

Mohammed Mustafa : Rev Vs. State Represented By

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Court : Chennai

Decided On : Jul-22-2015

Judge : S.Nagamuthu

Appellant : Mohammed Mustafa : Rev

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 22.07.2015 CORAM: THE HONOURABLE MR.JUSTICE S.NAGAMUTHU Crl.R.C.(MD)No.211 of 2015 and M.P.(MD)No.3 of 2015 Mohammed Mustafa : Revision Petitioner/ Accused versus State represented by The Sub-Inspector of Police, Valanthoor Police Station, Madurai District, in Crime No.86 of 2011 : Respondent/Complainant PRAYER Petition is filed under Section 397(1) and 401 of the Code of Criminal Procedure to call for the records and set aside the order of conviction and sentence passed by the learned IV Additional District and Sessions Judge, Madurai in C.A.No.48 of 2013, dated 16.12.2014 in C.C.No.129 of 2011, on the file of the learned Judicial Magistrate No.II, Usilampatti, dated 08.11.2013 !For Petitioner : Mr.S.Kanagarajan ^For Respondent : Mr.P.Kannithevan Government Advocate(Crl.Side0 :

ORDER

The revision petitioner is a senior citizen, aged about 70 yeaRs.The respondent laid final report against him before the learned Judicial Magistrate No.II,

Usilampatti, alleging that the petitioner had committed an offence punishable under Section 304-A I.P.C. By judgment dated 08.11.2013, the trial Court convicted him under Section 304-A I.P.C, and sentenced him to undergo rigorous imprisonment for three months and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three weeks.

Challenging the same, he filed an appeal in C.A.No.48 of 2013.

The learned IV Additional District and Sessions Judge, Madurai, by judgment dated 16.12.2014, has dismissed the appeal, thereby confirming the conviction and sentence imposed on him.

The lower Appellate Court, however, issued a direction to the trial Court to take appropriate steps to consider for releasing the accused on probation of Offenders Act, 1958 or to imprison him to serve the remaining period of sentence.

Challenging the above conviction and sentence, the petitioner has come before this Court with this revision.

2.The case of the prosecution in brief is as follows: The deceased, in this case, was one Selvatharasu.

He was working as a Sub-Inspector of Police in Madurai.

On 08.09.2011, at about 07.00 a.m., he was proceeding in his motorcycle from West towards East on the Theni-Madurai road near Pasumpon Nagar.

He was keeping to his left.

At that time, a car bearing Registration No.TN-58-R-9518 came from the opposite direction in a great speed, so rashly and negligently and dashed against the motorcycle.

The car was driven by the petitioner.

The car as well as the motorcycle got damaged.

Mr.Selvatharasu sustained injuries.

P.W.1 ?.

Mr.Periyasamy, a resident of Pasumpon Nagar, witnessed the occurrence.

With the help of otherRs.he took Mr.Selvatharasu immediately to the Government Hospital, at Usilampatti.

After fiRs.aid treatment, the Doctor referred him to the Government Rajaji Hospital, at Madurai.

But, on his way, he breathed his last.

The dead body was brought back to the Government Hospital at Usilampatti.

(ii)On the complaint of P.W.1, P.W.9, the then Sub-Inspector of Police, attached to Valanthoor Police Station, registered a case at 08.15 a.m., on 08.09.2011 in Crime No.86 of 2011 under Section 304(A) I.P.C.Ex.P.1 is the complaint and Ex.P.3 is the FiRs.Information Report.

He forwarded both the documents to the Court and then handed over the case diary to the Inspector of Police for investigation.

P.W.12, the then Inspector of Police attached to Solavanthan Police Station, took up the case for investigation on 08.09.2011.

He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketc.showing the place of occurrence, in the presence of witnesses.

Then, at 09.30 a.m., he conducted inquest on the body of the deceased in the Government Hospital at Usilampatti.

He examined P.W.1 to P.W.8 and recorded their statements.

Then, he forwarded the body for postmortem.

P.W.11 ?.

