



Crl.R.C.No.148 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.148 of 2022

Subburaj

... Petitioner

Vs.

State rep by
The Inspector of Police,
Kadathur Police Station,
Gobichettipalayam Taluk,
Erode District.
(Cr.No.360/2015).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to allow the above Criminal R.C by setting aside the judgment dated 26.10.2021 made in C.A.No.38 of 2021 on the file of the III Addl. District and Sessions Court, Erode District at Gobichettipalayam confirming the judgment dated 08.02.2021 made in C.C.No.55 of 2016 on the file of the Judicial Magistrate Court No.II, Gobichettipalayam.

For Petitioner : Mr.S.Sriram

For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)



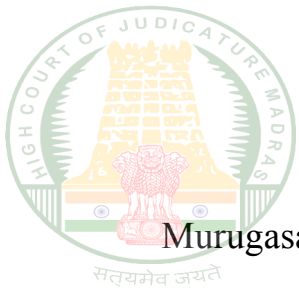
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ORDER

The petitioner was convicted by judgment, dated 08.02.2021 in C.C.No.55 of 2016 by the learned Judicial Magistrate No.II, Gobichettipalayam (Trial Court) for offence under Section 304(A) IPC and sentenced to under two years Simple Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for two weeks and also imposed a fine of Rs.1,000/- for offence under Section 279 IPC in default to undergo Simple Imprisonment for two weeks. Aggrieved over the judgment of the trial Court, an appeal was preferred by the petitioner before the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam (Lower Appellate Court) in Crl.A.No.38 of 2021. The Lower Appellate Court, by judgment dated 26.10.2021 dismissed the appeal, confirming the judgment of the trial Court, against which the present criminal revision case is filed.

2.The case of the prosecution is that on 08.12.2015 at about 06.30 p.m the petitioner was driving Velalar College Bus bearing Reg.No.TN-33-AL-7473 from east to west on Gobichettipalayam-Sathiyamangalam road near Kasipalayam in a rash and negligent manner and dashed against the deceased



Murugasamy @ Murugesan who was walking on the left edge of the road.

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PW1 to PW3 who were present in the scene of occurrence, took the deceased to the Government Hospital, Gobichettipalayam, thereafter the injured was referred to the Government General Hospital, Erode but the injured was taken to Kalyani Kidney Care Centre and took treatment as inpatient till 23.12.2015. Thereafter, the injured was taken to the Government Hospital, Coimbatore and on 24.12.2015, he succumbed to injuries. On the next day of the accident i.e., on 09.12.2015, PW1 lodged a complaint (Ex.P1) to PW9, Sub Inspector of Police attached to the respondent Police Station. PW9 registered an FIR (Ex.P4) in Crime No.360 of 2015 for offence under Sections 279 and 337 IPC, visited the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P5) in presence of PW4 and PW5. Thereafter, the college bus involved in the accident sent for Motor Vehicle Inspection, after inspection, the Motor Vehicle Inspection Report (Ex.P10) collected. In the meanwhile, PW9 visited the Government Hospital, Gobichettipalayam, examined the Doctor (PW8), recorded his statement and collected Accident Register (Ex.P3). On coming to know about the death of the deceased on 24.12.2015, Section was altered to 304(A) IPC by alteration report (Ex.P6).



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3.PW10 took up further investigation, examined the witnesses, recorded further statements, conducted inquest on the body of the deceased, sent the body for postmortem, collected the postmortem certificate (Ex.P11), Accident Register (Ex.P7) and Wound Certificate (Ex.P8) from Kalyani Kidney Care Centre. On conclusion of investigation, charge sheet was filed before the Trial Court. During trial, on the side of the prosecution, ten witnesses examined as PW1 to PW10 and eleven documents marked as Exs.P1 to P11. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the Trial Court had convicted the petitioner as stated above.

4.The learned counsel for the petitioner submitted that in this case, PW1 to PW3 are projected as eye witnesses to the alleged occurrence and that PW1 was running a Computer Centre in Gobichettipalayam. When PW1 was talking with PW2, who was running a provision shop, he saw the deceased was crossing the road to buy milk. After hearing a bang noise, PW1 and PW2 turned around, saw the injured and ran to the scene of occurrence. Both PW1 and PW2 took the injured in a car of PW2 to the Government Hospital, Gobichettipalayam. PW3, the brother-in-law of the deceased who was near the



