



Crl.R.C(MD)No.425 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023

Pronounced on : 09.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.425 of 2023

and

Crl.M.P(MD)Nos.6268 & 6271 of 2023

Kalaiarasan

.. Petitioner/Appellant/Accused

Vs.

The State represented by,
The Inspector of Police,
Traffic Investigation Wing,
Thanjavur District.
(Crime No.109/2016)

.. Respondent/Respondent/
Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 22.10.2021 passed in C.A.No.18 of 2020 on the file of the learned II-Additional District Judge, Thanjavur District confirming the judgment of the learned Judicial Magistrate No.III, Thanjavur District in C.C.No. 56 of 2016 dated 29.01.2020 and set aside the same.



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Crl.R.C(MD)No.425 of 2023

For Petitioner : Mr.K.Jeyamohan

For Respondent : Mr.P.Kottaichamy
Government Advocate (Criminal side)

ORDER

This Criminal Revision has been filed against the order dated 22.10.2021 passed in C.A.No.18 of 2020 on the file of the learned II-Additional District Judge, Thanjavur, confirming the judgment dated 29.01.2020 passed by the learned Judicial Magistrate No.III, Thanjavur District in C.C.No.56 of 2016.

2. The trial Court, by judgment dated 29.01.2020 in C.C.No.56 of 2016 convicted the petitioner for the offence punishable under Sections 279, 338 and 304-A IPC and sentenced him to undergo three months simple imprisonment and a fine of Rs.500/-, in default, to undergo one month simple imprisonment for the offence under Section 279 IPC; to undergo six months simple imprisonment and a fine of Rs.1000/-, in default, to undergo one month simple imprisonment for the offence under Section 338 IPC and to undergo one year simple imprisonment and a fine of Rs.2000/- each (3 counts, totally Rs.6000/-), in default, to undergo one month simple imprisonment for the offence under Section 304-A



Crl.R.C(MD)No.425 of 2023

(3 counts) IPC. Aggrieved over the same, the petitioner filed an appeal before the learned II-Additional District and Sessions Judge, Thanjavur in C.A.No.18 of 2020. The appellate Judge vide order dated 22.10.2021 confirmed the conviction of the trial Court and modified the sentence to the effect that the petitioner shall pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week for the offence under Section 279 IPC; the petitioner shall pay a fine of Rs.1000/-, in default, to undergo one month simple imprisonment for the offence under Section 338 IPC; and the petitioner shall undergo six months (for each count) simple imprisonment and a fine of Rs.2000/- each, in default, to undergo two months simple imprisonment (for each count) for the offence under Section 304-A(3 counts) IPC and dismissed the appeal. Challenging the same, the petitioner filed the present criminal revision case.

3. The case of the prosecution is that the petitioner is the accused in Crime No.109 of 2016 on the file of the respondent police. The case of the prosecution is that on 01.06.2016 at 1.30 p.m, when the deceased Chandrasekar along with his wife Malarmalini and his two children Priyadarshini and Pugazh proceeded in his two wheeler bearing Registration No.TN 07 AF 8925 Hero Honda Splender Plus in Thanjavur



Crl.R.C(MD)No.425 of 2023

Rani Paradise Bridge opposite to Mubarak Palace from east to west direction, driven by Chandrasekar to CPM office, the the Tourist bus bearing Registration No.PY01BD2929 said to have been driven by the petitioner in opposite direction in a rash and negligent manner, dashed the said two wheeler. In result, Chandrasekar died on the spot and his children died on the way to hospital and his wife sustained grievous injuries in her head. Therefore, the respondent police registered a case for the alleged offence under Sections 279, 337 and 304A (3 counts) IPC. The investigation officer conducted the investigation and after completion of investigation, he filed the final report before the learned Judicial Magistrate No.III, Thanjavur, for the offence under Sections 279, 338 and 304-A (3 counts) IPC, and the same was taken on file in C.C.No.56 of 2016. The learned trial Judge issued summons to the petitioner and on his appearance, documents under Section 207 Cr.P.C, were served to him. Proper charges were framed and the petitioner was questioned and he pleaded not guilty and the case was posted for trial.

