

Jayaraj Vs. The State Represented By

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Court : Chennai

Decided On : Jan-19-2015

Judge : M.Sathyannarayanan

Appellant : Jayaraj

Respondent : The State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

19. 01.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Revision Case (MD)No.431 of 2012 Jayaraj ... Petitioner/ Accused Vs. The State represented by The Sub Inspector of Police, Aruppukkottai Town Police Station, Aruppukkottai. ... Respondent/ Complainant Prayer : Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur, in CrI.A.No.192 of 2008, dated 15.09.2012, confirming the order passed by the learned Judicial Magistrate, Aruppukkottai, in C.C.No.45 of 2007, dated 23.09.2008. !For Petitioner : Mr.S.I.A.Bagadur Sha ^For Respondent : Mr.P.Kandasamy, Government Advocate (Criminal Side) :

ORDER

The revision petitioner is the sole accused in C.C.No.45 of 2007 on the file of the Court of Judicial Magistrate, Aruppukkottai and he stood, charged, tried and convicted by the Court of the learned Judicial Magistrate, Aruppukkottai, vide judgment dated 23.09.2008, thus: The revision petitioner/accused was found guilty under Sections 279, 337, 338 and 304-A I.P.C and sentenced to undergo simple imprisonment for one year for the offence punishable under Section 304-A I.P.C. As a consequence of awarding the sentence under Section 304-A I.P.C., the trial Court did not award either sentence of imprisonment or fine for the other offences.

2. The revision petitioner/accused, aggrieved by the said conviction and sentence, preferred an appeal in CrI.A.No.192 of 2008 on the file of the Court of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur. The lower appellate Court, vide judgment dated 15.09.2012, confirmed the conviction and sentence passed by the trial Court and dismissed the appeal and challenging the legality of the same, the present Criminal Revision Case is filed.

3. The revision petitioner/accused is the driver of the ill-fated bus bearing Registration No.TN-72-N-0951 belonging to the State Transport Corporation. The said bus, at about 11.00 p.m., on 27.10.2006, was proceeding to Madurai from south to north and according to the prosecution, it was driven in a rash and negligent manner and dashed on the rear side of a parked lorry bearing Registration No.TN-28-K-5964. Due to the impact, the conductor of the bus, namely, Thilagar and three passengers, namely, Erulayiammal, Veerammal and Ponnuchamy, died on the spot. The other passengers, namely, Kumarasamy, Kasthuri, Pandiammal, Veerammal, Sivanammal, Ravi, Azhagar and Murugan - P.W.1 to P.W.8 respectively, sustained injuries.

4. P.W.11 was the Sub-Inspector of Police attached to Aruppukkottai Town Police Station and at about 01.00 a.m., on 28.10.2006, he received the information about the accident and proceeded to Aruppukkottai Government Hospital and recorded the statement of P.W.1 and thereafter, came back to the Police Station and registered a case in Cr.No.802 of 2006. The recorded statement was marked as Ex.P.3 and the F.I.R was marked as Ex.P.4.

5. P.W.12 was the Inspector of Police of Aruppukkottai Town Police Station and based on the F.I.R., he took up the investigation on the morning hours of 28.10.2006 and proceeded to the scene of occurrence and in the presence of the witnesses, prepared the Observation Mahazar and Sketch, which were marked as Exs.P.1 and P.5 respectively and also recovered M.O.1 - series.

6. P.W.12 conducted inquest on the bodies of four deceased in the presence of the Panchayatdars and the inquest report was marked as Exs.P.6 to P.9. Thereafter, P.W.12 sent the dead bodies of the deceased through P.W.10 for post-mortem and the post-mortem reports were marked as Exs.P.20 to P.23 respectively. P.W.12 also collected the copies of the Accident Registers of the injured witnesses and recorded their statements.

