

**Mahesh .. Rev Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/30545](http://sooperkanoon.com/30545)

**Court :** Chennai

**Decided On :** Jan-09-2015

**Judge :** M.Sathyannarayanan

**Appellant :** Mahesh .. Rev

**Respondent :** State

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 01.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Cri.R.C.(MD)NO.581 of 2008 Mahesh .. Revision Petitioner Vs. State Inspector of Police Kayathar Police Station Crime No.110 of 2006 Tuticorin District. .. Respondent Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., against the judgment passed by the Additional Sessions Judge, Fast Track Court, No.11, Tuticorin District in C.A.No.131 of 2007 dated 10.04.2008, confirming the conviction of the Judicial Magistrate, No.II, Kovilpatti, in C.C.No.134 of 2006 dated 16.10.2007. !For Petitioner :: Mr.V.Kathirvelu Senior counsel for Mr.K.Prabhu ^For Respondent :: Mr.P.Kandasamy Govt. Advocate (Crl. side) :

**ORDER**

The Revision Petitioner is the accused in C.C.No.134 of 2006 on the file of the Court of Judicial Magistrate No.II, Kovilpatti and he stood charged and tried for the

commission of the offence under Section 304A of IPC. The trial Court vide judgment dated 16.10.2007 has convicted him for the commission of the offence under Section 304A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for one year and fine of Rs.3,000/- with default sentence of three months simple imprisonment. The accused, aggrieved by the conviction and sentence passed by the trial Court, has filed the appeal in C.A.No.131 of 2007 on the file of the Court of Additional District and Sessions Judge, Fast Track Court, No.II, Tuticorin. The appellate Court, while confirming the conviction, has modified the sentence of imprisonment by reducing the sentence of imprisonment from one year to 6 months and maintain the sentence of fine, vide judgment dated 10.04.2008 and challenging the legality of the same, the accused has filed this revision.

2. A perusal of the materials available on record in the form of typed set of documents would disclose that on 17.06.2006, at about 11.15 a.m., at Tirunelveli Main Road, Tipper lorry bearing registration No.AP5T1515 was parked on the eastern side of the road facing south direction and the driver of the lorry, namely, Seetharamaraj and his Assistant one Shankar, who has alighted from the lorry and was drawing water. P.W.1, who came there, had a conversation with them. At that time, lorry bearing registration No.TN69Z5254 driven in a rash and negligent manner by the revision petitioner/accused had dashed on the right rear side of the tipper lorry. The spare/alternate driver, namely, Arunachalam, who was in the cabin of the lorry, was crushed to death on account of the accident.

3. P.W.1, who was an eye witness to the said occurrence, went to Kayathar Police Station and at that time, the Head Constable, P.W.8, was on duty and he lodged a written complaint, marked as Ex.P1. Based on which, P.W.8 has registered an FIR, marked as Ex.P5. P.W.8 has despatched the original of Ex.P1, complaint and FIR, Ex.P.5 to the jurisdictional Magistrate and forwarded copies to the higher officials.

4. P.W.9 was the Inspector of Police of Kayathar Police Station at the relevant point of time and at about 12.20 p.m. on 17.06.2006, on receipt of the FIR through P.W.8, took up the investigation and proceeded to the scene of occurrence at

about 12.30 p.m. and in the presence of one Ramesh and P.W.4 Kanagaraj, prepared a sketch and observation mahazar. The observation mahazar is marked as Ex.P.2 and the sketch is marked as Ex.P.6. In the presence of P.W.2/the wife of the deceased and P.W.3, the mother of the deceased, P.W.9 conducted the inquest on the body of the deceased, namely, Arunachalam between 13 hours and 14.30 hours and inquest report is marked as Ex.P7 and thereafter P.W.9 has recorded the statements of P.Ws.2 and 3. Afterwards, P.W.9, through Head Constable Krishnasamy, has sent the body for postmortem to Government Hospital, Kovilpatti, along with a requisition letter and examined P.W.1 Kandasamy, Seetharamaraj, Shankar, Pitchaiya, Muruganandham, P.W.4 Ramesh, P.W.7 and P.W.8 and recorded their statements.

5. P.W.6, on receipt of the body of the deceased Arunachalam, has commenced postmortem at about 5 p.m., on 17.06.2006 and after conclusion of the postmortem, opined that the deceased had died on account of shock and hemorrhage due to the injuries sustained by him. The postmortem certificate given by him is marked as Ex.P.4. On 19.06.2006, P.W.9 effected the arrest of the accused, namely, Mahesh and subsequently he was remanded to judicial custody.

