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Sugumar Vs. the Inspector of Police,

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Court : Chennai

Decided On : Sep-12-2014

Judge : P.R.Shivakumar

Appellant : Sugumar

Respondent : The Inspector of Police,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 12.09.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Criminal Revision Case (Md.No.202 of 2008 Sugumar ..Petitioner versus The Inspector of Police, Velayuthampalayam Police Station, Karur.

(Crime No.474 of 2004) ..Respondent Petition filed under Section 397 read with 401 Cr.P.C., against the sentence and conviction imposed in judgment dated 21.09.2007 made in C.A.No.24 of 2007 passed by the learned District cum Sessions Judge, Karur confirming the conviction and sentence passed by the learned Judge Magistrate No.II, Karur made in C.C.No.127 of 2005 on 12.04.2007.

!For Petitioner : Mr.R.Venkateswaran ^For Respondent : Mr.S.Prabha, Government Advocate (Crl.Side) :

ORDER

The sole accused in C.C.127 of 2005, who was convicted by the trial Judge namely, the learned Judicial Magistrate II, Karur, in the said case for an offence

punishable under Section 304-A IPC, after suffering a dismissal of the appeal filed by him in C.A.No.24 of 2007 on the file of the Sessions Court, Karur, has approached this Court with the present Criminal Revision Case under Section 397 read with Section 401 Cr.P.C.He was prosecuted on the accusation that he drove the lorry bearing Regn.No.TN-28-N-3785 on the east west road in front of the Nadayanur school playground in a rash and negligent manner and hit the deceased Narasimhan who was proceeding in a bicycle on the left side of the road resulting in his death.

2.The Crime No.474 registered on the file of the Velayuthampalayam Police Station regarding the said accident was investigated by the police which resulted in the submission of a final report, alleging commission of an offence punishable under Section 304-A IPC.

The same was taken on file by the learned Judicial Magistrate II as C.C.No.127 of 2005.

On appearance, the revision petitioner/accused denied having committed any offence and hence necessary charge was framed for an offence under Section 304-A IPC.

When the revision petitioner/accused was asked to express his plea, he pleaded not guilty.

Pursuant to such a plea, a trial was conducted in which 6 witnesses were examined as P.Ws.1 to 6 and 8 documents were produced as Exs.P.1 to P.8.

After he was questioned under Section 313(1)(b) regarding incriminating materials found in the evidence of the prosecution case, the revision petitioner/accused did not examine any witness on his side.

He did not produce any document either during the examination of evidence adduced on the side of the prosecution or along with statement under Section 313(1)(b) stated thereto.

3.The learned Judicial Magistrate after hearing the arguments advanced on both sides, considered the evidence in the light of the points urged in the arguments and, upon such consideration, convicted the revision petitioner/accused for the offence punishable under Section 304-A IPC holding him guilty of the said offence.

The revision petitioner/accused was awarded six months simple imprisonment and no fine was imposed.

4.As against the judgment of the trial Court dated 12.04.2007, an appeal came to be filed by the revision petitioner/accused as C.A.No.24 of 2007 on the file of the Sessions Court, Karur.

The learned Sessions Judge heard the appeal, re-appreciated the evidence and on such re-appreciation, concurred with the finding of the trial Court in all respects and dismissed the appeal by his judgment dated 21.09.2007.

The said judgment of the learned Sessions Judge, Karur is challenged in the present Criminal Revision Case.

5.The arguments advanced by Mr.R.Venkateswaran, learned counsel for the revision petitioner/accused and Mrs.S.Prabha, learned Government Advocate (Criminal Side) were heard.

The judgments of the Court below and the materials available on record were also perused.

6.It is an admitted fact that the accident concerned in this case took place on the road running in the east west direction at a place opposite to the Nadayanur school playground at about 11.45 hours on 06.10.2004.

It is also an admitted fact that the deceased Narasimhan who was proceeding in his bicycle on the said road from west to east the lorry bearing Regn.No.TN-28-N-3785 driven by the respondent/accused that came in the same direction hit the above said cycle as a result of which the said Narasimhan died on the spot.

7.The case of the prosecution is that the revision petitioner/accused drove the said lorry in a rash and negligent manner as a result of which he dashed against the

cyclist who was proceeding in front of the lorry on the same direction keeping the left side of the road leading to his death on the spot.

Immediately, after the occurrence, the accident was reported to the police by Radhakrishnan (P.W.1) and a case was registered in Crime No.474 of 2004 on the file of the Velayuthampalayam Police Station for an offence under Section 304-A on the basis of the statement of P.W.1.

P.W.1 is none other than the elder brother of the deceased Narasimhan.

It is his statement before the police that while they were returning after completing their work in Kodikal in separate bicycles, the deceased Narasimhan was proceeding ahead of P.W.1 and P.W.1 was following him at a distance in his own bicycle and at that point of time, the lorry bearing Regn.No.TN-28-N-3785 which came in the same direction to the edge of the road and hit Narasimhan who was proceeding in the bicycle; that after the impact, the deceased along with his cycle was dragged by the lorry to some distance; that on the hue and cry raised by him and others who witnessed the occurrence, the lorry was stopped and that in the meanwhile, Narasimhan died on the spot due to the injuries sustained in the accident.

8.P.W.1 reiterated and confirmed what he had stated in the complaint in his evidence.