Dr.Parimala Selvi, conducted autopsy on the body of the deceased on 08.09.2011.

She found a fracture on the frontal bone of the head of the deceased.

Similarly, she found another fracture on the occipital region of the head of the deceased.

She found a lacerated wound measuring 5x1.5x0.5cm on the right parietal region of the head and there were also abrasions on many parts of the body.

There was dislocation of the right shoulder joint.

There was bleeding through the nostrils and the mouth.

She opined that the death was due to the cumulative effect of all the above injuries.

Ex.P.6 is the postmortem certificate.

Continuing the investigation, P.W.12 forwarded both the vehicles for examination by Motor Vehicle Inspector.

The Motor Vehicle Inspector opined that there were no mechanical defects in both the vehicles.

P.W.12 collected the medical records, examined the Doctor, collected the reports from the Motor Vehicle Inspector and finally on completing the investigation, laid charge sheet against the accused under Section 304(A) I.P.C.3. Based on the above materials, the trial Court tried the accused for the offence under Section 304(A) I.P.C. The accused denied the same.

In order to prove the charges, the prosecution examined as many as 12 witnesses, of whom P.Ws.1, 2, 3 and 7 are the eye-witnesses.

P.W.4 is the wife of the deceased and she is not an eye-witness to the occurrence.

P.W.9 is the Sub- Inspector of Police, who registered the case and who has spoken about the same.

P.W.10 is the motor vehicle Inspector, who examined both the vehicles viz., the car as well as the motorcycle and opined that there was no mechanical defect found in both the vehicles.

P.W.11 ?.

Dr.Parimala Selvi has spoken about the autopsy conducted by her and P.W.12 has spoken about the entire investigation done.

4.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false.

According to the defence taken, the car was driven by the accused in a very slow manner with all care and caution.

But, the deceased came in uncontrollable speed, rashly and negligently and as a result the motorcycle dashed against the right side body of the car.

Thus, according to the petitioner, he had not committed any offence punishable under Section 304(A) I.P.C.5.Having considered all the above materials, the trial Court found him guilty under Section 304(A) I.P.C., and the lower Appellate Court confirmed the same.

That is how, the accused is before this Court with this revision.

6.I have heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent State and also perused the records carefully.

7.The learned Counsel for the petitioner would submit that the accident would not have happened in the manner as it is projected by the prosecution.

It is his contention that P.Ws.1 to 3 are interested witnesses and therefore, their evidences require close scrutiny.

He would further submit that though it is stated by P.Ws.1 to 3 that there was a head on collision between these two vehicles, the damages found on both vehicles

by the motor vehicle Inspector would go to show that there was no head on collision at all.

The learned Counsel would further point out that the damages on the car were found only on the right side body of the car and there was no damage on the front side of the car at all.

He would further point out that so far as the motorcycle is concerned, the damages were caused only on the right side of the vehicle and there was no damage caused to the front side.

From these facts, the learned Counsel for the petitioner would submit that the story of the prosecution that there was head on collision between these two vehicles is absolutely false and hence, the accused is entitled for acquittal.

8. But the learned Government Advocate (Crl. side) would vehemently oppose this Criminal Revision.

According to him, the evidence of P.Ws. 1 to 3 and P.W. 7 would clearly go to show that the accident was wholly due to the rash and negligent driving on the part of the petitioner.

He would further submit that the road was broad enough and therefore, the accused would have avoided the accident, had he taken under due care and caution.

Thus according to him, the conviction and sentence imposed on the petitioner does not require any interference at the hands of this Court.

9. I have heard the above submissions.

10. P.Ws. 1 to 3 and 7 claimed to have eye witnesses to the occurrence.

A close reading of the evidence of P.W. 7 would go to show that there is an admission by him that he did not witness the occurrence and he was attracted towards the place of the occurrence only after hearing a bang arose out of the accident.

Therefore, he cannot be taken as an eye-witness to speak about the occurrence as to how both vehicles were driven.