6. On 19.06.2006, P.W.9 has requested the service of P.W.5, Motor Vehicle Inspector, for examining both the vehicles and after examination, he has given his report. After examining the vehicles, P.W.5 has given a report marked as Ex.P.3. P.W.9 has also recorded the statements of P.W.5.

7. On 30.06.2006, P.W.9 examined P.W.6, namely, Doctor Venkatesh, who has conducted the autopsy on the body of the deceased and recorded statement and after completion of investigation, he has filed his final report on 30.06.2006 charging the accused for the commission of offence under Section 304A IPC.

8. The Court of Judicial Magistrate, No.II, Kovilpatti, on appearance of the accused, has framed the charge under Section 304A of the Indian Penal Code against the accused and the same has been read over and explained to him and the accused pleaded not guilty to the charge framed against him.

9. The prosecution in order to substantiate its case, has examined P.Ws.1 to 9 and marked Exs.P.1 to P.7.

10. When the accused has been questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973 with regard to the incriminating substance made out against him in the evidence rendered by the prosecution, he denied the same as false and on behalf of the accused, no oral and documentary evidence have been exhibited.

11. The trial Court, on consideration of the oral and documentary evidences, has convicted the revision petitioner/accused for commission of offence under Section 304A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for one year with fine of Rs.3,000/- and with default sentence of three months simple imprisonment and challenging the conviction and sentence, the accused preferred an appeal in C.A.No.131 of 2007 and the lower appellate Court, while confirming the conviction, has modified the sentence of imprisonment to one of six months and maintain the sentence of fine. Being aggrieved, the accused has filed this revision.

12. Mr.V.Kathirvelu, learned Senior counsel for the revision petitioner, has invited the attention of this Court to the testimony of P.W.1 and would submit that P.W.1 in the chief examination has deposed that he is a chance witness and he was conversing with the driver, namely, Seetharamaraj and cleaner Shankar at about 11.15 a.m. on 17.06.2006 and at that time, the lorry bearing Registration No.TN69 5254 driven in a rash and negligent manner dashed on the rear side of the above said tipper lorry and consequently the occupant of the lorry, namely, Arunachalam died on the spot on account of the injury sustained. Immediately, he along with Seetharamaraj and Shankar proceeded to the Kayathar Police Station and lodged a complaint under Ex.P.1 and thereafter he was examined by the police.

13. The learned Senior counsel has invited the attention of this Court to the cross examination of P.W.1 and would submit that in the cross examination, P.W.1 has given a complete go-by to his complaint and there are very many infirmities found in the cross examination of P.W.1, which would go deep into the root of the case projected by the prosecution and in any event, the trial Court ought to have

ordered benefit of doubt and acquitted the revision petitioner/accused.

14. The attention of this Court was also drawn to the testimony of P.W.5, Motor Vehicle Inspector as well as P.W.9, the investigating officer and it is the submission of the learned Senior counsel for the revision petitioner that Ex.P.1 would not have come into play as projected by the prosecution and on the sole ground, the Court below ought to have acquitted the revision petitioner/accused.

15. Per contra, Mr.P.Kandasamy, learned Government Advocate (Crl. Side), would submit that P.W.1, being an eye witness to the occurrence, has promptly lodged the complaint, based on which, FIR came to be registered and his oral evidence is corroborated through the medical evidence of P.W.6 and postmortem marked as Ex.P.4 and P.W.9, after proper investigation, has correctly laid the charge sheet and the Courts below, on a proper appreciation of the oral and documentary evidence, has rightly convicted the revision petitioner/accused and therefore, prays for the dismissal of this revision petition.

16. This Court, after careful consideration of the rival submissions and upon perusal of the impugned judgments passed by the Courts below and typed set of documents filed by the revision petitioner, is of the considered view that the conviction and sentence passed against the revision petitioner is to be set aside and the revision is to be allowed for the following reasons: (i) P.W.1, the first informant in the cross examination, would depose that he has written Ex.P1 in the police station and he did not remember, whether Seetharamaraj and Shankar, who accompanied him in the police station, has put their signatures or not. Later on, in the cross examination, he deposed that he did not remember whether Seetharamaraj and Shankar, who was also present at the time of occurrence, came to the police station or not and at the same breath, would depose that Shankar and Seetharamaraj were examined by the police and they have spoken in Telugu and since he knows Telugu, he translated the same and thereafter, statement was recorded by the police. (ii) It is the further evidence of P.W.1 that sometime thereafter, after the accident took place, police came to the spot and he did not know on whose information, the police came to the spot and subsequently, the police took Seetharamaraj as well as Shankar to the police station. It is also

