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Court : Chennai

Decided On : Oct-15-2012

Reported in : 2012(4)MLJ(CrI)668; 2013CrLJ165(NOC)

Judge : B. Rajendran

Appeal No. : Criminal Revision Case No. 616 of 2008

Appellant : S. Sakir

Respondent : State of Tamil Nadu Rep. by Inspector of Police North Police Station Tirupur

Advocate for Pet/Ap. : For the Petitioner: M. Venkadeshan, Advocate. For the Respondent: C. Enilias, Government Advocate (CrI.side).

Judgement :

(Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 08.04.2008 made in Criminal Appeal No. 20 of 2008 on the file of the Additional District and Sessions Court, Fast Track Court No.IV, Coimbatore at Tiruppur modifying the judgment dated 28.12.2007 passed in C.C. No. 373 of 2005 on the file of the Judicial Magistrate No.I, Tiruppur.)

The petitioner, who was arrayed as accused in C.C. No. 373 of 2005 on the file of the learned Judicial Magistrate No.I, Tiruppur, was tried for the offence punishable under Section 279 and 304-A of IPC. After trial, the trial court convicted the petitioner for the offence under Section 279 of IPC and sentenced to pay fine of Rs.1,000/-, in default, to undergo one month imprisonment and also convicted him under Section 304-A of IPC and sentenced to undergo one year rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo one month imprisonment. Aggrieved by the judgment of the trial court, the petitioner filed an appeal before the appellate Court. The appellate Court, while confirming the conviction imposed on the petitioner for the offences under Sections 279 and 304-A of IPC, set aside the sentence of punishment of fine of Rs.1,000/- imposed on the petitioner for the offence under Section 279 of IPC and also modified the sentence of one year imposed on the petitioner under Section 304-A of IPC to six months, however enhanced the fine amount of Rs.1,000/- to Rs.2,000/-, in default to undergo imprisonment for three months. As against the same, the present Criminal Revision Case is filed.

2. The facts of the case, as could be unfolded from the records, is that on 10.07.2005 at 8.30 pm, PW3 was riding a motor cycle bearing Registration No. TN 39 S 4617 in which the deceased Madurai Veeran was travelling as a pillion rider. When the vehicle was nearing Bishop School in Angeripalayam Road, the Maruti Car bearing Registration No. TN 39 AC 4008, which was coming in the opposite direction and was driven by its driver in a rash and negligent manner, hit the two wheeler driven by PW3. After dashing the two wheeler, the car rammed into the compound wall of the school. In the impact, PW3 as well as the deceased sustained grievous injuries and were taken for treatment to Government Hospital, Tirupur, from where, they were referred to Coimbatore Medical College Hospital, Coimbatore. In this context, a complaint was given by PW1 to the respondent police based on which the case in Crime No. 1781 of 2005 came to be registered for the offences punishable under Section 279 and 338 of IPC on 10.07.2005. Based on the registration of the case, PW11, Sub-Inspector of Police commenced investigation and recorded the statement of the witnesses. During the course of investigation, on 12.07.2005, In spite of treatment, the deceased Madurai Veeran died in the hospital. Therefore, the FIR in Crime No.1781 of 2005 was altered into

one under Section 304-A of IPC.

3. The learned counsel for the petitioner would contend that neither PW1 or PW3, who was the driver of the two wheeler, have identified the accused and there was no evidence to show that it is the petitioner who had driven the car. Once there is no direct evidence to prove that the petitioner had driven the car, the courts below ought to have given the benefit of doubt in favour of the revision petitioner, instead of convicting him for the offences under Section 279 of IPC. Even according to PW1, who was projected by the prosecution as an eye witness, he has admitted in the cross-examination that he did not see the petitioner driving the car. He would further depose that the passers-by have chased and caught the driver of the car and only based on their version, he came to know that it is the petitioner who had driven the car. Therefore, PW1 is an hearsay witness. Similarly, PW3 also admitted that he has not seen the driver of the car nor the driver was identified by conducting an identification parade. Even PW3 in his cross-examination had stated that he do not know as to who had driven the car. Thus, PW3 also did not identify the petitioner as the driver of the car. Therefore, the evidence of Pws 1 and 3 are not trustworthy, believable and based on their version, the courts below ought not to have convicted the petitioner.

4. On the other hand, the learned Government Advocate appearing for the respondent would contend that Pws 1 and 3 are the eye witnesses in this case and they have categorically stated that the car was coming in the opposite direction in a high speed and dashed against the two wheeler driven by PW3, even though there was a speed breaker in the accident spot. Thus, inspite of the speed breaker, the car was driven at a high speed which resulted in the accident. In fact, after hitting the two wheeler driven by PW3, the car rammed into the compound wall of Bishop's school near the accident spot, which would indicate the rash and negligent driving with which the car was driven. The revision petitioner, immediately after causing the accident, ran away from the scene of occurrence and he was caught hold of by the passers-by who crowded the accident spot. In other words, the petitioner was caught red handed by the passers-by and his identity was clearly established. The courts below analysed the evidence available on record and came to a correct conclusion. Therefore, the order passed by the

courts below need not be interfered with.

5. I heard the counsel for both sides. The main ground of attack raised by the counsel for the petitioner is that the prosecution witnesses have not identified the identity of the revision petitioner as a driver of the car. When we read the evidence of PW1 he would only say this in his cross-examination:-

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6. Thus, it is evident that PW1 came to know from the mob crowded on the spot that the car was driven by the petitioner and he has not seen the petitioner at the accident spot.

7. Similarly, PW3, who was also projected as an eye witnesses on behalf of the prosecution and who was driving the two wheeler in which the deceased was travelling as a pillion rider, would only say this in his cross-examination:-

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8. Therefore, PW3 also says that he do not know who had driven the car and he came to know about the driver of the car only on the next day. Thus, both Pws 1 and 3, who were projected as an eye witnesses on behalf of the prosecution, have not deposed about the identity of the deceased. Further, Pw1 as well as PW3 would depose that there were about 10 to 15 persons crowded on the accident spot, but other than Pws 1 and 3, none of them were examined to establish the identity of the revision petitioner. In the absence of the same, it has to be concluded that the prosecution has not proved the guilt against the revision petitioner/accused beyond reasonable doubt and therefore the revision petitioner/accused is entitled to benefit of doubt.

9. Accordingly, the conviction and sentence imposed on the petitioner by the courts below are set aside. The Criminal Revision Case is allowed. The surety bond, if any, executed by the petitioner/accused shall stand cancelled. Fine amount, if any, paid by the petitioner/accused is ordered to be refunded.

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