4. In order to establish the guilt, on the side of the prosecution, 14 witnesses were examined and 15 documents were marked. After that the learned trial Judge examined the appellant under Section 313 Cr.P.C,



Crl.R.C(MD)No.425 of 2023

with regard to the incriminating circumstances available on record against the petitioner and the same was denied by the petitioner. Hence the case was posted for examination of defence witness if any. On the defence side, no witness was examined and no documents were produced. The learned trial Judge after considering the evidence and submission of the petitioner and the learned prosecutor, convicted the petitioner for the above said offence and imposed the sentence of imprisonment stated supra. Aggrieved over the same, the petitioner preferred the appeal in C.A.No.18 of 2020, before the learned II Additional District Judge, Thanjavur. The learned appellate Judge also confirmed the judgment passed by the trial Court. As against concurrent judgments of both the Courts below, the present Criminal Revision Case has been filed before this Court.

5. The learned counsel for the petitioner submitted that the presence of the eyewitness is doubtful and his deposition, that he saw the accident on hearing the noise of the accident, creates suspicion and hence his evidence is not reliable. Further, he submitted that according to P.W8-Motor Vehicle Inspector, the offending vehicle hit the backside of the two wheeler, but there were no damages on the backside, instead, the



Crl.R.C(MD)No.425 of 2023

front portion of the two wheeler alone found damaged. Hence, there was some discrepancy in the evidence of P.W3 and hence, the learned counsel prays for acquittal of the petitioner.

6. On seeing the said accident, P.W3 took the diseased and injured to the hospital and informed P.W1, who is none other than the brother of the deceased. Thereafter, P.W1 went to the police station and made a complaint-Ex.P1 to P.W11. P.W11 registered a case in Crime No.109 of 2016 for the offence registered under Ex.P8(FIR). Thereafter, the investigating officer collected all the materials and examined number of persons and filed the final report. He also obtained the Motor Vehicle Inspector Report-Ex.P4. According to the prosecution, two eyewitnesses to the occurrence were examined. P.W3 clearly speaks about the manner in which the accident took place on the date of accident. He further deposed that when the diseased was driving his two wheeler, the petitioner drove his bus in a rash and negligent manner and hit the backside of the two wheeler. The said evidence is corroborated by the remaining eyewitnesses. The evidence of P.W9 also corroborated the same. The said evidence was corroborated with the remaining documentary evidence collected by the investigation officer. So, both the



Crl.R.C(MD)No.425 of 2023

Courts below, after considering the evidence in that case, gave a categorical finding that the petitioner is responsible for the accident.

7. It is seen from the records that P.W3 clearly deposed that the petitioner drove his vehicle in a rash and negligent manner and hit the vehicle driven by the deceased. The said discrepancy with regard to the damage caused on the front side and backside of the vehicle have no consequences to discard his evidence when he was examined in the Court after a period of three years from the date of occurrence. Further, the occurrence took place in the over bridge. In the said circumstances, the evidence of P.W.3 and the evidence of P.W.9 are corroborated with each other and they are cogent in their version and there is no reason to disbelieve their evidence. P.W.3's presence in the scene of occurrence is clearly proved and he took the two injured children and injured P.W.9 to the hospital. The manner of the accident in the over bridge itself speaks volumes about the rash and negligence on the part of the petitioner. Hence, in this case, the principle *res ipso loquitur* is applicable. The Hon'ble Supreme Court in ***Thakur Singh Vs. State of Punjab*** reported in ***2004 SCC Crl. 1183***, the relevant portion of the judgment is as follows:



Crl.R.C(MD)No.425 of 2023

“4. It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into canal. In such a situation the doctrine of res ipsa loquitur comes into play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part.”

8. When the evidence of P.W.3 and 9 is cogent regarding the rash and negligent driving in the over bridge, the burden of proof was on the petitioner who drove the offending vehicle in the opposite direction to show that he has not driven the said vehicle in a rash and negligent manner. Even in this case, the petitioner did not give any explanation regarding the above involvement of his vehicle in the said accident during Section 313 Cr.P.C, questioning before the trial Court.

9. In all aspects, this Court does not find any merit in the contention of the learned counsel for the petitioner and there is no perversity in the finding of both the Courts below. Hence, this Criminal



Crl.R.C(MD)No.425 of 2023

Revision Case is dismissed. The impugned order dated 22.10.2021 passed in C.A.No.18 of 2020 by the learned II-Additional District Judge, Thanjavur District is hereby confirmed. Consequently, connected miscellaneous petitions are closed.

09.01.2024

NCC : Yes/No
Index :Yes/No
Internet :Yes/No
PJL

To

1. The II-Additional District and Sessions Judge,
Thanjavur.
2. The Judicial Magistrate No.III,
Thanjavur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C(MD)No.425 of 2023

K.K.RAMAKRISHNAN, J.

PJL

Pre-delivery order made in
Crl.R.C(MD)No.425 of 2023

09.01.2024