deposed by him that both vehicles are in drivable condition and he did not know the accused and has no occasion to see him also and however, he enquired him and noted his name. He would further depose that though he is employed in a Milk Society and signed in the Attendance Register on that date, he did not produce the same. (iii) It is admitted by P.W.1 that after the completion of the narration of facts in Ex.P1, he has put his signature and there is a space/gap between the last sentence in Ex.P1 and his signature. (iv) P.W.6, the Doctor, who conducted the autopsy on the body of the deceased in his Ex.P.4 postmortem, opined that the deceased died of shock and hemorrhage on account of the injuries sustained. (v) P.W.8, who was the Head Constable, attached to Kayathar Police Station, would depose that at about 12 noon on 17.06.2006, P.W.1 came to the police station and lodged a complaint Ex.P1, based on which, he registered the FIR in Crime No.110 of 2006 for the commission of offence under Section 304A IPC and denied the suggestion that the signature has been obtained in the blank paper and later on, the contents were filled up. (vi) P.W.9, Investigating Officer in the cross examination, would depose that with regard to the movement particulars of P.W.1, he did not collect any materials and submitted to the Court and he also did not verify the attendance Register of P.W.1 and it was also not seized and sent to the Court. P.W.9 would further admit that he did not conduct identification parade so as to enable P.W.1 to identify the revision petitioner/accused. (vii) P.W.9 made a crucial admission that in the sketch as well as in the observation mahazar, the location of the two vehicles, which involved in the accident, have not been stated/drawn and though no particulars have been given as to how those two vehicles were removed and brought to the police station, P.W.9 further admit that while preparing the observation mahazar and rough sketch, the location and other relevant particulars of the road have not been stated and he denied the suggestion that there is no connection between the commission of offence and the accused and would further admit that the observation mahazar and sketch have reached the Court only on 11.07.2006. (viii) It is very relevant to point out at this juncture that according to P.W.1, both vehicles are in good condition and whereas according to P.W.5, Motor Vehicle Inspector, the tipper lorry bearing Registration No.AP5 TT1515 was in drivable condition, whereas the vehicle, which dashed on the rear side of the lorry bearing Registration No.TN69Z5254 is not in a drivable

condition and it is not made clear how two vehicles are brought to the police station. (ix) A perusal of Ex.P.1 would also disclose that there was a space between the last sentence and the signature of P.W.1. It is admitted by P.W.1 that he did not know the revision petitioner/accused even on earlier occasions and he asked for his name and noted it. It is deposed by P.W.9 that admittedly, he did not conduct identification parade to identify the revision petitioner/accused and even as per the testimony of P.W.1, he did not know the accused nor his identity. (x) In a case of a road accident, it is obligatory on the part of the Investigating Officer to prepare a rough sketch, as it would help the criminal Court as well as the Tribunal to try the motor accident case, arrive at the correct conclusion as to the manner of accident. Unfortunately, P.W.9 did not note the location of the vehicles in the rough sketch as well as in the observation mahazar and not even noted the surroundings of the locality. That apart, though the driver of the vehicle bearing Registration No.AP5TT1515 Seetharamaraja and cleaner of the vehicle, namely, Shankar were very much available in the spot and according to P.W.1, their statements were also recorded, they have not been examined as witnesses. Therefore, this Court is left with the only testimony of P.W.1. It is very pertinent to point out at this juncture that the observation mahazar and sketch though were prepared, on the date of accident, on 17.06.2006, it reached the Court only on 11.07.2006 and it was also admitted by P.W.1 that he has failed to offer any explanation as to the belated despatch of those two crucial documents. P.W.1 also made a crucial admission in the cross examination that he is not in a position to tell the Court as to the contents of Ex.P1 and at the time of lodging the complaint, the Sub Inspector of Police was also not present and according to P.W.9, he was not examined.

16. In the considered opinion of the Court, the investigation has not been done on proper lines and though the defective investigation will not per se lead to acquittal, in the considered opinion of the Court, the defects/infirmities as pointed out above have shaken the very foundation of the prosecution. The respondent has failed to prove its case beyond any reasonable doubt and therefore, the benefit of doubt shall enure in favour of the revision petitioner/accused.

17. In the result, the Criminal Revision Petition is allowed and the conviction and sentence passed by the trial Court as modified by the appellate Court are set aside and the revision petitioner is acquitted of the charge under Section 304A of the Indian Penal Code and the fine amount, if any, paid by the revision petitioner/accused is to be refunded to him. The bail bond shall stand terminated. 09.01.2015 Index :No Internet:Yes RR To 1.Judicial Magistrate, No.II, Kovilpatti. 2.The Additional Sessions Judge, Fast Track Court, No.11, Tuticorin District 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

RR CrI.R.C.(MD)NO.581 of 2008 09.01.2015

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