

Chandrasegar Vs. State

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Court : Chennai

Decided On : Feb-05-1993

Reported in : 2(1993)ACC586

Judge : Arumugham, J.

Appellant : Chandrasegar

Respondent : State

Judgement :

Arumugham, J.

1. This Revision filed Under Sections 397 and 401 of Cr.P.C. by the accused was directed against the judgment of conviction and sentence rendered by the learned Principal Sessions Judge at Pondicherry in Crl. Appeal No. 23 of 1988 whereby confirming the conviction and sentence recorded by the learned Trial Judge, the Chief Judicial Magistrate, Pondicherry, in S.T.R. No. 121 of 1987, in which the trial was conducted against the revision petition herein for the charges framed under Section 304(A) I.P.C. and thereupon convicted and sentenced to undergo Simple Imprisonment for a period of 2 months and to pay a fine of Rs. 1,000/- and in default of which to undergo Simple Imprisonment for 1 month on finding the accused guilty of the charges tried against him. The brief facts of the prosecution case as culled out from the recorded evidence before both Courts below are as follows:

2. The Revision Petitioner was a driver of a transport passenger bus owned by a private person by name 'Vasantha Raja', bearing the registration mark TNJ-9979 and at about 8.30 a.m. on 21.12.1986 he was driving the said vehicle on Pondicherry-Cuddalore road by proceeding from south towards north. When he neared Nonankuppam bridge on the western side of the road, the bus hit three pedestrians by name Subburayan, Samikannu and Raju and all the three of them were killed on the spot. It was alleged by the prosecution that the revision petitioner drove the vehicle so rashly and negligently with a great speed. P.W. 1 Gnanasekaran, P.W. 2 Rajamani and P.W. 3 Manickkam were the eye witnesses to the gruesome accident above referred. On informing the Traffic Police Station by P.W. 1 Gnanasekaran at about 9-00 a.m. on that day, P.W. 7 Venkatachalapathy, Inspector of Police, recorded the statement from him and got it registered in the Traffic Police Station Cr. No. 219 of 1986 Under Sections 304(A), 279 and 337 I.P.C. against the accused. Ex. P-1 is the First Information Report. Then he inspected the place of accident, prepared Ex. P-10 rough sketch alone showing the photograph of the scene of accident.

Then P.W. 7 Inspector went to the Government Hospital, Pondicherry, held inquest over the dead bodies of the deceased Samikannu, Subburayan and Raju in the presence of Panchayatdars and prepared inquest report respectively Exs. P-13, P-14 and P-15. He examined P.Ws. 1 to 3 and recorded their statements. Following this, he sent a requisition to the Hospital Authorities with the dead bodies escorted by the police to conduct the autopsy over the same. P.W.4 Dr. Elumalai attached to Government Hospital, Pondicherry, did the autopsy over the dead body of Samikannu and found the following injuries : (Ex. P-2)

External Injuries:

Body lies on its back. Stained with blood. The skull is broken into pieces and brain has come out. The left half of the face is smashed. Compound fracture (R) arm. Compound fracture (L) leg. Compound fracture (L) Femur. Deep lacerated injury in the abdomen (R) 6 cm. x 4 cm. x 3 cm. Lacerated injury chin 2 cm. x 1 cm. Lacerated injury Penis 1 cm. x 1 cm.

Internal Injuries:

1. The chest is fragile. Multiple fracture of ribs; pericardium is teared, lacerated injury of the (L) ventricle of heart.

Lungs: Shows haemorrhage.

Liver: Ruptured. Spleen: Ruptured.

Skull: The skull is broken into pieces. The brain matter has come out. The brain was brought in a covered dhoti. Cervical spine: Injured. The spinal column is cut off from the brain.

According to him, death was due to the head injury was instantaneous. Similarly, he did the autopsy over the dead body of Subburayan and found the following injuries. Ex. P-4 is the post-mortem certificate issued by P.W. 4 Dr. Elumalai.

External Injuries:

1. The body lies on its back. Lacerated injury on the scalp extending from the parietal region to left side 10 cm. x 6 cm. 2. Abrasion below eye.