market place, had also gone along with PW2 to the hospital. Thereafter, the

injured was referred to the Government Hospital, Erode, despite the Doctors advice the injured was taken to Kalyani Kidney Care Centre. All the three witnesses stated that only after hearing the bang noise, they turned around and saw the injured. Nobody had seen that the petitioner had driven the college bus in a rash and negligent manner and dashed against the petitioner. He further submitted that from the Observation Mahazar and Rough Sketch (Exs.P2 & P5), it is clear that the deceased treaded stepping into the road and contributed to the accident. From the Observation Mahazar (Ex.P2), it is seen that the road is of 30 feet width and there is 5 feet mud road on both sides but the deceased was not walked on the mud road. The projected eye witnesses (PW1 to PW3) stated that the deceased was crossing the road to buy milk. PW6 and PW7 are the wife and son of the deceased and they are in the nature of the hearsay. PW8 is the Casualty Doctor of Government Hospital, Gobichettipalayam who issued the Accident Register (Ex.P3). The Motor Vehicle Inspection report (Ex.P10) confirms no damage to the college bus driven by the petitioner. None of the witnesses present in the scene of occurrence stated that the petitioner was driving the college bus in a rash and negligent manner and dashed against the petitioner. Added to it, from the Motor Vehicle Inspection Report (Ex.P10), it is seen that there is no damage to the college bus. Had the college bus was



driven in high speed, there could have been some mark or dent. All the witnesses admit that the scene of occurrence is a busy market place and there is no possibility of driving vehicle in high speed. Hence, the presence of PW1 to PW3 at the time of occurrence is highly doubtful.

5.The learned counsel further submitted the infected abrasion was found on the right fronto occipital region and the deceased died sixteen days after the accident due to improper medical treatment, hence the death was not due to rash and negligence of the petitioner. He further submitted that the Doctor John Gurupatham who treated the deceased in Kalyani Kidney Care Centre not examined by the prosecution and the medical records *viz.*, Accident Register and Wound Certificate (Exs.P6 & P7) marked through the Investigating Officer. Likewise, the Motor Vehicle Inspector who examined the college bus and the Postmortem Doctor not examined in this case, hence the Motor Vehicle Inspection Report and Postmortem Certificate (Exs.P10 & P11) marked through the Investigating Officer/PW10. Thus, the documents Exs.P6, P7, P10 & P11 not proved in the manner known to law. The Trial Court and the Lower Appellate Court failed to consider these aspects but mechanically convicted the petitioner, hence he prays for acquittal. In support of his submissions, the learned counsel for the petitioner relied on the following decisions for the point



that no evidence on the record to show that the accused was driving the vehicle

in a rash and negligent manner.

- *State of Karnataka v. Satish reported in (1998) 8 SCC 493.*
- *M.Subramani v. State rep. by Inspector of Police, Edapadi Police Station, Salem reported in 2016 SCC OnLine Mad 33692.*
- *Renugopal v. State rep. by Inspector of Police, Vishnu Kanchi Police Station, Kancheepuram reported in 2016 SCC OnLine Mad 30704.*

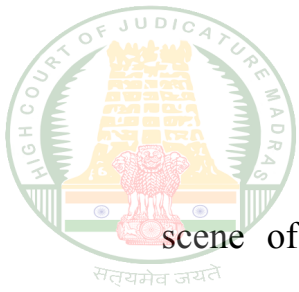
6.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that PW1, the defacto complainant had lodged a complaint (Ex.P1) on 09.12.2015 for the accident which had taken place on 08.12.2015 at about 06.30 p.m in Gobichettipalayam-Sathiyamangalam road near Kasipalayam. The college bus bearing Reg.No.TN-33-AL-7478 driven by the petitioner in a rash and negligence manner had dashed the petitioner from the behind who was walking on the left side of the road to buy milk. Due to which, the deceased sustained injuries on his forearm, abrasion over the right fronto occipital region and he was immediately taken in a car by PW1 to PW3 to the Government Hospital, Gobichettipalayam. PW8, the Doctor gave treatment to the injured and thereafter, referred to the Government Hospital, Erode. Instead the injured was admitted in Kalyani Kidney Care Centre, Erode.

On complaint of PW1, PW9 registered an FIR (Ex.P4) in Crime No.360 of



2015 for offence under Section 279 & 337 of IPC, visited the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P5) in presence of PW4 and PW5, recorded the statement of witnesses present in the scene of occurrence and sent the vehicle for Motor Vehicle Inspection. On 24.12.2015, on getting information about the death of the injured, Section altered to 304(A) IPC *vide* alteration report (Ex.P6). PW10, Investigating Officer took up further investigation, recorded further statement of witnesses, conducted inquest on the body of the deceased, sent the body for postmortem, recorded the statement of the Doctor, collected the Postmortem Report (Ex.P11), Motor Vehicle Inspection Report (Ex.P10) and filed charge sheet on completion of investigation.

