

V.Chandran Vs. State Represented by

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Court : Chennai

Decided On : Sep-02-2014

Judge : P.R.Shivakumar

Appellant : V.Chandran

Respondent : State Represented by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 02.09.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Criminal Revision Case (Md.No.373 of 2008 V.Chandran ..Petitioner versus State represented by Inspector of Police, Vallam Police Station, Thanjavur District..Respondent Petition filed under Section 397 read with 401 Cr.P.C., to call for the records of Additional Sessions Judge, Fast Track Court No.1, Thanjavur in C.A.No.74/07, set aside the conviction and sentence imposed on the petitioner in C.A.No.74/07, dated 14.03.2008 modifying the sentence imposed by the learned Judicial Magistrate No.II, Thanjavur in C.C.No.11 of 2004 by judgment dated 18.07.2007.

!For Petitioner : Mr.A.Anbalagan ^For Respondent : Mrs.S.Prabha, Government Advocate (Criminal Side) :

ORDER

The petitioner herein was convicted by the learned Judicial Magistrate No.1, Thanjavur, in C.C.No.11 of 2004 on the file of the said Court for the offences punishable under Sections 279, 338 and 304-A IPC.

Pursuant to a road accident that took place on 10.08.2003 at 05.00 a.m, at a place near Vallam on Thanjavur ?.

Trichy Road in which one Palani, cleaner of a lorry bearing Regn.No.TDO8384 died on the spot and Balakrishnan, the driver of the said lorry sustained grievous injuries, a case was registered on the file of the Vallam Police Station as Crime No.257 of 2003 for the offences punishable under Sections 279, 337 and 304-A IPC.

After getting the wound certificate for the defacto complainant and post mortem report of the deceased and after completion of investigation a final report was laid against the petitioner herein, who was the driver of the offending lorry bearing Regn.No.TN-45-M- 6131, alleging commission of offences under Sections 279, 338 and 304-A IPC.

The same was taken on file by the learned Judicial Magistrate No.I, Thanjavur as C.C.No.11 of 2004.

The learned Judicial Magistrate, after trial, considered the evidence and pronounced a judgment holding the petitioner herein guilty of all the three offences with which he stood charged, convicted him for the said offences and sentenced him to undergo the punishment as follows: (i)for the offence under Section 279 IPC, 6 months simple imprisonment and a fine of Rs.1,000/- with a default sentence of simple imprisonment for one month; (ii)for the offence under Section 338 IPC, 6 months simple imprisonment and a fine of Rs.1,000/- with a default sentence of simple imprisonment for one month and (iii)for the offence under Section 304 IPC, simple imprisonment for one year and a fine of Rs.2,000/- with a default sentence of simple imprisonment for two months.

2.As against the said judgment of the learned trial Magistrate, the petitioner preferred an appeal in C.A.No.74 of 2007 on the file of the Sessions Court,

Thanjavur.

The learned Additional Sessions Judge, Thanjavur, who heard the appeal, concurring with the finding of the trial Court regarding the occurrence, confirmed the conviction of the revision petitioner for the offences under Sections 279, 338 and 304-A IPC.

However, the learned Appellate Judge chose to reduce the sentence for the said offences.

The following chart will show the corresponding sentence imposed by the trial Court and the modified sentence as per the judgment of the appellate Court.

Section	Punishment as per judgment of the trial Court	Modified punishment as per judgment of the Appellate Court
279 IPC	Six months Simple Imprisonment and a fine of Rs.1,000/- with a default sentence of one month simple imprisonment.	No substantive sentence was imposed.
338 IPC	Six months Simple Imprisonment and a fine of Rs.1,000/- with a default sentence of one month simple imprisonment.	A fine of Rs.1,000/- with a default sentence of one month simple imprisonment.
304-A IPC	Simple imprisonment for one year and a fine of Rs.2,000/- with a default sentence of simple imprisonment for two months	Simple imprisonment for six months and a fine of Rs.2,000/- with a default sentence of simple imprisonment for two months.

3. Aggrieved by and challenging the confirmation of the conviction and also expressing grievance over the quantum of punishment, the petitioner herein has chosen to prefer the present Criminal Revision Case.

4. According to the prosecution case, while P.W.1 was proceeding on the stretch of Trichy ?.

Thanjavur Road, near Vallam, driving the lorry bearing Regn.No.TDO-8384 of which the deceased Palani was the cleaner, the lorry was stopped at the place of occurrence and the cleaner was asked to go and check the air in the tyres and while he was checking the back wheel tyres of the said lorry, the petitioner who was driver in charge of the offending lorry, namely the lorry bearing Regn.No.TN-45-M-6131 which came in the direction of Trichy to Thanjavur, drove the said vehicle in a rash and negligent manner, hit the said lorry on the back side of the lorry which had been stationed at that place.

Due to the above said impact, the lorry bearing Regn.No.TDO-8384 was pushed towards a ditch on the road side and P.W.1 who was in the driver seat sustained grievous injuries.

The cleaner of the said lorry was crushed to death on the spot.

5. In order to prove the case of the prosecution as many as 13 witnesses were examined as P.Ws.1 to 13 and 13 documents were marked as Exs.P.1 to P.13.

No witness was examined and no document was produced on the side of the revision petitioner herein/accused.

