

Veerakumar Vs. the State, Rep. by Sub-inspector of Police, Mannargudi Police Station Thiruvarur District

Veerakumar Vs. the State, Rep. by Sub-inspector of Police, Mannargudi Police Station Thiruvarur District

SooperKanoon Citation : sooperkanoon.com/953576

Court : Chennai

Decided On : Oct-09-2012

Judge : B. Rajendran

Appeal No. : Crl. R. C. No. 1660 of 2007

Appellant : Veerakumar

Respondent : The State, Rep. by Sub-inspector of Police, Mannargudi Police Station Thiruvarur District

Advocate for Pet/Ap. : For the Petitioner: M/s. S. Kingston Jerold, Advocate. For the Respondent: M. Mohammed Riyaz, Govt. Advocate (Crl. Side).

Judgement :

(Prayer: Criminal RevisionPetition filed under Section 397 and 401 of the Criminal Procedure Code praying to

1)call for the records of the case in Crl.A.No.56/2006 of the court of the Sessions Judge, Nagapattinam and in C.C.No.130/2004 on the file of the Judicial Magistrate No.1 at Mannargudi.

2)examine the legality, the property and correctness of the proceedings before the Lower Courts and also findings contained in the Judgments;

3)set aside the order of the Learned Sessions Judge confirming the Judgment passed by the Trial Court viz. Judicial Magistrate No.1, Mannargudi in C.C.No.130/2004 on 24-3-2006 and direct the acquittal of the petitioner of the charges levelled against him.)

1. This revision petition is filed against the order of the learned Judicial Magistrate No.1 at Mannargudi dated 24.03.2006 made in C.C.No.130 of 2004 convicting the accused/ revision petitioner for the offence punishable under section 337 and 304(A) IPC and sentenced him to undergo three months simple imprisonment for the offence under Section 337 I.P.C. and to undergo ten months simple imprisonment for the offence under Section 304(A) IPC with fine of Rs.500/-, in default to undergo two months simple imprisonment. The order of the trial Court was confirmed by the appellate Court by judgment dated 25.07.2007 made in Crl.A.No.56 of 2006.

2. The learned counsel for the revision petitioner submits that the lower Court has failed to take into consideration that the complaint itself says that the tractor was coming from behind and hit the vehicle, a two wheeler and the accident took place only because of the rash and negligent driving of the driver of the tractor. His main contention was that the Motor Vehicle Inspector's report does not disclose any damage to the rear side of the vehicle namely, the two wheeler. Therefore this falsifies the theory made out by the prosecution that the occurrence took place due to the hitting of the vehicle from behind and that too because of the rash and negligent driving of the driver of the tractor.

3. Further, the learned counsel for the revision petitioner would mainly contend that P.W.1 to P.W.4 are only interested persons as they are doing same business in the same locality. Even though they are eye witnesses, their witnesses could not be believed. As far as P.W.7 and P.W.14, even though they are eye witnesses, they have already turned hostile. Further, P.W.8, P.W.15, P.W.5 and P.W.6 also turned hostile. Therefore, excepting the interested witnesses, all others have turned hostile. When such is the case, the lower court should have given the benefit of doubt to the accused. The Appellate court also failed to do so.

4. The learned Government Advocate (Criminal Side) would contend that P.W.1 to P.W.4, even though are interested witnesses, their evidence cannot be brushed aside. P.W.1 is the father of the deceased minor boy, who was driving the two wheeler. P.W.1 also got injured and he is the correct and proper witness to speak about the occurrence. He has deposed the nature of the accident. He has clearly stated about the rash and negligent driving of the tractor. Merely because P.W.2 to P.W.4 are doing similar business in the same locality, their evidence cannot be disbelieved. Similarly, he pointed out that the Break Inspector P.W.10 has given evidence that there were damages to the pedal, front side portions as well as parts of the vehicle and has also certified that there is no break failure.

5. The learned Government Advocate (Criminal Side) would further contend that, merely there was no damage caused on the backside of the vehicle, that by itself could not be taken into consideration in this case. He also pointed out that Ex.P11 sketch, clearly indicates that because of the actual impact, the vehicle has been thrown away to a further distance and the minor boy was thrown away in the road. It also indicate that the two wheeler sustained damages. Therefore, both the courts below have come to the correct conclusion based on the evidence available and convicted the accused/ revision petitioner, hence, he prayed for the dismissal of the revision.

6. Heard both sides. By consent of both the parties, the revision itself is taken up for final disposal.

7. At the outset, the main contention raised by the revision petitioner is that the impact, as stated by the prosecution, has not been proved because of the fact that there is no damage to the rear portion of the two wheeler, besides that the complaint reads that the tractor has hit against the two wheeler at the backside.

8. In this connection, if we read the evidence of Break Inspector P.W.10, he would state that there were lot of damages to the two wheeler. But in the cross examination, he has stated that if really there is an impact there should have been damage to the backside of the vehicle. But merely because there was no damage to the backside of the vehicle it cannot be taken into consideration inasmuch as the vehicle was thrown away to a longer distance, the vehicle has fallen down and

damages are more even on the right hand side of the two wheeler particularly to the pedal side, on the front side, coupled with the fact that the four year old minor boy, who was sitting, has been thrown away.

9. From the sketch we are able to see that the two wheeler and the injured person were thrown away in different directions which will clearly indicate the rash and negligent driving of the driver of the tractor. Further, the court below has taken into consideration that merely because P.W.1 to P.W.4 are having similar business in the same locality that by itself will not be taken into account to disbelieve their evidence. Infact P.W.1 is the father of the deceased minor boy, who was also injured in the accident and has taken treatment for the injuries sustained. The evidence of P.W.1 to P.W.4 are clear and cogent. In so far as the evidence of P.W.5 to P.W.8 is concerned, no doubt they have turned hostile. They are independent witnesses. Merely because they have turned hostile, that by itself will not dis-entitle the Court to believe the evidence of the persons who have given evidence correctly, especially eye witness. Therefore, I do not find any reason to interfere with the reasoned order passed by both the courts below.

10. At this juncture, the learned counsel for the petitioner pleaded that the punishment could be reduced taking into consideration the age of the accused.

11. Hence, taking into consideration the request of the learned counsel for the revision petitioner, the punishment of 10 months simple imprisonment for the offence under Section 304(A) I.P.C. is reduced to 6 months simple imprisonment. Except this reduction in sentence, the order of both the courts below, in other aspects, stands confirmed.

12. In the result, the revision is dismissed but the sentence imposed is modified as follows:

(i) sentence to undergo three months simple imprisonment for the offence under Section 337 I.P.C. is confirmed;

(ii) sentence to undergo ten months simple imprisonment and to pay a fine of Rs.500/- in default to undergo two months simple imprisonment for the offence

under Section 304(A) I.P.C. is reduced to six months simple imprisonment; and fine of Rs.500/-

(iii) both the sentences are ordered to run concurrently;

(iv) the fine amount is confirmed. It is represented that the fine amount is already paid.

The period of sentence, if any, already undergone by the revision petitioner is ordered to be given set off under Section 428 of Cr.P.C.

13. The learned Sessions Judge, Nagapattinam is directed to secure the presence of the petitioner to undergo the remaining period of sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com