

Samydurai Vs. State by the Station House Officer, Kallakurichi Police Station

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Court : Chennai

Decided On : Nov-28-2012

Judge : B. Rajendran

Appeal No. : Crl.R.C. No. 16 of 2010

Appellant : Samydurai

Respondent : State by the Station House Officer, Kallakurichi Police Station

Advocate for Pet/Ap. : For the Petitioner: A.G. Rajan, Advocate. For the Respondent: R. Prathap Kumar, Govt. Advocate. (Crl.side)

Judgement :

(Prayer: Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the judgment rendered by the Principal Sessions Court, Villupuram, in Crl.A.No.31 of 2009 dated 21.12.2009, confirming the judgment rendered by the learned Judicial Magistrate, Kallakurichi, in C.C.No.119 of 2007 dated 11.09.2009.)

1. This criminal revision has been filed challenging the judgment passed by the learned Principal Sessions Judge, Villupuram, in Crl.A.No.31 of 2009 dated 21.12.2009, confirming the judgment rendered by the learned Judicial Magistrate, Kallakurichi, in C.C.No.119 of 2007 dated 11.09.2009.

2. The grievance of the revision petitioner is that the Courts below have failed to take into consideration the Rough Sketch, Ex.P8, produced by the prosecution as well as the deposition of PW-2 in his cross-examination who was projected as an eye witness, who clearly admitted that he came to the spot only ten minutes of the occurrence. It was also admitted that PWs.1 and 2 came in the same vehicle. If they had reached the scene after ten minutes of the occurrence, they could not have witnessed the occurrence. This vital question has not been considered at all by the Courts below, thus both eye witnesses were not present at the time of occurrence and therefore, the conviction imposed on the petitioner has to be set aside. Learned counsel for the revision petitioner further submits that PW-1 admitted that one Ramesh was the person who gave the complaint, but he was not examined. The complaint has been marked only through PW-1, therefore, the non-examination of the said Ramesh is fatal to the case of the prosecution. This aspect was also not taken into consideration by the Courts below. Further, the learned counsel mainly contends that even as per the Rough Sketch, Ex.P8, the vehicle which was driven by the petitioner from North to South on the left extreme of the road. The accident took place on the turning. The vehicle driven by the deceased came in the extreme right side of the road in the opposite direction and dashed against the lorry driven by the petitioner. Therefore, it is clear that negligence was definitely not on the part of the revision petitioner.

3. Learned Government Advocate (Crl.side) submits that the evidence of PWs.1 and 2 are clear and cogent and they have clearly stated about the accident. PW-8, Motor Vehicle Inspector, in his evidence, has stated about the damaged parts of the vehicle, which clearly reveal that the accident had occurred due to the rash and negligent driving of the vehicle by the petitioner/accused.

4. Heard learned counsel for the revision petitioner and learned Government Advocate (Crl. side).

5. From the evidence of PWs.1 and 2, it is seen that they were travelling together in a TVS-50 vehicle and they were projected as the eye witnesses to the occurrence. But in the cross-examination of PW-2, he admitted that "TAMIL" Therefore, there was a clear admission by PW-2 that he and PW-1 went to the

accident spot ten minutes after the occurrence. It was further admitted by him that when they went to the spot, they did not see the driver and there were already more than ten persons present at that place. As there was a crowd in the accident spot before PWs.1 and 2 could reach, it cannot be construed that PWs.1 and 2 who were travelling in the same two wheeler could have witnessed the accident. When they were not the eye witnesses, the whole case relied upon by the prosecution to fasten the negligence on the revision petitioner does not stand. Apart from this vital discrepancy, learned counsel for the revision petitioner correctly pointed out that in the cross-examination, PW-1 admits that the complaint was written by one Ramesh, but admittedly the said Ramesh has not been examined. Therefore, the origin of the FIR itself is doubtful and the non-examination of the said Ramesh is fatal to the case of the prosecution.

6. On perusal of the Rough sketch, Ex.P8, it is evident that the vehicle driven by the revision petitioner was coming in the left extreme corner of the road from North to South, thus the accident had occurred on the right hand side of the vehicle driven by the petitioner. As per the sketch, the breadth of the road is 30 feet. The accident took place beyond 20 feet. The deceased was coming from the opposite side in a two wheeler from South to North. He should have kept the left side, but he had gone to the right extreme corner even as per the marking in the rough sketch. Therefore, as per the rough sketch, it is clearly seen that the deceased had driven the vehicle on the wrong side.

7. It is well settled that merely because a vehicle was driven at a particular speed, it cannot be presumed that it was driven in a rash and negligent manner. In the decision of the Honourable Supreme Court reported in (Mohammed Aynuddin @ Miyam vs. State of Andhra Pradesh) (2000) 7 Supreme Court Cases 72, which was relied on by the counsel for the petitioner, it was categorically held that in the absence of any evidence to show that the driver of the offending vehicle had driven it in a rash and negligent driving or in any way responsible for the accident, the conviction and sentence imposed on him are unsustainable. It was further held that negligent of the driver of the offending vehicle cannot always be presumed to be a rash and negligent one. In para-7 of the said decision, it was held as follows:-

"7. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus."

Since, there was no specific evidence of the rash and negligent driving of the revision petitioner, the Courts below ought not to have convicted the petitioner. The petitioner/accused is entitled for benefit of doubt.

8. Accordingly, this Criminal Revision stands allowed. The judgments of the learned Principal Sessions Court, Villupuram, in CrI.A.No.31 of 2009 dated 21.12.2009 and the learned Judicial Magistrate, Kallakurichi, in C.C.No.119 of 2007 dated 11.09.2009, shall stand set aside. The petitioner/accused shall stand acquitted of the charges. The fine amount, if any paid, shall stand refunded to the petitioner/accused.

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