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Crl.R.C.No.531 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.531 of 2019

Mylsamy

... Petitioner

Vs.

State by Public Prosecutor,
Coimbatore,
Rep. by SI of Police,
Chettipalayam P.S.
Crime No.665/2010

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment and Orders passed in C.A.No.345 of 2017 on the file of the IVth Additional District and Sessions Judge, Coimbatore, dated 17.12.2018.

For Petitioner : Mr.N.Vignesh

For Respondent : Ms.A.Shahana Fathima,

Government Advocate (Crl. Side)

ORDER

Challenging the conviction and sentence passed in Crl.A.No.345 of 2017 by the IV Additional District and Sessions Judge, Coimbatore on 17.12.2018, the present Criminal Revision is filed.



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2. The revision petitioner is the accused in C.C.No.337 of 2011 on the file of the Judicial Magistrate VII, Coimbatore.

3. The case of the prosecution in a nutshell is as follows:

On 18.09.2010 at about 17.15 hours, the deceased Dhatchinamoorthy was riding his two wheeler bearing Registration No.TN39 AV 0076 on Pollachi - Coimbatore Main Road. When he was nearing Balaji Mess at Echanari, a TNSTC Bus bearing Registration No.TN38 N 1053, driven by the present Revision petitioner rashly, came in an opposite direction after overtaking a lorry and hit the two wheeler ridden by the deceased, as a result of which, the deceased Dhatchinamoorthy sustained grievous injuries. He was immediately rushed to CMC Hospital, Coimbatore where he was declared brought dead.

4. Based on the complaint given by Vivek (P.W.1) one of the friends of the deceased and also a witness to the occurrence, Munusamy (P.W.7), the Sub Inspector of Police, Chettipalayam Police Station registered an FIR in Crime No.665/2010 (Ex.P3) against the present



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Revision petitioner for the offences punishable under Sections 279 and 304 (A) I.P.C., Thiru.Ravikumar (P.W.8), the then Inspector of Police, Kinathukadavu Police Station took up investigation in Crime No.665/2010, went to the scene of occurrence and prepared an Observation Mahazar (Ex.P2) and a Rough Sketch (Ex.P4) in the presence of one A.C.Sakthivel (not examined as a witness) and Nagendran (Ex.P4). He then went to CMC hospital, Coimbatore and conducted an inquest on the body of the deceased (Ex.P5) in the presence of Panchayatdars. Thereafter, he sent the body for postmortem. Dr.A.N.Senthil, Tutor, Forensic Medicine, Coimbatore Medical College Hospital conducted autopsy on the body of the deceased on 19.09.2010 and found the following injuries:

The following antemortem injuries noted on the body:-

Graze abrasion 15x4 cm noted on left side mastoid process extending over the neck to the left maxilla.

- Abrasion 3x1 cm noted on middle of back of left forearm, 1x0.5 cm noted on back of left hand, 5x3 cm noted on left leg and 3x1.5 cm, 2x1.cm noted on right arm on its lateral aspect.

- Laceration 2x0.5 cm x muscle deep noted on left cheek.



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-Left forearm found deformed, on dissection the underlying both bones found fractured on its middle 1/3rd with surrounding tissue contusion.

- Contusion 5x4 cm noted on middle of occipital region.

On dissection of Scalp, Skull and Duras Sub scalp contusion 4x3 cm noted on right temporal region and 5x4 cm noted on right occipital region near midline. Sub arachnoid hemorrhages noted on base of frontal and left temporal lobes. Depressed fracture noted on left maxilla with skull base fracture noted on left anterior cranial fossa On dissection of Thorax and Abdomen: Right side ribs 2nd and 3rd found fractured on its anterior aspect with surrounding tissue contusion. Hematoma entire right lower lobe of lung and upper part of left upper lobe.

5. In the opinion of the Doctor, the deceased appeared to have died of the effects of multiple injuries. The Investigation Officer examined all the witness and recorded their statements individually under Section 161 (3) Cr.P.C. After concluding investigation, he laid a final report before the Judicial Magistrate VII, Coimbatore against the revision petitioner for the offences punishable under Sections 279 and 304 (A) I.P.C.



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6. The learned Judicial Magistrate took cognizance of the offence after observing necessary legal formalities and issued summons for the appearance of the accused under Section 204 (3) of Cr.P.C. Copies of records were furnished to the accused under Section 207 of Cr.P.C. When the accused was questioned with regard to the substance of accusation made against him by the prosecution, he pleaded not guilty and therefore the case was posted for trial.

7. In order to bring home the guilt of the accused, the prosecution examined 8 witnesses and marked 8 documents. When the accused was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not adduce any oral or documentary evidence on his side.

