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Court : Chennai

Decided On : Mar-21-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313(1)(b), 200; Indian Penal Code (IPC) - Sections 304-A

Appeal No. : Crl.A.(MD)No.188 of 2011

Appellant : Balakumar

Respondent : Muthuselvam.

Advocate for Pet/Ap. : Mr.S.Moorthy, Adv.

Judgement :

JUDGMENT

1. This criminal appeal has been filed against the judgment of acquittal pronounced by the learned Judicial Magistrate, Musiri in C.C.No.109 of 2007. The said case was instituted on a private complainant filed pursuant to a negative report submitted by the Sub-Inspector of Police, Musiri Police station in crime No.163 of 2006 registered on the file of the said police station. The complaint to the police was made by the appellant herein.

2.The contents of the complaint are to the effect that on 03.04.2006 the respondent herein drove his motor cycle bearing registration No.TN-46-A-5259 on Pulivalam-Musiri main road rashly and negligently keeping the deceased Thenmozhi seated on the motor cycle as a pillion rider and that as a result of such negligent driving, the pillion rider, namely the deceased Thenmozhi was thrown out from the motor cycle, resulting in head injuries which ultimately led to her death on the failure of treatment. Though the time of death of Thenmozhi on the way to the Government General Hospital, Trichy from Musiri has been noted in the complaint with an interpolation as 6.30 p.m., the complaint does not contain any reference to the time at which the accident took place. The complaint also contains an averment that the respondent was driving the above said vehicle, namely motor cycle on the Thar portion of the road rashly and negligently and while trying to give way to the passenger bus that was coming in the same direction, he applied brake which caused a jerk and the resultant fall of the deceased from the motor cycle. The said complaint contains a further averment that after the occurrence, the respondent himself took the deceased to Alva Hospital, Musiri and then to the Government Hospital, Musiri. The complaint also proceeds to state that since the Medical Officers at Government Hospital, Musiri referred Thenmozhi to Government General Hospital, Trichy, she was taken in an ambulance to Trichy, but unfortunately on the way she succumbed to injuries. There is no reference as to who accompanied Thenmozhi in the ambulance to Trichy.

3.Of course, the complaint came to be lodged only after the death of Thenmozhi. On the requisition made by the Investigating Officer, autopsy was conducted and the Medical Officer, who conducted autopsy expressed an opinion that the deceased Thenmozhi died of head injuries. However, since the Investigating Officer could not collect any material to show that the respondent/accused acted with rashness and negligence in driving the motor cycle and such rashness and negligence led to the accident, the Investigating Officer chose to submit a negative final report praying for the closure of the case as 'Mistake of Fact'. Notice of such negative final report was served on the appellant, who was the de-facto complainant. On receipt of such notice, the appellant appeared before the trial court, namely the Court of the learned Judicial Magistrate, Musiri and preferred a private complaint. The learned Judicial Magistrate, Musiri took cognizance of the

offence and registered the case as C.C.No.109 of 2007 following the procedure prescribed therefor.

4.On appearance the respondent/accused denied having committed the offence of causing death by negligently driving the motor cycle. Hence, after framing a charge and recording the plea of the accused, a trial was conducted, in which totally three witnesses were examined as PW1 to PW3 and five documents were marked as Exs.P1 to P5 on the side of the prosecution/complainant. The respondent herein/accused was also questioned under section 313(1)(b) Cr.P.C regarding the incriminating materials found in the evidence adduced on the side of the complainant and also generally regarding the case and the respondent/accused denied the evidence adduced against him by the prosecution witness. No witnesses was examined and no document was marked on his side.

5.The learned Judicial Magistrate, Musiri considered the evidence in the light of the arguments advanced on both sides and upon such consideration, came to the conclusion that the charge against the accused for an offence under section 304-A IPC was not proved beyond reasonable doubt. Based on the finding and incorporating the same, the learned Judicial Magistrate pronounced a judgment holding the respondent herein/accused not guilty of the offence with which he stood charged and acquitted him of the said charge. The said judgment of acquittal dated 09.12.2009 pronounced by the learned Judicial Magistrate, Musiri is under challenge in the present criminal appeal.

6.The point that arises for consideration is:-

Whether the judgment of acquittal pronounced by the learned trial court in C.C.No.109 of 2007 acquitting the accused therein/respondent herein is liable to be interfered with in this appeal?

7.Before admission, notice was issued to the respondent, since the court was of the view that the appeal could be disposed of at the stage of admission itself. Accordingly, notice was served on the respondent and the respondent is also represented by a counsel. This court is also having the benefit of going through the original records as they have already been summoned from the trial court for

reference in this appeal.

8.The argument advanced by Mr.S.Moorthy, learned counsel for the appellant and Mr.S.Manikandaraja, learned counsel for the respondent are heard and the materials available on record are also perused.

