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Crl.R.C.No.270 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.270 of 2021

S.Kotti

... Petitioner

Vs.

State rep by,
Inspector of Police,
Thimiri Police Station,
Ranipet District.
(Crime No.88/2015).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records of judgment passed in Crl.A.No.69 of 2019 by Additional District cum Sessions Court-II, Vellore @ Ranipet, dated 06.03.2021 by confirming the sentence passed in C.C.No.19 of 2016 on the file of District Munsif cum Judicial Magistrate I – Walajahpet, Vellore District dated 06.07.2019 and set aside the same.



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

ORDER

The petitioner/accused in C.C.No.19 of 2016 was convicted by the learned District Munsif-cum-Judicial Magistrate No.I, Walajahpet (Trial Court) by judgment dated 06.07.2019 for the offence under section 279 IPC and sentenced to undergo three months Simple Imprisonment and to pay a fine of Rs.1000/-, in default to undergo two weeks Simple Imprisonment and for the offence under Section 304(A) IPC, the petitioner was sentenced to undergo two years Simple Imprisonment and to pay a fine of Rs.9,000/-, in default to undergo three months Simple Imprisonment. Against which, the petitioner preferred an appeal in Crl.A.No.69 of 2019 before the learned II Additional District and Sessions Judge, Vellore @ Ranipet (Lower Appellate Court) and the same was dismissed *vide* judgment dated 06.03.2021 confirming the conviction and sentence of the Trial Court, against which, the present revision petition is filed.

2.The brief facts of the case is that on 16.08.2015, at about 03.10



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p.m., when the defacto complainant/PW1 was sitting on the porch, at that time his daughter Megala, aged about three years and the daughter of PW2 & PW3 viz., Nisha/deceased, aged about three years, were standing right side of Kalavai to Thimir Road. At that time, a bus viz., Janatha bearing Reg.No.TN-23BC-2074 driven by the petitioner came on the right side of the road in a rash and negligent and dashed against the deceased Nisha and the front right wheel of the bus ran over on the deceased. Due to which, the head, right and left shoulder of the deceased crushed and she died on the spot. The petitioner got down from the bus and escaped from the scene of occurrence. Thereafter, the defacto complainant lodged a complaint (Ex.P1) to PW7/Investigating Officer. On receipt of the complaint, PW7 registered FIR (Ex.P3) in Crime No.277 of 2015 for offence under Sections 279 & 304(A) of IPC against the petitioner, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P4), enquired the witnesses present in the scene of occurrence, sent the body to the Government Hospital, Arcot for Postmortem, conducted inquest on the body of the deceased, prepared Inquest Report (Ex.P6), sent the bus for Motor Vehicle Inspection, recorded the statement of the Doctor on 18.08.2015, collected Postmortem Certificate

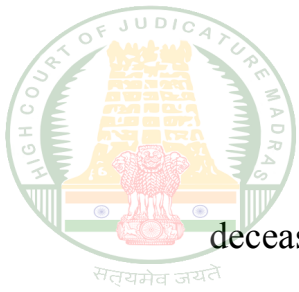


(Ex.P6) and also collected Motor Vehicle Inspection Report (Ex.P7) and

arrested the petitioner. On conclusion of investigation, charge sheet filed before the Trial Court.

3.During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and eight documents marked as Exs.P1 to P8. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above and the same was confirmed by the Lower Appellate Court.

4.The learned counsel for petitioner submitted that the projected eye witnesses to the accident taken place on 16.08.2015 are PW1, PW3 and PW5. PW1 in his evidence stated that on the fateful day, when he was sitting on the porch, his daughter and the daughter of PW2 & PW3 were standing on the right side of Kalavai-Thimiri road, at that time the bus driven by the petitioner caused the accident. PW5 in his evidence stated that when he was standing in Kalavai-Thimiri road, the bus involved in the accident came and attempted to overtake TATA Ace. At that time, the



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deceased treaded into the road and the right side front wheel of the bus ran over on the deceased. The version of PW1, PW3 and PW5 with regard to presence of TATA Ace are contradictory to each other. Added to it, PW1 and PW3 stated that the petitioner dashed against the deceased Nisha when she was standing on the right side of the road, but PW5 in his evidence stated that when the bus was overtaking the TATA Ace, the deceased/Nisha suddenly entered the road and sustained injury. Thus, the evidence of the eye witnesses to the occurrence are contradictory to each other and it cannot be relied upon to sustain the conviction. He further submitted that after the accident, the body of the deceased was sent to the Government Hospital, Arcot and the bus involved in the accident was sent to the Motor Vehicle Inspector for examination. The Investigating Officer/PW7 in his evidence admitted that on 18.08.2015, she examined the Doctor who conducted Postmortem and collected the Postmortem Report (Ex.P6). But neither the Doctor nor the Motor Vehicle Inspector examined in this case, on the other hand, the Postmortem Certificate (Ex.P6) and the Motor Vehicle Inspection Report (Ex.P7) marked through the Investigating Officer which is fatal to the prosecution case. Hence, he prays for setting aside the judgment of the



Trial Court.

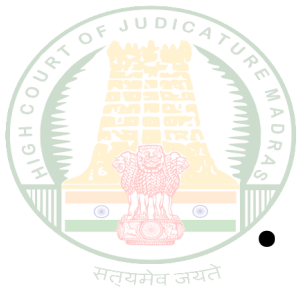
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5.To substantiate his arguments, the learned counsel for the petitioner relied on the following decisions for the points that when a child attempts to cross the road, the bus swerved to right, due to which the child was crushed to death and that in the absence of any material on the record, no presumption of “negligence” or “rashness” could be drawn. Further, for the point that the mere fact that an innocent died in a road accident, the presumption of rashness and negligence against the petitioner cannot be drawn and in order to impose criminal liability on the petitioner, it must be found as a fact that the accident was entirely or atleast mainly due to the rashness or negligence on the part of the accused who was driving the vehicle.