3. Abrasion (L) shoulder.

4. Lower Jaw malaligned.

5. A deep lacerated injury in the left arm 4 cm. x 2 cm.

6. A deep lacerated injury right leg 4 cm. x 4 cm. Bone is protruding out.

7. Lacerated injury left leg below knee 3 cm. x 2cm. x 2 cm.

Internal Injuries:

1. Compound fracture left humerus.

2. Compound fracture right tibia.

3. Fracture mandible.

4. Peritoneal cavity contained blood.

5. Stomach contents food particles.

6. Liver is ruptured.

7. Spleen is ruptured.

Head: Parietal bone fractured.

Dura matter is lacerated. Brain matter is haemorrhagic in pieces.

He was of the opinion that the deceased would appear to have died of head injury and multiple fracture.

Dr. Kanganath examined as P.W. 5 conducted autopsy over the dead body of Raju on the same day during which he found the following injuries:

External Injuries:

1. A lacerated injury on forehead extending into left parietal area. Meas : 8'x 2' - Brain matter scattered over the face and scalp.

2. Injury: A lacerated injury left side of neck carotid vessel and extending regular veins are severed. Meas : 3' x 1' x 3 cms.

3. A lacerated injury over the left side of the chest wall. Meas : 5' x 3'. Lungs tissue seen through the wound. Crackling sounds heard on palpitation.

Internal Injuries:

1. Frontal lobe is lacerated about 150 ml. of mixed blood present in the cranial cavity.

2. Both left carotid artery and Ex. regular veins are severed--lot of blood clots present in the wound. Fracture dislocation C.4 and C.5 present.

3. Fracture of 3, 4, 5, 6, 7 and 8 ribs on left side present. About 150 cc. of blood present in the left thoracic cavity.

Ex. P-6 is the post-mortem certificate. He would opine that the deceased would appear to have died of injuries to his brain, multiple fractures and blood vessels. P.W. 7 Mr. Venkatachalapathy, inspector of Police, then arrested the Revision Petitioner at about 4.45 p.m. on 21.12.1986 and sent him to judicial custody. Then he has forwarded the requisition to the Motor Vehicle Inspector to examine the bus involved in the accident. Mr. Chellape-rumal, was examined as P.W. 6. The concerned Motor Vehicle Inspector examined the vehicle viz., the bus referred above involved in the accident and submitted his report which has been marked as Ex. P-8. On seizing the trip sheet Ex. P-16 by P.W. 7 Inspector and examining further witnesses, P.W. 7 laid charge sheet against the Revision Petitioner in the Court on 12.6.1987.

3. On being questioned with reference to the evidence appearing as well as the incriminating portion against the accused by the trial Court under Section 313 Cr.P.C. the accused-Revision Petitioner denied his complicity in toto, but added that at the time of accident, the road was slippery due to the rain and that though he applied the brake, it gave way and that therefore the vehicle was capsized. He was not aware of the three victims above referred. He examined none on his behalf to establish his case.

4. On assessing the entire evidence adduced by the prosecution and the plea taken by the accused-Revision Petitioner, the trial Court found him guilty On the charge framed and tried against him and accordingly convicted and sentenced him and against which on reassessing the judgment and the case records as well as the evidence, the lower Appellate Court confirmed the same in toto and against which, challenging the same with reference to its correctness, legality and impropriety, the present Revision is sought for.

5. I have heard Mr. Karpagavinayagam, learned Counsel appearing for the Revision Petitioner in attacking the concurrent findings held by both the Courts below. Learned Counsel dwells his main contention that though the unfortunate accident caused the death of three innocent persons going on the left hand side of the road keeping on the left hand extreme side by the bus driven by the Revision Petitioner herein, the complicity of the accused-Revision Petitioner in causing the

death of the said three persons attracting the above offence of law has not been virtually established nor proved by the prosecution in this case warranting to sustain the concurrent findings. He then contended that the investigation done in this case by P.W. 7 Inspector does not appear to be a true one, projecting the true prosecution case properly before the Court of law and that above all, the report of the Motor Vehicle Inspector does not help the prosecution in any manner to prove the guilt of the accused. That apart, the admitted portion of the occurrence witnesses herein renders the defence theory as probable one and that in summing up, the learned Counsel for the Revision Petitioner Mr. Karpagavinayagarn persuaded me to interfere with the judgment rendered by both the Courts below and thereupon to set aside the same for the abovesaid legal infirmity.

