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CrI.RC No.20 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.R.C.No.20 of 2023
and MP. No.108 of 2023

Anandhan

... Petitioner

Vs.

The State by Inspector of Police,
Newtown Police Station,
Cuddalore District.
(Crime No.243 of 2018)

... Respondent

PRAYER: Criminal Revision Case filed under Sections 438 r/w 442 of the BNSS, to call for the records of the learned Principal Sessions Judge, Cuddalore and set aside the judgment passed by him made in C.A. No.32 of 2021 dated 29.11.2022, confirming the conviction granted by Chief Judicial Magistrate, Cuddalore in C.C. No.492 of 2019 dated 17.08.2021 convicting the Petitioner for the alleged offence under Section 279 and 304A of IPC to undergo Simple Imprisonment for three months and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for 1 month for the offence under Section 279, IPC and to undergo Simple Imprisonment for 1 year and to pay a fine of Rs.5000/- and in default to undergo simple imprisonment for three months for the offence under Section 304A IPC.

For Petitioner : Mr.C.Prasanna Venkatesh



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For Respondent : Mr.V.J.Priyadarsana,
Government Advocate.

ORDER

The Petitioner has preferred the present Criminal Revision against the Judgment of the learned Principal Sessions Judge, Cuddalore made in C.A. No.32 of 2021 dated 29.11.2022, confirming the conviction granted by the Chief Judicial Magistrate, Cuddalore in C.C. No.492 of 2019 dated 17.08.2021, convicting the Petitioner for the alleged offences under Section 279 and 304A IPC and sentenced him to undergo Simple Imprisonment for three months and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for 1 month for the offence under Section 279 IPC and to undergo Simple Imprisonment for 1 year and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for three months for the offence under Section 304A IPC.

2. It is the case of the prosecution that the petitioner is the Driver of the Transport Corporation belonging to the State, had driven the bus in a rash and negligent manner and dashed against a two wheeler, in which four persons travelled including the deceased who was a one year old child and that, because of the impact, the child fell down from the two



wheeler and the rear wheel of the bus ran over the child causing the child's death.

3. The respondent Police had examined 14 witnesses and marked 10 documents viz., Ex.P1 to Ex.P10 before the Trial Court. The Trial Court on the basis of the evidence adduced on the side of the respondent held that the petitioner was guilty of the offences under Sections 279 and 304A IPC and sentenced him as stated above.

4. On appeal, the lower Appellate Court confirmed the conviction and sentence imposed by the Trial Court and dismissed the Appeal.

5. The learned counsel for the petitioner would submit that the findings of the Courts below are perverse, contrary to the evidence on record and therefore, liable to be set aside.

6. The learned counsel for the petitioner submitted that the evidence of Doctor Mr.Senthil (P.W.11) is that P.W.1, the father of the child had told him that the child fell down from his vehicle and thereafter, run over by the bus. The learned counsel also pointed out to the evidence



of the Motor Vehicle Inspector (P.W.9), where P.W.9 stated when he inspected the two wheeler bearing Registration No.PY-01-CJ-2292, he found that there were no damages on the backside of the two wheeler and that there was only a damage to the front side bumper. The learned counsel would submit that all these vital evidences have been ignored by the Courts below and therefore, prayed for acquittal.

7. Per contra, the learned Public Prosecutor would submit that the Courts below had considered the evidence of P.W.1, the father of the deceased child and P.W.4 and P.W.5, the other witnesses to the occurrence who had all stated that the bus dashed the two wheeler from behind, as a result of which, the child fell down and the bus ran over the child and submitted that no interference is warranted in the judgments passed by the Courts below.

8. Heard both sides and perused the materials available on record.

9. If the evidence of P.W.1, P.W.4 & P.W.5 are believed the offence under Section 304A IPC would be made out. However, the question is whether the evidence of the above witnesses can be believed



and whether their version is probable. The earliest version of P.W.1 before the Doctor P.W.11, is that the child fell down from the two wheeler and thereafter, run over by the bus driven by the petitioner. He had not stated that child fell down because the bus collided with the two wheeler and thereafter, the bus ran over the child. That apart, the Motor Vehicle Inspector, P.W.9 had not noticed any damage to the rear side of the two wheeler. If the bus had dashed the two wheeler from behind, the impact would have certainly caused damage to the two wheeler and in the absence of any damage, the evidence of eye witnesses is doubtful. The fact that the child was run over by the rear wheel of the bus also belies the prosecution case and the version of the eye witnesses. The defence of the petitioner/accused is that the child fell down from the vehicle and the moving bus ran over the child and hence, the petitioner cannot be attributed with either rashness or negligence. The defence of the accused is more in consonance with the evidence on record, especially the earliest version given by P.W.1 to the Doctor, P.W.11.

10. In the light of the above evidence, this Court finds that judgments passed by the Courts below are perverse and liable to be set aside. Accordingly, the petitioner herein is acquitted of all the charges.



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11. In fine, this Criminal Revision is allowed. Consequently, connected Miscellaneous Petition is also closed.

12.11.2024

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No.

rkp

To

1. The Principal Sessions Judge, Cuddalore.

2. The Chief Judicial Magistrate, Cuddalore

3. The State by Inspector of Police,
Newtown Police Station,
Cuddalore District.

4. The Public Prosecutor,
Madras High Court.

SUNDER MOHAN, J.



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