7.He further submitted that in this case, PW1 to PW3 clearly stated that the petitioner had driven the college bus in a rash and negligent manner and dashed against the deceased from behind, due to which the deceased sustained injuries, got admitted in the hospital, after 16 days of the treatment, he succumbed to the injuries. Merely because of PW1 to PW3 are known and relatives to the deceased, their evidence cannot be doubted. The presence of of PW1 to PW3 in the scene of occurrence is natural for the reason that PW1 and PW2 are running a Computer Centre and Provision Shop respectively near the



scene of occurrence. In this case, the injured immediately taken to the

Government Hospital, Gobichettipalaym is recorded in the Accident Register (Ex.P3) and PW8, the Doctor from Gobichettipalayam Government Hospital confirms the same. The injured took treatment in Kalyani Kidney Care Centre, Erode is confirmed by the Accident Register and Wound Certificate (Exs.P7 & P8). The postmortem was conducted by the Doctor from Coimbatore Medical College Hospital and the Postmortem Report (Ex.P11) confirm that the deceased died due to the injuries sustained in the accident. He further submits that the non-examination of the Postmortem Doctor, the Doctor who gave treatment in Kalyani Kidney Care Centre and the Motor Vehicle Inspector is not fatal to the prosecution case which has been rightly considered by both the Courts below. Hence, the revision is liable to be dismissed confirming the judgments of the Courts below.

8.Considering the submissions and on perusal of the materials, it is seen that in this case, PW1 and PW2 are running a Computer Centre and Provision Shop near the scene of occurrence *i.e.*, Kasipalayam main road. PW3, the brother-in-law of the deceased said to be present in the accident spot. PW1 to PW3 stated that at the time of accident, they heard a bang noise and, found the deceased with injuries. Immediately, the injured was taken in a car by PW2 and



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PW3 to the Gobichettipalayam Government Hospital. PW1 to PW3 admitted that they are known and relatives to the injured and they had not seen the accident proper. They further admit that they saw the petitioner who came down from the college bus and later on seeing the crowd, he left the scene of occurrence. Initially, PW8, the Doctor from the Government Hospital, Gobichettipalayam gave treatment to the injured and issued the Accident Register (Ex.P3) recording the injuries on the left forearm and abrasion over the right fronto occipital region. Thereafter, the injured was taken to Kalyani Kidney Care Centre where he took treatment as inpatient for 15 days. On the 16th day, the injured health condition deteriorated, hence he was referred to the Coimbatore Medical College where he succumbed to the injuries. From the Postmortem Report, it is seen that there is infected abrasion noted over right fronto occipital region.

9.It is to be noted that there is no proper explanation or any document to show what is the treatment given for fifteen days in Kalyani Kidney Care Centre except for producing the Accident Register and Postmortem Certificate (Exs.P7 & P8). Added to it, the Doctor John Gurupatham who gave treatment in Kalyani Kidney Care Centre not examined by the prosecution. Ex.P7 is a reproduction of Ex.P3.



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10.It is seen that the Investigating Officer/PW10 had not given any explanation as to why the Postmortem Doctor, the Doctor who treated the injured in Kalyani Kidney Care Centre and the Motor Vehicle Inspector were not examined as witnesses. Thus, marking of the Accident Register (Ex.P7), Wound Certificate (Ex.P8), Motor Vehicle Inspection Report (Ex.P10) and the Postmoretem Report (Ex.P11) by the Investigating Officer is not proper and the documents cannot be taken in evidence as proved. The presence of PW1 to PW3 in the scene of occurrence and witnessing the accident is doubtful for the reason that they saw the injured only after hearing a bang noise.

11.In view of the above discussion, this Court finds that the prosecution has miserably failed to prove the case beyond all reasonable doubt. Hence, the judgments of the Courts below are liable to be set aside.

12.Accordingly, the judgment, dated 08.02.2021 in C.C.No.55 of 2016 passed by the learned Judicial Magistrate No.II, Gobichettipalayam and the judgment, dated 26.10.2021 in Crl.A.No.38 of 2021 passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam are set



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aside and the Criminal Revision Case is allowed. The petitioner is acquitted

from all the charges levelled against him. Fine amount if any paid shall be

refunded. Bail bond if any executed shall stand cancelled.

19.02.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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To

1.The III Additional District and Sessions Judge,
Erode @ Gobichettipalayam.

2.The Judicial Magistrate No.II,
Gobichettipalayam.

3.The Inspector of Police,
Kadathur Police Station,
Gobichettipalayam Taluk,
Erode District.

4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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