



Crl.R.C.(MD)No.537 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	20.12.2023
Pronounced On	:	22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.537 of 2019

Subramanian

... Petitioner/Appellant/Sole Accused

Vs.

State rep. by its
The Sub Inspector of Police,
Suthamalli Police Station,
Tirunelveli District.
Crime No.250/08

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for records relating to the judgment passed by III-Additional Session Court, Tirunelveli in Crl.A.29 of 2018 dated 12.03.2019 modifying the Judgment passed by the District Munsif Cum Judicial Magistrate, Cheranmahadevi in S.T.C.1691 of 2009 dated 14.02.2018 and set aside the same and may acquit the petitioner.

For Petitioner : Mr.K.P.Narayana Kumar

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

The petitioner is the sole accused in S.T.C.1691 of 2009 on the file of the learned District Munsif Cum Judicial Magistrate, Cheranmahadevi. The learned trial Judge vide order dated 14.02.2018, convicted the petitioner under Sections 279, 337 (21 counts) and 338 (3 counts) and sentenced him to undergo 6 months rigorous imprisonment of the offence under Section 279 IPC; to undergo 6 months rigorous imprisonment each and fine of Rs.500/- in default, to undergo one month simple imprisonment for the offence under Section 337(21 counts); to undergo 2 years rigorous imprisonment each and fine of Rs.1000/-each, for the offence under Section 338 (3counts) and in default to undergo 2 months simple imprisonment.

2. The case of the prosecution is that on 09.02.2008, at about 1.00 p.m, the revision petitioner drove the mini bus bearing Registration No.TN 59 N 0176 from East to West. He drove the mini bus in a rash and negligent manner using the mobile phone and caused the accident due to which 24 passengers sustained simple injury and three sustained grievous injury. The respondent police registered a case and conducted the investigation and filed the final report before



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the learned trial Judge. The learned trial Judge took the final report on file in S.T.C.No.169 of 2009 and summoned the accused and on his appearance the copies under Section 207 Cr.P.C., were supplied. Thereafter, he framed necessary charges and questioned the accused. He pleaded not guilty and stood for trial.

3.To prove the case, the prosecution examined PW1 to PW28 and marked Ex.P1 to Ex.P32. The learned trial Judge, on the basis of the available evidence, questioned the accused by putting the incriminating materials available against him. The accused denied the same as false and hence the case was posted for defence side evidence. On the side of the accused, neither witness was examined nor documents were marked.

4. The learned trial Judge considering the above evidence and also the documents filed by the prosecution, convicted the petitioner under Sections 279, 337 (21 counts) and 338 (3 counts) and sentenced him to undergo 6 months rigorous imprisonment of the offence under Section 279 IPC; to undergo 6 months rigorous imprisonment each and fine of Rs.500/- in default, to undergo one month simple imprisonment for the offence under Section 337(21 counts); to undergo 2 years rigorous imprisonment each and fine of Rs.1000/-each, for the



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offence under Section 338 (3 counts) and in default to undergo 2 months simple imprisonment vide judgment dated 14.02.2018. Challenging the same, he preferred an appeal before the appellate Court/III-Additional Sessions Judge, Tirunelveli in Crl.A. No.29 of 2018. The learned Appellate Judge confirmed the conviction and reduced the sentence to three months each and confirmed the fine amount. In the said circumstances, challenging the said conviction and sentence, he filed this revision before this Court.

5. The learned counsel for the petitioner submitted that PW.1 made the complaint and there is a contradiction between the version of the defacto complainant and other remaining witnesses. P.W.1, P.W.4, P.W.5 have not deposed that the petitioner while driving the vehicle used the mobile phone and caused the accident. But, the remaining injured witnesses deposed that the petitioner on the date of occurrence, used the mobile phone in his right hand and drove the vehicle in a rash and negligent manner and hence, the vehicle plunged into the river. Therefore, two set of evidence is available on the side of the prosecution. Hence, he seeks that benefit of doubt may be given to the petitioner. Further, he submitted that the investigating officer has not conducted any investigation relating to the mobile phone of the petitioner. It is the specific case



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of the prosecution that the petitioner had driven the vehicle by chatting over the mobile phone. Hence, the prosecution ought to have seized the mobile phone of the petitioner. In the said circumstances, both the Courts below have not considered the above infirmity of the prosecution case. Hence, he seeks to set aside the conviction and sentence imposed by the learned trial Judge as well as the Appellate Judge.

6. The learned Additional Public Prosecutor submitted that even though PW1, PW4 and PW5 have not deposed about the using of the mobile phone, all the remaining injured witnesses clearly deposed that the petitioner while driving the vehicle used the mobile phone in his right hand and drove the vehicle in a rash and negligent manner that too without noticing the river bridge ahead and hence the bus plunged into the river. More than 24 witnesses cogently deposed the same. In the said circumstances, the finding of both the Courts below regarding the above fact need not be disturbed. Further the Appellate Court substantially reduced the sentence of imprisonment from two years to three months. Hence, there is no need to interfere with the judgment of the Appellate Court and he seeks for dismissal of this revision.



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7. This Court has considered the rival submissions made by both side counsel and perused the records of both the Courts below and also perused the impugned judgment.

8. This Court perused the deposition of all the injured witnesses. As rightly pointed out by the learned Additional Public Prosecutor, except PW.1, PW.3 and P.W.4 all other witnesses have clearly deposed that the petitioner used the mobile phone in his right hand and drove the vehicle in a rash and negligent manner without taking any precaution while crossing the revetment wall and dashed the revetment wall and the bus plunged into the river. All the witnesses except P.W.1, P.W.3 and P.W.4 have cogently stated the above fact without any contradiction. The drivers should not use mobile phone while they are driving the vehicles. In this case, there is clear evidence that the petitioner used the mobile phone in the right hand and drove the vehicle in a rash and negligent manner without taking precaution while crossing the river bridge and hence, the bus was ran into 5 feet pit and the accident occurred. Apart from that the manner of the accident took place itself shows the fact of rash and negligent driving on the part of the petitioner. Hence, this Court is of the opinion that both the Courts below have properly appreciated the evidence and conducted the trial for the above said



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offences. It is settled principle that unless there is manifest perversity and illegality, this Court has no jurisdiction to interfere with the finding of the learned trial Judge as well as the learned Appellate Judge. When both the Courts below believed the evidence of more than 24 injured witnesses, this Court has no reason to interfere with the same. Hence, as held by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 at page 205*** this Court is not inclined to interfere with the judgments of the Courts below:

16. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

9. In the result, this criminal revision petition is dismissed. The judgment passed by the learned III-Additional Sessions Judge, Tirunelveli in Crl.A.No.29 of 2018 dated 12.03.2019 by modifying the Judgment passed by the learned District Munsif Cum Judicial Magistrate, Cheranmahadevi, in S.T.C.169 of 2009 dated 14.02.2018 is hereby confirmed.

22.02.2024

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



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To

1. The Learned III-Additional Sessions Judge,
Tirunelveli.
2. The Learned District Munsif Cum Judicial Magistrate,
Cheranmahadevi.
3. The Sub Inspector of Police,
Suthamalli Police Station,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL

**Pre-delivery Order made in
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22.02.2024