7. On 28.10.2006, P.W.12 effected the arrest of the revision petitioner/accused and also requisitioned the services of Motor Vehicle Inspector to inspect the bus and the lorry and the reports given by the Motor Vehicle Inspector were marked as Exs.P.10 and P.11 respectively. P.W.12 also recorded the statement of the Casualty Medical Officer who treated the injured persons and after completion of the investigation, filed the final report, charging the revision petitioner/accused for the offences under Sections 279, 337, 338 and 304-A I.P.C.

8. The Court of the learned Judicial Magistrate, Aruppukkottai, after taking the charge sheet on file in C.C.No.45 of 2007, summoned the accused and framed the charges under Sections 279, 337, 338 and 304-A I.P.C and questioned the accused and he pleaded not guilty.

9. The prosecution in order to sustain their case, has examined P.W.1 to P.W.12 and marked Exs.P.1 to P.23 and also marked M.O.1 - series.

10. The revision petitioner/accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.

11. On behalf of the accused, neither oral nor documentary evidence was let in.

12. The trial Court on consideration of the oral and documentary evidence, found the revision petitioner/accused guilty and convicted and imposed the sentence as stated above and challenging the vires of the same, the revision petitioner/accused filed the appeal and the same was dismissed and hence, the present revision is filed.

13. The learned Counsel for the revision petitioner/accused has drawn the attention of this Court to the additional typed set of papers which contains the testimonies of the witnesses and would submit that admittedly, the lorry was parked by the side of the road without any warning lamp and therefore, it cannot be said that the bus was driven by the revision petitioner/accused in a rash and negligent manner, which resulted in the accident.

14. It is further submission of the learned Counsel for the revision petitioner/accused that though the reports of the Motor Vehicle Inspector were marked as Exs.P.10 and P.11 respectively, the concerned Motor Vehicle Inspector was not at all examined and therefore, the said exhibits were of no use to the prosecution.

15. The learned Counsel for the revision petitioner/accused also invited the attention of this Court to the testimonies of P.W.1 to P.W.8 and would submit that none of them had cogently spoken about the accident and did not corroborate with each other and in any event, the trial Court ought to have awarded the benefit of doubt and in the alternate, ought to have awarded lesser sentence.

16. He would further submit that the lower appellate Court also without proper application of mind, has simply confirmed the conviction and sentence passed by the trial Court and dismissed the appeal and therefore, prayed for interference.

17. Per contra, the learned Government Advocate (Criminal Side) for the respondent would submit that the findings recorded by the Courts below are concurrent in nature and therefore, the scope of interference in exercise of the revisional jurisdiction of this Court, is very limited. He would further submit that the Courts below, on a proper appreciation of oral and documentary evidence, have rightly convicted and sentenced the revision petitioner/accused and therefore,

prayed for the dismissal of this revision.

18. This Court paid it's best attention to the rival submissions and also perused the materials available on record as well as original records.

19. P.W.1 to P.W.8 were the passengers, who travelled in the ill-fated bus. In the chief examination, P.W.2 would depose that the vehicle was driven in somewhat negligent manner and according to P.W.5, the vehicle was also driven in a rash manner.

20. A perusal of the testimonies of witnesses, especially, P.W.1 to P.W.6, would disclose that due to the impact, the bus itself got capsized and in fact, four occupants of the bus, including the conductor of the bus, were crushed to death.

21. A perusal of Ex.P.5 - Sketch available in the original record, would also disclose that as a consequence of the impact, the lorry which was parked, was also turned and changed in its direction.

22. Exs.P.10 and P.11 would disclose that there were major damages to the bus and the lorry respectively, wherein the Motor Vehicle Inspector certified that there is no mechanical failure in the vehicle.

23. Though it is the vehement submission of the learned Counsel for the revision petitioner/accused that the testimonies of witnesses did not corroborate with each other and the material particulars, this court, on going through the testimonies of the injured witnesses, is of the view that they corroborated with each other on material particulars and as a result of driving of the said bus in a rash and negligent manner, four occupants of the bus faced instantaneous death and eight persons sustained injuries.