6. Per contra, I have heard Mr. K.S. Ahamed, learned Public Prosecutor, appearing for the State, who, not only controverted the contentions raised on behalf of the Revision Petitioner but justified the finding given concurrently by both the Courts below particularly in the context that three innocent persons were run over and done to death on the spot for none of their fault.

7. In the light of the above rival contentions, the only point arises for consideration in this Revision is whether the concurrent judgments of conviction and sentence held by both the Courts below are vitiated by error of law, misappreciation of evidence and impropriety, rendering the same liable to be set aside?

8. Having perused the entire case records in this case, I may straightway observe that this Revision deserves every merit to be allowed for the simple reasoning that the prosecution, at the outset has totally, miserably and virtually failed to establish the guilt and the complicity of the accused for the offences charged and failed to place the correct facts before the Court of law to sustain the conviction in this case. For the observations above-stated, I have proposed to enter into to discuss the entire case of prosecution as culled out from the records and the evidence. Firstly, it is to be noticed, the three occurrence witnesses had admitted in their evidence that when they saw the bus driven by the accused coming from south towards north in the main road behind the three victims and just prior to the occurrence not in usual manner but in zig-zag way which goes to show, if the

evidence is accepted there was something wrong mechanically in the bus which aspect has not been probed either in the investigation or by the concerned authorities under the Motor Vehicles Act. Secondly, none of the passengers who travelled in the bus during the time of accident was examined in this case for reasons obviously known to the prosecution; thirdly while seeing the rough sketch Ex. P-10 prepared by P.W. 7 Investigation Officer, it is seen that the dead bodies of three victims were found in three different places on the left hand side of north-south Pondicherry-Cuddalore main road and the bus which caused the accident was found on the western extremity of the north-south road beyond the dead body of the first deceased. This photography would go to show demonstrably that the three victims were going along the road on the western side and during the said sojourn the bus came from behind, knocked them one by one and that was the reason why the dead bodies of three persons were found in three different places. If we give every weight to the evidence of the Doctor, the injuries caused by dashing of the bus to these victims were so severe and caused death instantaneously, there is no reason to suspect that these three victims were run over by the bus by a single hit at one place and at one time and that even so it is humanly impossible. Therefore, the preponderance of probability available in the evidence adduced by the prosecution would clearly identify that the above three victims were run over by the bus at three different places but at the same time as shown in the rough sketch - Ex. P-10. If this is the position in the context that there is only one charge framed and tried against the accused viz., under Section 304(A) I.P.C. alone is quite inappropriate. In this context. I am rather terribly shocked to see as to how this error has been committed by the trial Court as well as by the Appellate Authority. If three persons were killed by dashing of the bus driven by the accused at different places during the same course of transaction, then it would be quite appropriate for the trial Court to frame the charge on three counts under Section 303(A) I.P.C. and try against the accused. On perusal of the records, it is clear that the Investigating Agency also subscribed a major contribution in sharing this error by filing the charge sheet on one count alone which has been mechanically followed by the trial Court without looking into the papers and applying its mind. It was further shocking that the lower appellate Court viz., the learned Sessions Judge who reassessed the entire case records

and evidence has overlooked this aspect but confirmed the conviction and sentence mechanically.