11. Now, turning to the evidences of P.W.1 to P.W.3, one way or the other, they are interested witnesses.

But, on that score, I am not inclined to reject their evidences.

Prudence requires that their evidences require close scrutiny.

P.Ws.1 to 3, they have stated in one voice that there was a head on collision between two vehicles.

But, their evidence is fully contradicted by the evidence of the motorcycle Inspector, who was examined as P.W.10.

When he examined both the vehicles, he found that there was no damage at all to any part of the front side of the car and all the damages were found only on the right side of the car.

Similarly, the damages found on the motorcycle were only on the right side.

Had it been true that the car dashed against the motorcycle resulting in head on collision, undoubtedly there should have been damage to the car on its front side.

The mere fact that there was no such damage on the front side of the car would clearly go to show that there was no head on collision and in other words, the car would not have dashed against the motorcycle at all in the manner alleged by the prosecution.

Thus, the evidence of P.W.1 to P.W.3 cannot be believed on this aspect.

12. Now, when there were two vehicles coming from the opposite directions, the prosecution should clinchingly prove that the vehicle driven by the accused was driven rashnessly and negligently.

It is, of course, true that the plea of contributory negligence is not available for the defence in a criminal case where one of the drivers is prosecuted for offence

under Section 304-A I.P.C. Contributory negligence on the part of the deceased may be a mitigating circumstance for the purpose of deciding the quantum of punishment.

But, that will not rescue the accused from the clutches of law from being punished for the offence under Section 304-A I.P.C. Thus, it is no defence for the accused to plead that the deceased also contributed for the accident by driving his vehicle in a rash or negligent manner.

It is enough for the prosecution to prove that the accused was also responsible for the accident by his rash or negligent act.

Here, in the case on hand, the question is as to whether the accused had acted with due care and caution when he drove the vehicle or he was rash or negligent.

According to the evidence, the car took a turn towards south and came to halt.

The distance between the place of collision and the place of halting of the car is very short.

This would go to show that the car would have been driven only in a normal speed.

Apart from that, the very fact that the car was turned towards the south extreme side of the road would go to show that the accused had driven the car under due care and caution, but the deceased had come so rashly and negligently and dashed against the right side body of the car.

That is why, the accident had occurred, it appears. The prosecution has not cleared the doubts arising out of these circumstances.

13. In view of all these discussions, I have no option but to hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts.

In such view of the matter, the petitioner is entitled for acquittal.

14. Before, concluding, I wish to highlight the following: The learned Additional Sessions Judge, while dismissing the appeal thereby conforming the conviction as well as the substantive sentence of imprisonment and the fine imposed on the petitioner, has issued a direction to the trial Court which reads as follows: "...The trial Court is directed to take appropriate steps to consider the releasing of the accused on P.O. or to imprison the accused to serve the remaining period of sentence if any.".

(ii) This direction issued by the lower Appellate Court is illegal.

The accused can be released on probation of Offenders Act, after convicting him for an offence instead of imposing sentence on him.

After having imposed the sentence, the question of releasing him on probation of Offenders Act by the trial Court does not arise at all.

It appears from the record that the learned Magistrate, as per the direction of the fiRs. Appellate Court, considered the plea for release on probation, but declined to release him so.

After the judgment is once delivered, the trial Court cannot modify or alter the same in any manner as per the bar contained in Section 362 of the Criminal Procedure Code.

All these legal positions were not taken note of by the learned Additional Sessions Judge.

I am hopeful that this kind of error will not occur in future.

15. In the result, the Criminal Revision Case is allowed and the conviction and sentence imposed on the revision petitioner by the Courts below is set aside and revision petitioner is acquitted.

Fine amount, if any, paid by him, shall be refunded to him.

Bail bond if any shall stand cancelled.

Consequently, the connected Miscellaneous Petition is closed.

To 1.The IV Additional District and Sessions Court, Madurai.

2.

The Judicial Magistrate Court No.II, Usilampatti 3.The Sub-Inspector of Police, Valanthoor Police Station, Madurai District.

4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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