6. P.W.1, the driver of the lorry bearing Regn.No.TDO-8384 that was pushed towards the ditch and capsized due to the impact caused by the lorry bearing Regn.No.TN-45-M-6131 driven by the revision petitioner, has given a clear account of how the accident took place.

His evidence also stands corroborated by the evidence of P.W.2, who happened to be the driver of another vehicle which came immediately after the accident to the said place and who took P.W.1 to the hospital.

P.W.9, Dr.Bharathy, speaks about the admission of P.W.1 in the hospital and the injuries found on him.

P.W.8, Dr.Vijayalakshmi speaks about the admission of the accused and the injuries found on him.

P.W.11, Dr.Balasundaram, has spoken about the autopsy conducted on the body of the deceased Palani and the post mortem examination certificate with the final opinion marked as Ex.P.5.

P.W.7 Motor Vehicle Inspector has given evidence regarding the inspection of the vehicles involved in the accident.

The motor vehicle inspector report's have been marked as Exs.P3 and 4.

7.From the said evidence both oral and documentary, it is quite clear that the lorry bearing Regn.No.TN-45-M- 6131 dashed against the lorry bearing Regn.No.TDO-8384 on its back side.

It is also obvious from the said evidence that the lorry bearing bearing Regn.No.TDO-8384 had been stationed on the side of the road and the cleaner was checking the tyres and that at that point of time, the petitioner who came in the other lorry caused the accident by dashing it against the stationary lorry on its backside.

It is also obvious from the above said evidence that the death of Palani was due to the injuries sustained in the accident.

The said medical evidence and the evidence of eye witnesses are corroborated by the reports of the Motor Vehicle Inspector and also the evidence of the Investigating officer, the police officials who assisted him in the investigation and other witnesses who were attestors of the observation mahazor/Ex.P.2 and also the panchayatars for the inquest report/Ex.P.12.

8.The learned Judicial Magistrate No.I, Thanjavur, on a proper appreciation of evidence, accepted the case of the prosecution and came to the correct conclusion, which cannot be found fault with and which cannot be termed perverse, that the charges of committing the offences under Sections 279 and 304-A IPC made against the revision petitioner/accused stood proved by sufficient

evidence beyond reasonable doubt.

The evidence of the Medical Officer's the Accident Register (Ex.P.7) of P.W.1 issued by Dr.Bharathi (P.W.9) corroborate the evidence of P.W.1 and the same shall be enough to support the conclusion of the learned trial Magistrate that P.W.1 sustained grievous injuries in the said accident and hence, the revision petitioner/accused was guilty of the offence under Section 338 IPC also.

The said finding of the trial Magistrate holding the revision petitioner/accused guilty of all the three offences with which he stood charged came to be confirmed by the learned Appellate Judge on re-appreciation of evidence.

The trial Court on appreciation of evidence and the appellate Court on re-appreciation of evidence rendered a concurrent finding assigning reasons in support of the conclusion arrived at by the said Courts that all the three offences with which the revision petitioner/accused stood charged were proved beyond reasonable doubt.

9.The said findings of the Courts below cannot be termed either erroneous or defective capable of being reversed by this Court in exercise of its power of revision.

Moreover when two Courts have rendered concurrent findings, unless the High Court on revision comes to the conclusion that the findings are perverse, normally it should not interfere with such findings.

Even otherwise, unless the revision petitioner/accused shows that the Courts below have committed an error either on facts or on law, the findings of the Courts below cannot be interfered with.

This Court after going through the records is of the considered view that the Courts below have not committed any mistake or error in rendering a finding holding the revision petitioner/accused guilty of all the three offences with which he stood charged.

10.Regarding the sentence though the learned trial Magistrate chose to impose substantive punishment of six months simple imprisonment each for the offences under Sections 279, 338 IPC, the learned Appellate Judge seems to have shown leniency in the matter of awarding punishment by altering the punishment into one imposing fine alone namely Rs.1,000/- for each one of the said offences with a default sentence of one month simple imprisonment.

The revision petitioner cannot succeed in contending that the said sentence of fine is either unreasonable or excessive.

Insofar as the offence under Section 304-A IPC is concerned, it is punishable with an imprisonment of either description for a term which may extend to two years or with fine, or with both.

Though the learned Judicial Magistrate chose to punish the revision petitioner with simple imprisonment for one year and a fine of Rs.2,000/- with a default sentence of simple imprisonment for two months, the learned Appellate Judge showed the maximum leniency by reducing the substantive sentence to six months simple imprisonment while confirming the fine and the default sentence.

11.Viewed from any angle, the judgment of the appellate Court confirming the conviction and imposing a reduced sentence cannot be said to be erroneous affecting the right of the revision petitioner/accused to seek either complete acquittal or further reduction of the sentence.

There is no merit in the Criminal Revision Case and the Criminal Revision Case deserves dismissal.

12.In the result, the Criminal Revision Case is dismissed.

The conviction of the revision petitioner for the offences under Sections 279, 338 and 304-A IPC as confirmed by the Appellate Judge, Thanjavur and the sentence imposed on the revision petitioner as modified by the appellate Court shall stand confirmed.

To 1.The Additional Sessions Judge, Fast Track Court No.1, Thanjavur 2.The
Judicial Magistrate No.II, Thanjavur

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