



CrI.R.C.No.875 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.875 of 2021

Sadikbasha

... Petitioner

Vs.

The State represented by
The Inspector of Police,
Kolathur Police Station,
Salem District.
Crime No.617 of 2014..

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Code of Criminal Procedure to set aside the judgment dated 21.12.2020 passed in C.A.No.241 of 2019 on the file of the learned Additional District Judge, Additional District (Fast Track) Court, Mettur confirming the judgment dated 08.11.2019 passed in C.C.No.39 of 2015 by the Judicial Magistrate No.I, Mettur.



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For Petitioner : Mr.R.Nalliyappan
For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)

ORDER

The petitioner/accused was convicted by the learned Judicial Magistrate No.I, Mettur in C.C.No.39 of 2015 and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment for the offence under Section 279 IPC, to undergo six months simple imprisonment and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment for the offence under Section 337 IPC and to undergo two years simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo three months simple imprisonment for the offence under Section 304(A) IPC, by judgment dated 08.11.2019. Aggrieved against the same, the petitioner preferred an appeal before the Sessions Court in C.A.No.241 of 2019. The learned Additional District Judge, Additional District (Fast Track) Court, Mettur dismissed the appeal confirming the conviction and sentence of the



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Trial Court by judgment dated 21.12.2020. Against which, the present revision is filed.

2.The case of the prosecution is that on 23.10.2014 at about 5.00 p.m., the deceased had driven the Hero Honda Splendor bike bearing registration No.TN-38-S-5108 with P.W.1 as pillion rider proceeding from Kolathur to Chennampatty road, near Kannamoochi cross road on the left side corner of the road, at that time, the bus being registration No.TN-52-B-5577 driven by the petitioner was coming from Kannamoochi road towards Kolathur in a rash and negligent manner dashed against the bike driven by the deceased and caused accident, thereby both the deceased and P.W.1 were thrown away from the bike, in which, P.W.1 sustained simple injury on his head, left leg and abrasion on his body whereas the deceased sustained injuries on his head, left eyebrow, left leg, ears, nose and died due to the accident. The relatives of the deceased who were following in the Omni van, namely, P.W.8 and P.W.9 saw the accident, took the injured and the deceased in an ambulance to the Government Hospital where P.W.4/Casualty Doctor attached to the Government Hospital, Mettur treated P.W.1 and P.W.11 is



the Postmortem Doctor. During trial, P.W.1 to P.W.14 examined and Ex.P1 to Ex.P9 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. The trial Court on conclusion of trial found the petitioner guilty and convicted him as stated above. The Lower Appellate Court confirmed the conviction and sentence.

3.The contention of the learned counsel for the petitioner is that in this case, P.W.1, P.W.8 and P.W.9 are projected as eye witnesses. P.W.1, who is an injured witness admits that on 23.10.2014 after the accident and on sustaining injury, he was taken to the Government Hospital, Mettur, at that time, the Police had come there, enquired him and thereafter, on the next day, the Police came back and recorded statement from him, which was marked as Ex.P1. As per the statement/Ex.P1, P.W.1 and the deceased Purushothaman were coming back after worship from Madeswaranmalai in a bike and when they were coming near Chennampatty – Kannamoochi division road, a bus driven by the petitioner in a rash and negligent manner dashed against them and caused the accident, in which, both the deceased and P.W.1 were thrown away from the bike. If that is the case, the place



shown in the rough sketch/Ex.P7 as scene of occurrence is contrary to the statement of P.W.1. He would submit that the presence of P.W.8 and P.W.9 is also highly artificial. P.W.8 states that he had driven the Omni van and he was coming 100 meters behind the bike. It is a link road with curves and it is highly impossible for P.W.8 to see the accident in 100 meters. Further, P.W.8 admits that there was heavy rain on that day and hence, he could not have seen the occurrence. P.W.9, a relative who is said to have travelled in the Omni van states that 10 minutes after the accident when P.W.1 and the deceased were lying in the road, he went there and sent them in an ambulance. Thus the evidence of P.W.8 and P.W.9 are contradictory to each other and with P.W.1. Further, the Investigating Officer admits that in the scene of occurrence, there are other persons who are residing but none of them examined. The other witnesses P.W.2, P.W.3 and P.W.6 are father, relative and brother of the deceased, who admits that they are not present at the time of occurrence. Thus the evidence of P.W.1 alone is available which is also contrary to his statement/Ex.P1.

4.The learned counsel for the petitioner further submitted that the



statement of P.W.1 was recorded on 23.10.2014 but FIR/Ex.P6 came to be recorded only on 24.10.2014. Further, P.W.1 in his statement states that the bus driven by the petitioner caused the accident by dashing against the bike on the left side of the bike, but in Ex.P8/Motor vehicle report of the bus driven by the petitioner, there is no damage marked. The Trial Court and the Lower Appellate Court failed to consider these aspects but gave its own reason that it is a case of contributory negligence. Further, the Trial Court states that as a general rule, when a vehicle come from a branch road joining the main road, it is the duty of the driver to follow the principle of “Stop, Watch and Proceed”. In this case there is no evidence to show that the petitioner had not followed the principle. Further, P.W.1 in his evidence admits that the bus was driven in a normal speed and he has not stated anything about rash and negligence. Thus, on presumption both the Courts below convicted the petitioner.