9.It is not in dispute that on 03.04.2006 in the evening, while the accused was proceeding in his motor cycle bearing registration No.TN46-A-5259 from Nalliampatty Panchayat Middle School to his residence, the deceased Thenmozhi was seated on the motor cycle as a pillion rider and that at about 4.30 p.m. near Thoppulampatty, the deceased fell down from the motor cycle and sustained head injuries, pursuant to which she was taken to hospital for treatment. Though the accused might have denied each and every part of the testimony of the prosecution witnesses claiming it to be false, there is an admission in the form of a suggestion made to PW1 that the accident took place at 4.30 p.m. on 03.04.2006 while the deceased was proceeding in the motor cycle of the respondent/accused as a pillion rider. Though the appellant/complainant would have claimed in the complaint itself that the details as to how the accident took place were divulged by the accused, who had taken the deceased Thenmozhi to a private hospital at Musiri called 'Alva Hospital' in a passenger bus belonging to the Tamil Nadu State Transport Corporation and that on coming to know that the injured was none other than his niece, she was taken to the Government Hospital, Musiri, the language used in the complaint is capable of meaning that the appellant/complainant along with the accused, took the deceased Thenmozhi to the Government Hospital, Musiri. The further averment in the complaint is that since the duty doctor at the Government Hospital, Musiri opined that Thenmozhi had sustained injuries endangering her life and she could be conveniently treated at the Government General Hospital, Trichy; that based on the said opinion of the duty doctor the appellant/complainant took the deceased Thenmozhi in an ambulance to Trichy and that she died at 6.30 p.m., the language was coined in such a manner, as if the deceased was admitted in the Government Hospital at Trichy and there she succumbed to the injuries.

10.On the other hand, in the complaint given to the police, he had stated that the deceased Thenmozhi died on the way to Trichy from Musiri. Neither in the complaint given to the police, nor in the complaint submitted to the Magistrate in writing under section 200 Cr.P.C., the appellant/complainant had stated that one Shanmugam was the person, who informed him about the accident. On the other hand, in paragraph 5 of the complaint, the appellant/complainant had simply stated that one Shanmugam s/o.Kannaiyan seems to have witnessed the occurrence. However, during his cross examination before the court, he has deviated from his statement found in the complaint by stating that he alone took Thenmozhi from Alva Hospital, Musiri to the Government Hospital, Musiri in an auto rickshaw. While referring to the persons, who took the deceased from Alva Hospital to Government Hospital, Musiri, the vocabulary denoting plurality of persons was used, whereas in the evidence as pointed out supra, the appellant/complainant (PW1) made an attempt to assert that he alone took the deceased in an auto rickshaw to the Government Hospital, Musiri.

11.It is the evidence of PW1 that he reached the Government General Hospital, Trichy at 6.30 p.m. on 3.4.2006 and the Medical Officer, after examining Thenmozhi, informed him that Thenmozhi had died on the way to the hospital. No complaint was lodged till 7.00 a.m. the next day, namely 04.04.2006. Only at 7.00 a.m. on 04.04.2006, a complaint came to be lodged with the police. The reason assigned for the delay was that the appellant/complainant, after entrusting the dead body of Thenmozhi to the hospital authorities to be kept in the mortuary, met the relatives of the deceased and informed them and thereafter went to the police station to lodge a complaint and in that process, there was a delay. Of course, it is true that there is some kind of explanation for the said delay, which cannot be rejected.

12.As pointed supra, there is no dispute regarding the fact that an accident occurred at 4.30 p.m. on 3.4.2006, near Thoppulampatty on Pulivalam- Musiri main road and the deceased who was travelling as pillion rider in the motor cycle of the respondent/accused fell down and sustained injuries. According to the complainant's case, the said motor cycle was driven by the respondent/accused in a rash and negligent manner and while trying to give way to a passenger bus that

wanted to over-take the motor cycle, the respondent/accused suddenly applied the brake which caused a jerk, due to which the deceased fell down from the motor cycle leading to the fatal injuries. As rightly pointed out by the learned Judicial Magistrate in the impugned judgment, the appellant/complainant was not an eye witness and he would not be the fit person to speak about the manner in which the accident took place and to say who was at fault. Only under the said circumstances, the appellant/complainant chose to include the name of one Shanmugam as the sole eye witness, who saw the occurrence. As pointed out supra, neither in the complaint given to the police, nor in the complaint filed in the court, the appellant/complainant has stated that it was Shanmugam, who informed him about the nature of the accident. On the other hand, the averment in the complaint has been couched in such a way that the said Shanmugam seems to have seen the occurrence. There is nothing in the complaint to show from whom the information that Shanmugam was an eye witness came to the complainant. PW1 himself has admitted during cross examination that he did not state in the complaint given to the police and in the complaint filed in the court, the source from which he got the details of the accident.

13.It is also an admitted fact that the said Shanmugam is a close friend of the appellant/complainant and both of them were working as auto drivers in the very same auto stand. PW1 has also admitted his close and cordial relationship with the above said Shanmugam. The said Shanmugam has been examined as PW2. He claims to have travelled in the bus that was following the motor cycle and thus have seen the occurrence as a passenger in the bus. PW2 Shanmugam, in his evidence in cross examination, would state that when the deceased was taken to the hospital, her uncle, namely PW1 came there and immediately PW2 informed PW1 about the details of the accident and also narrated how the accident took place. The said testimony of PW2 seems to be an improvement over the testimony of PW1.

