved the case beyond all reasonable doubts, the Trial Court rightly convicted the petitioner which was confirmed by the Lower Appellate Court. Hence, prayed for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that in this case it is not the number of witness that matters. P.W.7, the pillion rider to her husband was proceeding from Madipakkam to Velachery in a two wheeler, while they were proceeding near Velachery, a tipper lorry came in a rash and negligent manner dashed against the two



wheeler from behind, in which, both P.W.7 and her husband were thrown away. The rider of the vehicle fell on the right side of the road and the pillion rider fell to the left side of the road. The tipper lorry ran over the vehicle as well as the deceased, who was on the right side of the road and P.W.7 who fell on the left side survived with minor injuries. P.W.4 is the owner of the lorry bearing No.TN-72-E-5136 admits that the petitioner is the Driver under him. P.W.5 is the casualty Doctor who issued the Accident Register/Ex.P3A confirming that the body of Haridoss was brought to the hospital by Head Constable, kept in mortuary and thereafter sent for postmortem. The Investigating Officer/P.W.8 confirms that on receipt of complaint, visited the scene of occurrence, prepared observation mahazar and rough sketch, conducted inquest and thereafter, sent the body for postmortem. The postmortem report/Ex.P8 confirms that the death of Haridoss was due to injuries sustained during the road accident. It is seen that in inquest report/Ex.P7, P.W.7 is one of the inquest witness, the reason and opinion given by the inquest witness is that the deceased died due to the accident caused by the tipper lorry driven by the petitioner which had ran over him in Velachery and P.W.7 was the pillion rider. In such circumstances, the contention of the petitioner that the name of P.W.7 has



been included later as an after thought and she had given improvised version in the evidence is not sustainable. It is not a condition that statement of all witnesses to be recorded. The Investigating Officer can record the statement of witness and in some cases if it is not required, he might not do so. In this case, no question has been put to the Investigating officer regarding the presence of P.W.7 in the scene of occurrence and her statement not recorded. Ex.P2 and Ex.P3/Motor Vehicle Inspector reports and Postmortem report/Ex.P8 marked through P.W.8/Investigating Officer and at that point of time, the petitioner had not raised any objection and it was taken in evidence, at this stage, questioning the same is not permitted. The Trial Court considering the evidence, passed a well reasoned order and the Lower Appellate Court independently analysed the evidence and confirmed the conviction. In view of the same, this Court finds no reason to interfere with the conviction.

8.Finding that the petitioner is the sole breadwinner to the family, the petitioner is having no previous cases of similar nature and he has got school going children to be taken care, this Court is inclined to modify the sentence. It is seen that the petitioner had been in prison for 8 months and 23 days.



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Accordingly, the conviction imposed by the Trial Court is confirmed
modifying the sentence to the period already undergone by the petitioner.

9.In the result, the criminal revision petition stands disposed of.

23.08.2024

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

- 1.The Inspector of Police,
J-3 Guindy Police Station,
Chennai.
- 2.The IV Additional Sessions Judge,
City Civil Court,
Chennai.
- 3.The IV Metropolitan Magistrate,
Saidapet, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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