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Crl.R.C.No.486 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.R.C.No.486 of 2019
and Crl.M.P.No.6797 & 6799 of 2019

Gowtham Chand Jain

... Petitioner

vs.

The State Rep. By
The Sub-Inspector of Police,
H-1, Washermenpet Police Station,
Traffic Investigation Team,
Chennai.

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 Criminal Procedure Code, 1973, against the judgment and orders dated 27.02.2019 passed in C.A.No.172/2017 by the XVIII Additional Sessions Judge, Chennai, confirming the judgment and orders dated 16.06.2017 passed in C.C.No.2983/2016 by the III Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.J.Suresh

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



Crl.R.C.No.486 of 2019

WEB COPY

ORDER

Challenging the conviction and sentence passed by the XVIII Additional Sessions Judge, Chennai in C.A.No.172/2017 confirming the conviction and sentence passed by the III Metropolitan Magistrate, George Town, Chennai in C.C.No.2983/2016, the present revision case is filed by the petitioner / accused.

2. The revision petitioner is the accused in C.C. No.2983/2016 on the file of the III Metropolitan Magistrate, George Town Chennai, and he has been convicted and sentenced as follows:

<i>Conviction</i>	<i>Sentence</i>
Section 304(A) IPC	Rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.
Section 338 IPC	To pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two weeks.
Section 184 of the Motor Vehicles Act	To pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two weeks.
The aforesaid sentences shall run concurrently. The period of sentence already undergone is set off under Section 428 Cr.P.C.	



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

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31. On 26.09.2016 at about 2.15 p.m, one Saravanan and Madasamy (deceased) were on a two wheeler bearing Registration No.TN-03-S-4358 and were proceeding towards Korukkupet. When they were on Meenambal Nagar Bridge at Korukkupet, a car bearing Registration No.TN-06-Q-1717 driven by the revision petitioner hit the two wheeler, as a result of which, Madasamy fell down and sustained injuries on his head and the driver Saravanan also sustained injuries. Both of them were rushed to Government Stanley Hospital. While Madasamy died on the way to the hospital, Saravanan (P.W.2) was admitted as an inpatient by Dr.Ponraj (P.W.4).

3.2. Dr.Malarvizhi (P.W.8) who gave treatment to P.W.2 opined that the injuries sustained by P.W.2 are grievous in nature. The wound certificate was marked as Ex.P7.

3.3. Thiru.Selvakumar (P.W.11), the then Inspector of Police on receipt of complaint (Ex.P1) from Thiru. Kumaravel (P.W.1) registered FIR (Ex.P9) in Crime No.182/H1/2016 against the revision petitioner for the offence punishable under Sections 304(A), 338 IPC and



184 of M.V. Act.

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3.4. P.W.11 took up investigation went to the scene of occurrence, prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P10) in the presence of the witnesses Thirunavukarasu (P.W.6) and Abbas (not examined). He examined the witnesses and recorded their statements under Section 161(3) Cr.P.C. He also went to the mortuary of Government Stanley Hospital and conducted inquest (Ex.P11) on the body of the deceased in the presence of panchayatdhars. Thereafter, he handed over the body to Dr.Gokula Krishnan (P.W.9) for conducting postmortem.

3.5. Dr.Gokula Krishnan (P.W.9) conducted autopsy on the body of the deceased and opined that the death had occurred due to head injury. The postmortem certificate was marked as Ex.P8.

3.6. PW.11 after completing investigation laid a final report against the revision petitioner for the offence punishable under Sections 304(A), 338 IPC and 184 of the Motor Vehicles Act before the III Metropolitan Magistrate, George Town, Chennai in C.C.No.2983/2016.



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3.7. In order to bring home the guilt of the accused, the prosecution examined 11 witnesses and marked 12 documents.

3.8. The revision petitioner, when questioned under Section 313 (1) Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.

3.9. The learned trial court judge after analysing the oral and documentary evidence on record, convicted and sentenced the revision petitioner as stated in paragraph No.2, vide his judgment and orders dated 16.06.2017.