- *Searle v. Wallbank reported in [1947] A.C 341.*
- *Syad Akbar v. State of Karnataka reported in 1979 AIR 1848.*
- *State of Maharashtra v. Austin Anthony D'Souza reported in 1986 (3) BomCR 44.*
- *State of Karnataka v. Satish reported in 1999 ACJ 1378.*



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- *Abdul Subhan v. State (NCT of Delhi)* reported in 2007 Crl.L.J 1089.
- *Palanisamy v. The State Represented by the Inspector of Police, Perur Police Station, Coimbatore* in Crl.R.C.No.1576 of 2008, dated 25.07.2014.
- *Rajendran v. The Inspector of Police, N-2, Kasimedu Traffic Investigation, Chennai – 600 013* in Crl.R.C.No.221 of 2009.
- *Ras Bihari Singh v. State (NCT of Delhi)* in Crl.Rev.P.805/2016, dated 24.11.2017.

6.He further submitted that without prejudice to the submissions, the petitioner, on humanitarian consideration for the welfare of the family members of the deceased, produced the demand draft, dated 28.02.2025 for a sum of Rs.2,00,000/- (Rupees Two Lakh only) drawn in favour of the mother of the deceased Mrs.Priya Nagendran/PW3.

7.The learned Government Advocate (Crl. Side) appearing for the



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respondent Police on the other hand submitted that on 16.08.2015, the defacto complainant/PW1 lodged a complaint before the respondent Police stating that on 16.08.2015, at 03.10 p.m., when the complainant was sitting in front of the house, the deceased/Nisha aged about 3 years along with Megala/3 years were playing in front of the complainant house. At that time, the bus bearing registration No.TN-23-BC-2074 driven by the petitioner came in Kalavai-Thmiri Road at T.Pudur in a rash and negligent manner and hit the deceased and the deceased died on the spot. On the complaint (Ex.P1) of PW1, an FIR (Ex.P3) was registered in Crime No.277 of 2015 for offence under Sections 279 & 304(A) IPC. PW7/Investigating Officer went to the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P4) in the presence of witnesses, examined the witnesses and recorded their statements. Thereafter, inquest conducted on the body of the deceased in the presence of panchayatars and prepared inquest report in the presence of witnesses. Then, the deceased body was sent to the Government Hospital, Arcot for Postmortem and the petitioner was arrested on 19.08.2015 and his confession statement recorded. After collection of Postmortem Certificate (Ex.P6) and Motor Vehicle Inspection



Report (Ex.P7), charge sheet filed before the Trial Court. On conclusion of trial, the Trial Court convicted the petitioner.

8.He further submitted that non-examination of the Doctor who conducted Postmortem and the Motor Vehicle Inspector is not fatal to the prosecution case. The prosecution proved the case beyond all reasonable doubts and both the Trial Court and Lower Appellate Court convicted the petitioner. Hence, the Criminal Revision is liable to be dismissed.

9.Considering the rival submissions and on perusal of the materials, it is seen that in this case, three persons projected as eye witnesses to the occurrence viz., PW1, PW3 and PW5 who are Maternal Uncle, Mother and Neighbour of the deceased respectively. PW1 in his evidence admits that his house is behind the house of Duraikannu and there is a distance of 20 meters from the accident spot which cannot be viewed from his house. The Rough Sketch (Ex.P4) confirms the same. The presence of PW1 in the scene of occurrence is highly doubtful. PW3, the mother of the deceased though in her evidence before the Trial Court stated that she had seen the



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occurrence, in her statement to the Police stated that only after getting information of the accident, she came to the spot. This contradiction put to the Investigating Officer/PW7 who admits the same. PW5, a neighbour gives a totally different version that the bus driven by the petitioner had overtaken TATA Ace vehicle on the right side of the road and the petitioner dashed against the deceased who was standing on the right end of the road. The fact of TATA Ace vehicle overtaken by the petitioner neither spoken by any of the projected eyewitnesses nor the Investigating Officer. Thus, the evidence of PW5 is total contradiction to the other projected eye witnesses (PW1 & PW3). Hence, the presence of PW1, PW3 and PW5 in the scene of occurrence highly doubtful.

10. Now the only question is whether the petitioner had driven the bus in a rash and negligent manner. PW1 and PW4 in their evidence admit that on the date of occurrence, the road was in a bad condition with potholes and there is no possibility of driving any vehicle in a high speed. The deceased, a little girl was left without care and she suddenly crossed the road in a playful manner and got under the vehicle appears probable.



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12.In view of the above, this Court is not inclined to sustain the conviction and sentence imposed on the petitioner based on the evidence and materials produced by the prosecution.

13.Accordingly, this Criminal Revision Case stands allowed setting aside the judgment, dated 06.07.2019 passed by the learned District Munsif-cum-Judicial Magistrate No.I, Walajahpet in C.C.No.19 of 2016 and the judgment, dated 06.03.2021 in Crl.A.No.69 of 2019 passed by the learned II



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Additional District and Sessions Judge, Vellore @ Ranipet. The petitioner

is acquittal from all the charges levelled against him.

28.02.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

- 1.The II Additional District and Sessions Judge,
Vellore @ Ranipet.
- 2.The District Munsif-cum-Judicial Magistrate No.I,
Walajahpet.
- 3.The Inspector of Police,
Thimiri Police Station,
Ranipet District.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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