5.The learned Government Advocate (Crl. Side) on the other hand submitted that P.W.1 is an injured witness, who lodged a complaint. Based on the statement of P.W.1 which is marked as Ex.P1, FIR /Ex.P6 registered.



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P.W.4 is the Casualty Doctor who examined the deceased as well as P.W.1 and issued Ex.P2 and Ex.P3. On registration of FIR, the Investigating officer visited the scene of occurrence, prepared observation mahazar/Ex.P4 and rough sketch/Ex.P7. Thereafter, the bike as well as the bus driven by the petitioner were sent to Motor Vehicle Inspector for examination and obtained the reports/Ex.P8 and Ex.P9. After obtaining Postmortem certificate/Ex.P5 from P.W.11, charge sheet filed before the Trial Court. During trial, P.W.1 to P.W.11 examined and Ex.P1 to Ex.P9 marked. The Trial Court found the petitioner guilty on the evidence of P.W.1, P.W.8 and P.W.9 and convicted the petitioner for the offence under Sections 279, 337 and 304(A) of IPC and sentenced him as stated above. The Lower Appellate Court dismissed the appeal filed by the petitioner and confirmed the conviction and sentence imposed by the Trial Court. He further submitted that the petitioner's defence of vehicle direction and the manner of accident all considered by the Trial Court. He would further submit that the petitioner not objected while marking of Ex.P8 and Ex.P9 and hence, it was marked through the Investigating Officer. The deceased died due to accident and P.W.11/Postmortem Doctor in his report/Ex.P5 confirms that



there is no smell of alcohol. In such circumstances, the petitioner's defence that the deceased and P.W.1 were intoxicated and caused the accident proved to be false. In view of the above, both the Courts below had rightly convicted the petitioner. Hence, prayed for dismissal.

6.Considering the submissions made and on perusal of the materials, it is not in dispute that the petitioner is the driver of the bus. The manner in which the accident took place is to be considered. As per Ex.P1/statement of P.W.1, the claim is that on 23.10.2014 at about 5.00 p.m., the deceased and P.W.1 were riding in the bike from Kolathur to Chennampatty road near Kannamoochi cross road and the bus was from Kannamoochi road to Kolathur which is contrary to the place of occurrence mentioned in the rough sketch/Ex.P7. Further, P.W.1 admits that damage was caused to the bus on the left side but the same is contrary to the Motor Vehicle report of the bus/Ex.P8 which does not mention any damage to the bus. P.W.8, relative of the deceased admits that on the date of incident there was heavy rain and the road was upward, the accident was due to other reasons and the petitioner is not the reason. Hence, the contention of the petitioner that his



vehicle was not involved in the accident gains strength and acceptability. It

is also to be seen that in this case, the projected eye witnesses, namely, P.W.8 and P.W.9 are close relatives and their evidence are contradictory to the evidence of P.W.1. Further, the evidence of P.W.1 is contrary to his complaint/Ex.P1, Motor vehicle report/Ex.P8 and rough sketch/Ex.P7. In this case, the contention of the learned Government Advocate (Crl. Side) with regard to the direction cannot be sustained for the reason that there is no cross examination. It is for the prosecution to prove that the petitioner had driven the vehicle in a rash and negligent manner but no witness stated that the accident was caused due to the rash and negligence driving of the petitioner. The evidence of P.W.1 is highly doubtful as regards the accident and the place of accident which are contrary to the complaint and rough sketch. All the witnesses in this case are close relatives of the petitioner and no public witness examined. From the above, it is seen that the petitioner driven the vehicle in a rash and negligent manner and caused the accident is not proved beyond all reasonable doubts. Hence, this Court finds the conviction and sentence imposed by the Trial Court which was confirmed by the Lower Appellate Court not sustainable.



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7. Accordingly, the judgment rendered by the learned Judicial Magistrate No.I, Mettur in C.C.No.39 of 2015 dated 08.11.2019, confirmed by the learned Additional District Judge, Additional District (Fast Track) Court, Mettur in C.A.No.241 of 2019 dated 21.12.2020 both set aside. The petitioner is acquitted from all the charges levelled against him.

8. In the result, the Criminal Revision Petition stands allowed.

03.02.2025

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
cse



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To

- 1.The Inspector of Police,
Kolathur Police Station,
Salem District.
- 2.The Judicial Magistrate No.I,
Mettur.
- 3.The Additional District Judge,
Additional District (Fast Track) Court,
Mettur.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.
cse

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