3.10. Aggrieved over the same, the revision petitioner filed an appeal in C.A.No.172/2017 before the XVIII Additional Sessions Court, Chennai. The learned XVIII Additional Sessions Judge after analysing the evidence on record, confirmed the findings recorded by the trial court and dismissed the appeal vide her judgment and orders dated 27.02.2019, as against which the present criminal revision case is filed.



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4. Heard Mr.J.Suresh, learned counsel for the revision petitioner and Mr.S.Rajakumar, learned Additional Public Prosecutor for the respondent.

5. Mr.J.Suresh, learned counsel for the revision petitioner contended that there were several bumps on the bridge and therefore, the two wheeler which was coming on the opposite direction in high speed hit the car, as a result of which, both the driver and the pillion rider of the two wheeler fell down and sustained injuries. According to him, the revision petitioner was not rash and negligent in driving his car and therefore, the conviction and sentence passed by both the courts below cannot be sustained.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that both the courts below after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the present revision.



7. It is pertinent to point out that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C., cannot act as a second appellate court unless it is convincingly shown that the conviction and sentence passed by both the courts below are perverse.

8. In the instant case, the eyewitness account is clear as to the manner of the accident that took place on 26.09.2016. The other witnesses have also corroborated the evidence of the eyewitness. Moreover, the injured Saravanan (P.W.2) in his evidence had clearly stated that the revision petitioner was rash and negligent in driving his car and hit his two wheeler, as a result of which, he and the deceased Madasamy fell down from the two wheeler. Thiru.Ravikumar (P.W.7), the Motor Vehicles Inspector in his report (Ex.P5 and Ex.P6) has stated that the accident did not happen due to any mechanical failure in both the vehicles. Thus, there is an irresistible inference that the revision petitioner was rash and negligent in driving his car. Nothing useful was suggested to P.W.1, P.W.2 and P.W.3 during the course of cross examination to discredit or disbelieve their versions.



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9. Both the courts below, by their well reasoned orders had convicted the revision petitioner for the offences punishable under Sections 304(A), 338 IPC and 184 of the Motor Vehicles Act and there is no reason for this Court to interfere with the same.

10. As regards the sentence, the contention of the learned counsel for the revision petitioner is that the revision petitioner is aged 69 years and therefore, some leniency may be shown to him. He also contended that the revision petitioner would pay a compensation of Rs.2,00,000/- to the victims.

11. The accident took place in the year 2016 and the revision petitioner had already undergone the ordeal of trial. Considering the age of the revision petitioner, the sentence passed by the trial court, for the offence under Sections 304(A) is modified as under :

(i) The revision petitioner shall pay a compensation of Rs.2,00,000/- out of which a sum of Rs.1,50,000/- shall be paid to the legal heirs of the deceased Madasamy and a sum of Rs.50,000/- shall be paid to the injured (P.W.2), in default, to undergo simple imprisonment for a period of three months.



Crl.R.C.No.486 of 2019

(ii) The compensation amount shall be paid within a period of one month from the date of receipt of a copy of this order, failing which, the Trial Court shall take steps to secure his presence for serving the remaining period of sentence.

The sentence passed in respect of the offence under Sections 338 IPC and 184 of M.V. Act shall remain intact.

12. In the result,

- i. This Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petitions are closed.
- ii. While the conviction passed by both the courts below is confirmed, the sentence is modified as stated in paragraph No.10.
- iii. The revision petitioner / accused shall appear before the III Metropolitan Magistrate, George Town, Chennai within 15 days from the date of receipt of a copy of this order / uploading of the order and deposit the compensation amount to the credit of the trial court, failing which, the Trial Court shall take steps to secure his presence for serving the appropriate sentence.

22.07.2024

Index : yes/no

Speaking /Non speaking Order



Crl.R.C.No.486 of 2019

To

1. The XVIII Additional Sessions Judge, Chennai.
2. The III Metropolitan Magistrate, George Town, Chennai.
3. The State Rep. By, The Sub-Inspector of Police,
H-1, Washermenpet Police Station,
Traffic Investigation Team, Chennai.
4. The Public Prosecutor, High Court, Madras.
5. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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