14.Considering each and every aspect, the learned Judicial Magistrate, Musiri came to a correct conclusion that PW2 could not have been an eye witness for the occurrence and he chose to give evidence as requested by his close friend PW1. This court also, after reappraising the evidence, concurs with the finding of the trial

court that PW2 Shanmugam could not have been an eye witness and his evidence shall not be sufficient to base a finding that the accident took place in the manner spoken to by PW2. PW2 did not produce the bus ticket to show that he was traveling in the said bus. How long the bus was chasing the motor cycle before the occurrence took place was not spoken to by PW2. The presence of PW2 along with the deceased in Alva Hospital, Musiri is not spoken to by PW1. If at all PW2 happened to be the eye witness, who travelled in the bus in which the deceased was taken to Alva Hospital, Musiri he would have chosen to inform the relatives of the deceased immediately or lodged a complaint with the police. He has not done so. Even during the investigation, he was not shown to be an eye witness. Hence, the court below has rightly come to the conclusion that the testimony of the projected eye witness cannot be relied on and should not be made the basis on which the respondent/accused can be convicted for the offence of causing death by negligence.

15.The other witness, namely PW3 examined on the side of the complainant is none other than a police official to speak about the submission of a negative final report closing the criminal case as 'Mistake of Fact'. Through him alone the file containing final report in which the complaint to the police, first information report and the Postmortem examination report are found. Since the entire file has been marked as a document, namely Ex.P5 without any objection, the postmortem examination certificate can be looked into and the same can be taken into account to decide the cause of death. Of course, the certificate makes it clear that the deceased Thenmozhi died due to head injuries-'Cranio- Cerebral Wounds'. In view of the fact that neither the Medical Officer who conducted autopsy, nor any one capable of speaking about the contents of the certificate issued by doctor, who conducted autopsy has been examined as a witness by the appellant/complainant, the learned Judicial Magistrate has chose to make an observation that the appellant/complainant had not proved that the death was due to the injuries sustained in the accident in question. This court is of the view that the said observation made by the trial court is unnecessary in so far the accused himself has not taken such a stand either by leading evidence or by putting a suggestion to the prosecution witnesses that Thenmozhi died of injuries sustained in some other occurrence and not in the accident concerned in this case. Admitting the fact

that the deceased Thenmozhi fell down from the motor cycle and sustained injuries and the said injuries led to her death, the prosecution witnesses were cross-examined. As such at the cost of repetition, this court again points out that the observations made by the learned Judicial Magistrate that the appellant/complainant failed to prove that the deceased Thenmozhi died of injuries sustained in the accident in question is unnecessary and incorrect.

16.Barring such observation in all other respects, the judgment of the learned Judicial Magistrate cannot be found fault with, as there is no other defect or infirmity that could be found on re-appreciation of evidence. It is the case of the respondent/accused that the deceased, who was employed as a teacher in the very same school in which he was employed, came in his motor cycle as a pillion rider; that while proceeding thus, she let her hand bag slip down and in an attempt to catch it she fell down and sustained the injuries. When such is the case and the evidence of the only eye witness projected by the prosecution is held to be unreliable, this court is able to find no wrong, defect or infirmity in the finding of the trial court that complainant failed to prove his case that the respondent/accused drove the motor cycle in a rash and negligent manner and suddenly applied brake and due to which the deceased was thrown out from the motor cycle and sustained head injuries leading to her death. Even otherwise, a pillion rider is expected to visualize such contingencies of the rider facing with a necessity to apply brake suddenly. The pillion rider should also be careful to ensure that in such an event, she/he does not lose grip and falls down. It is not a case wherein the motor cycle has collided with an object or that the motor cycle skidded due to which the pillion rider fell down and sustained the fatal injuries. In such circumstances, no other view, except the view that the appellant/complainant has miserably failed to prove that the respondent/accused acted with negligence and the accident occurred solely due to his negligence. The finding of the trial court holding the respondent/accused not guilty of the offence with which he stood charged namely, an offence punishable under section 304-A IPC is based on sound reasoning and this court cannot come to a different conclusion than the one arrived at by the trial court.

17.In criminal cases, there shall be a general presumption that the person accused of an offence is innocent, unless and until, the charge is proved. Such a general presumption can have some exceptions in case of statutory presumptions. When a case ends in acquittal, the general presumption of innocence is doubly fortified and stronger reasons are needed to interfere with the same. If two views of equal force are possible, one in favour of the accused and another in favour of the prosecution and the trial court has chosen to take the view in favour of the accused, the appellate court should not reverse the finding simply because, the other view is also possible and the appellate court is inclined to take the other view. For all the reasons stated above, this court comes to the conclusion that the well considered judgment of acquittal pronounced by the trial court deserves to be confirmed.

18.In the result, the appeal fails and the same is dismissed.

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