8. P.W.1 to P.W.6 are all friends of the deceased Dhatchinamorthy who were all coming out of their college at about 17.15 hours along with the deceased. They have witnessed the occurrence. It



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was deposed by P.W.1, P.W.2, P.W.4 and P.W.5 that the present revision petitioner was driving the bus bearing Registration No.TN38 N 1053 belonging to Tamil Nadu State Transport Corporation on the date of occurrence and he drove the bus rashly and negligently. It is also their deposition that the driver of the bus after overtaking a lorry, hit the two wheeler ridden by the deceased Dhatchinamoorthy.

9. Mr.V.Sivanandham, Motor Vehicle Inspector, R.T.O.Office, Coimbatore (South) inspected both the two wheeler bearing Registration No.TN39 AV 0076 and the TNSTC bus bearing Registration No.TN38 N 1053 on 20.09.2010 and opined that the accident was not due to any mechanical failure in both the vehicles.

10. The learned Judicial Magistrate VII, Coimbatore after analysing the evidence on record, found the accused guilty of the offences under Sections 279 and 304 (A) I.P.C., convicted and sentenced him to undergo Simple Imprisonment for a period of one year and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for a



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period of three months for the offence under Section 304 (A) I.P.C. No separate sentence was passed under Section 279 I.P.C.

11. Aggrieved over the conviction and sentence passed by the trial Court Judge, a Criminal Appeal was filed in C.A.No.345 of 2017 before the IV Additional District and Sessions Judge, Coimbatore. The learned IV Additional District and Sessions Judge, Coimbatore after analysing the evidence on record, dismissed the appeal on 17.12.2018, thereby confirming the conviction and sentence passed by the learned Judicial Magistrate VII, Coimbatore. Aggrieved over the same, the present revision is filed.

12. It is pertinent to point out that this is a concurrent findings recorded by both the Courts below and this Court while exercising Revisional Jurisdiction under Section 397 Cr.P.C., cannot act as a second appellate Court, unless it is shown that the orders passed by both the Courts below are perverse.



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13. Mr.N.Vignesh, learned counsel for the Revision Petitioner would contend that all the eyewitness to the occurrence viz., P.W.1 to P.W.6 are all friends of the deceased and therefore their evidence cannot be considered. It is also his contention that there are contradictions in the their evidence in material particulars. According to him, the doctor who conducted Autopsy on the body of the deceased and the Motor Vehicle Inspector were not examined to prove the case of the prosecution. He, therefore prayed for setting aside the Judgement and orders passed by both the Courts below.

14. Per contra, Ms.A.Shahana Fathima, learned Government Advocate appearing for the Respondent would contend that both the Courts below after analysing the evidence on record in proper perspective, had convicted and sentenced the accused and there is no reason for this Court to interfere with the same.

15. It is not disputed that the deceased was riding a two Wheeler bearing Registration No.TN39 AV 0076 and the Bus bearing



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Registration No.TN38 N 1053 belonging to TNSTC was driven by the present Revision petitioner. Both P.W.1 and P.W.2 have identified the accused and they have witnessed the occurrence also. It is not also disputed that the deceased Dhatchinamoorthy died out of multiple injuries sustained in the accident that took place on 18.09.2010. This is supported by the Postmortem certificate (Ex.P6) and the inquest report (Ex.P5). When there is no dispute with regard to the manner of the accident and consequent death, non examination of the doctor who conducted autopsy on the body of the deceased, is not fatal to the case of the prosecution. Similarly, it is also seen from the Motor Vehicle Inspector's report that the accident did not take place due to any mechanical failure in both the vehicles viz., the two wheeler and TNSTC Bus.

16. The contention of the learned counsel for the Revision petitioner that the interested testimony of P.W.1 to P.W.6 should not be considered, cannot be accepted for the simple reason that the witnesses P.W.1 to P.W.6 are all college students and the deceased was also a



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college student. On the date of occurrence i.e., on 18.09.2010, they were all coming out of their college at about 17.15 hours. P.W.1 and P.W.2 had in fact clearly deposed that the TNSTC Bus driven by the revision petitioner rashly, hit the two wheeler since he overtook a lorry which was going ahead of the bus. P.W.5 and P.W.6 have corroborated the evidence of P.W.1 and P.W.2 in all material particulars. The contradiction found in their evidence is that while P.W.5 and P.W.6 stated that all the friends were going by a two wheeler at the time of occurrence, P.W.1 and P.W.2 have deposed that they were going by walk. This will not affect the case of the prosecution. It is pertinent to point out that these witnesses were examined in the Court after a lapse of 8 years of the accident and therefore these contradictions tend to happen which are attributable to their memory. Nothing was suggested to P.W.1, P.W.2, P.W.4, P.W.5 during the course of cross examination, to discredit or disbelieve their versions.