9. Coming to the plea taken on behalf of the Revision Petitioner-accused regarding the failure of brake, I have perused the report of the Motor Vehicle Inspector marked as Ex. P-8, In his report, the Motor Vehicle Inspector has stated that in view of the heavy damages founds on the front side and rear side of the bus, he could not testify the braking system of the bus involved in the accident. But in the evidence when he was cross examined P.W. 6 Motor Vehicle Inspector Mr. Chellaperumal has denied the suggestion that the accident in question was due to the failure of the braking system. In the context of the above inconsistency between the evidence given by P.W. 6 and his report marked as Ex. P-8, I am at every difficulty to understand as to what extent the evidence of the Motor Vehicle Inspector will help the prosecution in establishing the guilt and the complicity of the accused, for the reason that Motor Vehicle Inspector was not in a position to test the braking system of the bus involved in the accident But while doing so and without testing that braking system, how he could claim that the accident happened due to the mechanical defect found in the bus during the relevant time. In this regard I must point out that both the evidence given by P.W. 6 Motor Vehicle Inspector and his report marked as Ex. P-8 would be of no use and would not render any help to the prosecution to establish the guilt of the accused in this case.

10. In so far as the investigation done by P.W. 7 Inspector in this case is concerned, I find every force in the arguments advanced by the learned Counsel for the Revision Petitioner. This is a case where the accident caused the death of three persons for no fault of their own, but may be due to mechanical failure of the bus which caused the death or the callous or negligent driving of the same or by the negligent or callous handling of the human mechanism. But it is difficult to identify which one among the above is the pivotal fact expected to be established by the investigating staff by preparing the Observation Mahazar, rough sketch and so on, as contemplated by the Police Standing Orders as well as the other relevant rules provided under the Motor Vehicles Act. In the context of three human lives were lost by the accident caused in the public road and on setting the

law in motion, it is seen P.W. 7 has reached the spot but deliberately failed to prepare any observation mahazar. But on the other hand, he has prepared the rough sketch Ex. P-10 alone and that too with incorrect particulars and measurements. From this attitude it is manifest that he has not discharged his duty properly. It is not known as to why or for what reason he has failed to prepare any observation mahazar showing the photography and the existence of things available on the spot at the earliest point of time which if he would have done would definitely help the Court in assessing the nature of occurrence in the true sense. One other serious laches committed by P.W. 7 he has not brought the Motor Vehicle Inspector to the spot and made to testify the vehicle which caused the accident. But on the other hand quite surprisingly, he took the vehicle to a far away place covering the distance of more than 8 kms., and where the vehicle was subjected to inspection. This in my firm view, was quite improbable and cannot be accepted for any moment. True, three deaths were caused by the bus driven by the Revision Petitioner-accused, but his plea forwarded before the trial Court cannot be ignored for the reasons stated above. If the vehicle was put to the mechanical test by the competent person and the test was conducted in a manner known and provided by the rules and law, then every matter would have been probed but in this case unfortunately the above said aspect has been totally ignored and it is a pity more than both the Courts below overlooked the vital aspect which clearly amounts to an error of law. The Investigation Officer, P.W. 7 did not conduct the investigation properly in this case. He has failed to give the measurements of the distance from the bus to the three dead bodies lying in the road due to the impact, caused by the bus. He has failed to note the tyre marks or the wheel marks of the bus caused either in the tar road or mud road. In my view, all the above-said aspects are the material and pivotal one which goes to the root of the prosecution case. As I have already observed both the Courts below have totally fell into an error in not looking into the abovesaid aspects while rendering the judgment of conviction and sentence being canvassed under this Revision. Having considered with the records relied on by the prosecution and the concurrent finding held by both the Courts below, I am fully constrained to hold that in maintaining the conviction and sentence against the accused both the Courts below fell into an error and failed to appreciate the attendant circumstances

with the adduced evidence by the prosecution in its proper legal perspective and in this regard, the judgments of the Courts below are totally vitiated with error of law, impropriety and misappreciation of the evidence and in this context, I feel every justification to interfere in this Revision with the Judgment by both the Courts below and accordingly, it is liable to be set aside.

11. In the result, for all the reasons stated aforesaid, the Revision succeeds. Accordingly, the judgment of conviction and sentence passed against the Revision Petitioner by both the Courts below are hereby set aside, and the accused is set at liberty forthwith. Fine amount paid if any, is hereby ordered to be refunded, immediately.

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