24. No doubt, the Motor Vehicle Inspector was not examined, however, the contents of Exs.P.10 and P.11 would disclose that the vehicles did not suffer any mechanical failure. No specific question was also put to the Investigating Officer as to the parking of the lorry partly on the mud portion and partly on the road and also with regard to non-switching of parking lights and non-availability of reflectors in the lorry and the marking of Exs.P.10 and P.11 without examining the Motor

Vehicle Inspector.

25. The vehement contention of the learned Counsel for the revision petitioner/accused that on account of the said infirmities, the prosecution has failed to prove the guilt on the part of the revision petitioner/accused beyond any reasonable doubt, in the considered opinion of this Court, lacks merit, for the reason that nothing has been suggested to the Investigating Officer or even to P.W.6, driver of the lorry and therefore, it cannot be taken into consideration as a mitigating factor.

26. Alternately, the learned Counsel for the revision petitioner/accused made a submission that considering the fact that the petitioner was incarcerated during the course of the investigation, as a result of the accident, he also faced disciplinary proceedings and got reduction in rank and therefore, the sentence of imprisonment may be reduced or he may be directed to pay compensation to the victims.

27. In *State of Punjab v. Balwinder Singh* reported in (2012) 2 Supreme Court Cases 182, the quantum of sentence regarding rash and negligent driving, came up for consideration and in paragraph 13, the Honourable Supreme Court observed as follows:

"3. It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in *Dalbir Singh* [(2000) 5 SCC82:

2004. SCC (Cri) 1208]."

28. In Ravi Kapur v. State of Rajasthan reported in (2012) 9 Supreme Court Cases 284, the principle of "reasonable care" and concept of "culpable rashness" and "culpable negligence" - meaning and application of, was explained and it has been held that rash and negligent driving has to be examined in the light of the facts and circumstances of a given case and speed of the vehicle was not always determinative and reckless and negligent driving at slow speed is also possible.

29. This Court, keeping in mind the ratio laid down in the above cited decisions, has carefully scanned the entire materials placed before this Court and is of the considered view that on account of rashness and negligent driving of the State Transport Corporation bus by the revision petitioner/accused, four persons including the conductor of the bus, had lost their lives instantaneously and eight persons sustained injuries and out of them, six persons have been cited as witnesses and they have spoken coherently in support of the case of the prosecution.

30. As regards the quantum of sentence, in the light of the decision in State of Punjab v. Balwinder Singh reported in (2012) 2 Supreme Court Cases 182, this Court is of the view that the sentence of simple imprisonment for one year, awarded by the trial Court for the commission of the offence under Section 304-A I.P.C, as confirmed by the lower appellate Court, is fit and proper, in the facts and circumstances of the case.

31. This Court, on an independent application of mind to the entire materials, is of the view that there is no error apparent in the reasons assigned by the lower appellate Court in confirming the conviction and sentence passed by the trial Court.

32. Therefore, this Criminal Revision Case is dismissed, confirming the order passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur, in CrI.A.No.192 of 2008, dated 15.09.2012, in confirming the order passed by the learned Judicial Magistrate, Aruppukkottai, in C.C.No.45 of 2007, dated 23.09.2008. The bail bonds executed by the revision petitioner/accused shall stand cancelled. The respondent/Investigating Officer is directed to take expeditious steps to secure the revision petitioner/accused to undergo the period

of sentence of imprisonment. The period of incarceration already undergone by the revision petitioner/accused during the course of the investigation and trial, is to be set off under Section 428 Cr.P.C. Index :Yes/No 19.01.2015 Internet :Yes/No
rsb To 1.The Sub Inspector of Police, Aruppukkottai Town Police Station, Aruppukkottai. 2.The Court of Principal Sessions Judge, Virudhunagar District at Srivilliputtur. 3.The Court of Judicial Magistrate, Aruppukkottai.
M.SATHYANARAYANAN,J.

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