17. The specific contention of the learned counsel for the Revision petitioner is that the rider of the two wheeler namely



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Dhatchinamoorthy (deceased) had driven the two wheeler rashly and negligently and hit the bus. This has not been substantiated by any acceptable evidence by the accused and on the contrary, the eyewitness account is clear on the aspect of rash and negligent driving of the driver of the TNSSTC bus. Moreover, a driver of a heavy motor vehicle, while driving his vehicle should be more careful and he should see on all the sides of the road. In the instant case, the driver of the Lorry as per the eyewitness account, overtook a lorry going ahead of him unmindful of the vehicular traffic on the opposite side of the road and hit the two wheeler.

18. Both the Courts below had in fact, analysed all these aspects and the appellate Court in its Judgment had observed thus:

"17. It is true that P.W.5 Karthikeyan and P.W.6 Tamilselvan have deposed that they were travelling in a two wheeler when the accident occur, in contra to the witness P.W.1 and P.W.2 who speaks that all of them went by walk, when they witnessed the accident. Considering the passage of time, almost 8 years since the date of occurrence and the



witnesses deposing as P.W.5 & P.W.6, these contradictions tend to occur, which are attributable to their memory. Except for their travelling in a two wheeler, P.W.5 and P.W.6 have spoken to in consonance to the evidence of P.W.1 and P.W.2 with respect to the manner of the accident. The Learned Counsel for the accused has not been successful in eliciting any answer during the cross examination of P.W.5 and P.W.6 in his favour. The fact that all the four (i.e), P.W.1, P.W.2, P.W.5 and P.W.6 and the deceased Dhatchinamoorthy all have been returning from their college after attending the classes remains undisputed and corroborated by each other. It is true that there are contradictions in the evidence of P.W.5 and P.W.6 with respect to their accompanying the hospital and giving their names and the name of the deceased to the Doctor. But those facts not being related to the manner of the accident does not affect the case of the prosecution. In other words, the contradictions does not go to the roots of the case and thus remains unaffected the veracity of the witnesses, as regards the manner of the accident. Hence, the evidence of P.W.5 and P.W.6 also held to be reliable and supporting the evidence of P.W.1 and P.W.2. Therefore, the above said evidence sufficiently and succinctly proves that it was the accused who was driving the vehicle in a rash manner, overtaking a lorry and crossing the middle of the



road, hit against the two wheeler driven by the deceased Dhatchinamoorthy which was driven on the left side of the road, by which the deceased was succumbed to death by the multiple injuries caused to him due to the accident. The Learned Counsel for the accused macro-scoping or magnifying the minor defects in the evidence of P.W.1, P.W.2, P.W.5 and P.W.6, argued that those discrepancies affects their veracity rendering their evidence unbelievable, is found to be untenable, owing to the discussion as aforesaid.

18. The absence of description about the lorry which was overtaken by the accused, driving the bus and in the absence of the mention of the bus and the two wheeler in the spot in the Observation Mahazar Ex.P.2 and Rough Sketch Ex.P.4, the absence of knowledge as to who accompanied the deceased in the ambulance to the hospital and the minor contradictions in the evidence of P.W.5 and P.W.6 and their 161 Statements given before the police all are argued to be affecting the case of the prosecution rendering the accused to be the cause for the accident to be baseless, does not hold good. In view of the discussions infra and when not even a suggestion has been made to any of the witnesses that the deceased was the cause for the accident or that he drove the two wheeler in a rash and negligent manner or driving the vehicle on a wrong side and when admittedly



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the accident occurred between the vehicle driven by the deceased and the vehicle driven by the accused and then, it is to be construed that the accident took place due to the rashness and negligence of the accused in driving the bus bearing Regn.No.TN 39 N 1053, especially when the deceased being on the left side of the road is substantially established by the evidence of P.W.1, P.W.2, P.W.5 and P.W.6 supported by P.W.7 and P.W.8. While so, there is nothing to hold the judgment of the trial court to be not based upon any substantial evidence and not well reasoned. In other words, this court finds that there is no infirmity in the judgment passed by the Learned trial court and consequently the Judgment is confirmed."

19. The above observations made by the appellate Court are perfectly in order and I do not see any reason to interfere with the same.

20. As far as the sentence imposed on the revision petitioner is concerned, the deceased was aged 22 years and was doing Post Graduation. In the circumstances, the sentence passed by both the Courts below cannot be said to be on the higher side.



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21. In the result,

- i. the Criminal Revision Case is dismissed.
- i. the Judgment dated 17.12.2018 in C.A.No.345 of 2017 passed by IV Additional District and Sessions Judge, Coimbatore, and the Judgment dated 07.10.2017 in C.C.No.337 of 2011 passed by the Judicial Magistrate VII, Coimbatore, are confirmed.
- ii. The accused is directed to surrender before the trial Court viz., Judicial Magistrate VII, Coimbatore, within fifteen days from the date of receipt of a copy of this order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

03.04.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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R. HEMALATHA, J.

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To

- 1.The IV Additional District and Sessions Judge, Coimbatore.
- 2.The Judicial Magistrate VII, Coimbatore.

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