Thiyagarajan (P.W.2) and Asokan (P.W.3) the two more witnesses were examined on the side of the prosecution as eye witnesses.

They also corroborated the evidence of P.W.1 regarding the accident.

Out of the above said witnesses, P.W.2 has totally supported the case of the prosecution.

Asokan (P.W.3) has corroborated the evidence of P.Ws.1 and 2 that he was also an eye witness to the occurrence and also regarding the manner in which the accident took place, he was also examined as an attestor of the observation mahazor/Ex.P.3 prepared by the Investigating Officer.

Even though P.W.3 corroborated the evidence of P.W.1 and regarding the manner in which the accident took place, with regard to his attestation of the observation mahazor/Ex.P.3, there are some discrepancies in his evidence.

As he had not stated in clear terms that the observation mahazor/Ex.P.3 was prepared in his presence, on the other hand, he has simply stated that Radhakrishnan (P.W.1) gave the complaint and he along with one Baskaran (P.W.5) affixed their signatures for having seen the occurrence and Radhakrishnan (P.W.1) lodging the complaint, the above said discrepancy regarding the preparation of the observation mahazor(Ex.P.3) will not be enough to discredit the evidence of Radhakrishnan (P.W.1) regarding the manner in which the accident took place which was totally corroborated by Thiyagarajan (P.W.2) and corroborated by Asokan (P.W.3).The meticulous cross examination made by the learned counsel for the revision petitioner/accused did not bring about any answer which would go against the reliability of the prosecution story or indicating the innocence of the accused.

9.Ex.P.6-inquest report and Ex.P.8-post mortem examination report clearly show that Narasimhan died due to the injuries sustained in the accident.

Though Asokan (P.W.3) would not have fully supported the prosecution version regarding the preparation of the observation mahaor(Ex.P.3) and rough sketc.(Ex.P.5).the genuineness of the same has not been seriously disputed.

The learned counsel for the revision petitioner/accused, relying on the said documents and especially rough sketch(Ex.P.5) advanced an argument that the dead body of the deceased was found on the edge of the road and the cycle used by him was lying at a distance of 8 feet on the road side from the edge of the road.

Pointing out the same, the learned counsel for the revision petitioner/accused wanted to project his theory that the cyclist who was proceeding ahead of the lorry lost his balance, fell on his right side and thus caught under the wheel of the lorry.

The said contention is untenable as all the eye witnesses examined on the side of the prosecution have spoken in one voice that while the deceased was proceeding

in the bicycle from west to east keeping the left side of the road, the lorry that came in the same direction hit the cyclist from behind and dragged the cyclist along with his cycle to some distance.

The said factors could very well be seen from the observation mahazor(Ex.P.3) and the rough sketch(Ex.P.5) prepared by the Investigating Officer.

To disprove the prosecution case or to discredit the evidence of the prosecution witnesses in this regard, no evidence has been adduced on the side of the revision petitioner/accused.

The suggestions made to the said effect by the learned counsel for the revision petitioner/accused to the prosecution witnesses were stoutly denied.

Hence, the contention made by the learned counsel for the revision petitioner/accused before this Court that the accident took place since cyclist lost his balance, fell on his right side and thus came to be caught under the wheel of the lorry, cannot be accepted as tenable.

10.The lorry driven by the revision petitioner/accused at the time of the accident was inspected by the Motor Vehicle Inspector(P.W.6) and his report has been marked as Ex.P.7.

It is found from Ex.P.7 that there was no mechanical defect in the vehicle and the accident was not due to any mechanical defect.

The above said evidence makes abundantly clear that the accident took place due to human error, namely the rash and negligent driving of the lorry by the revision petitioner/accused.

The learned trial Magistrate, on proper appreciation of evidence and proper application of the provisions of law, rendered a correct finding that the charge against the revision petitioner/accused under Section 304-A IPC was proved beyond reasonable doubt and that the revision petitioner/accused was guilty of the said offence.

The appellate Judge namely, the Sessions Judge, Karur also, on re-appreciation of evidence, correctly concurred with the finding of the trial Court and confirmed the conviction of the revision petitioner/accused for the offence punishable under Section 304-A IPC.

11.An offence under Section 304-A IPC is punishable with imprisonment of either description for a term which may extend to two years or with fine or with both.

The learned trial Magistrate has chosen to award simple imprisonment for six months alone without imposing any fine.

The said punishment imposed by the trial Court and confirmed by the appellate Court cannot be said to be excessive or haRs.or disproportionate to the criminality of the offence.

The learned trial Judge himself has shown leniency in the matter of awarding punishment.

That was the reason why the learned appellate Judge also chose to confirm the judgment of the trial Court regarding the conviction as well as the sentence.

No case for interference with the same has been made out in the Criminal Revision Case by the revision petitioner/accused.

There is no merit in the Criminal Revision Case and the same deserves to be dismissed.

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

The revision petitioner/accused shall surrender before the trial Court, within two weeks whereupon he shall be committed to jail for undergoing the unexpired portion of the sentence.

The trial Magistrate shall issue necessary warrant.

12.09.2014 Index : yes/no Internet : yes/no sms P.R.SHIVAKUMAR,J.

sms To 1.The District cum Sessions Judge, Karur 2.The Judge Magistrate No.II, Karur Pre-delivery order made in Criminal Revision Case (Md.No.202 of 2008 12.09.2014

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