

**Maheswaran Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/965273](http://sooperkanoon.com/965273)

**Court :** Chennai

**Decided On :** Jan-28-2013

**Judge :** B.Rajendran

**Appellant :** Maheswaran

**Respondent :** State

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:28.01.2013 CORAM THE HONOURABLE MR.JUSTICE B.RAJENDRAN CrI.R.C.No.138 of 2007 Maheswaran ...Petitioner Versus State Rep by The Inspector of Police, Kinathukadavu Police Station Thamarikulam Village, Pollachi, Coimbatore Dt. ...Respondent PRAYER: Criminal Revision Petition filed under Section 397 and 401 of the Criminal Procedure Code against the order passed by the Additional District, Fast Track No.1, Coimbatore as an appellate court by conforming the sentence and convicting the petitioner u/s 304(A) IPC for one year simple imprisonment and fine of Rs.2000/- in default simple imprisonment for 3 months by its judgment passed in C.A.No.469 of 2004 dated:

24. 01.2007 conforming the judgment in C.C.No.485 of 2000 dated 06.10.2004 passed by the Learned Judicial Magistrate No:

1. at Pollachi. For Petitioner :Mr.Ananthakrishnan for M/s.Ma.P.Thangavel For Respondent :Mr.R.Prathap Kumar Government Advocate (Crl. Side) ORDER This revision is filed against the order passed by the learned Additional District Judge,

Fast Track No.1, Coimbatore passed in C.A.No.469 of 2004 dated 24.01.2007 conforming the judgment made in C.C.No.485 of 2000 dated 06.10.2004 by the learned Judicial Magistrate No. 1, Pollachi. 2.The learned Judicial Magistrate No. 1, Pollachi convicted the revision petitioner for the offence under Section 304(A) of I.P.C. and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months. The learned Additional District Judge, Fast Track No.1, Coimbatore, confirmed the conviction and sentence passed by the lower court. 3.The learned counsel for the revision petitioner would contend that, the grievance of the petitioner is that the lower court did not properly appreciate the evidence of the alleged eye-witnesses P.W.3 to P.W.5. He would further contend that P.W.3 could not have seen the occurrence at all, since, in the cross-examination he has categorically admitted that he was behind two buses, namely, the bus which made the accident as well as the Government bus. Therefore, he could not have seen the accident as stated by him. Secondly, the evidence of P.W.4 is very clear and according to him, he only contends that he has seen the incident 100 feet away from the accident spot and his contention is that there were three buses going, whereas, the version of P.W.3 is that there were only two buses going. Therefore, there are total contradictions in-between the evidence of P.W.3 and P.W.4. He would further contend that, P.W.5 has given an entirely different version that there was a lorry and two buses and the bus first overtook the lorry and then overtook the government bus and was driven. He would further contend that since, there were total contradictions between the versions of P.W.3 to P.W.5, the lower court ought to have given the benefit of doubt to the accused/ revision petitioner. 4.The learned counsel for the revision petitioner would further contend that, according to the evidence of P.W.9, Sub-Inspector of Police, the complaint was given at 1.15 p.m., whereas, the evidence has been recorded at 9.30 a.m., whereas, the Inspector of Police would contend that when he was in the police station, complaint was lodged in his presence. Therefore, there is contradiction in respect of the timing of complaint and starting of investigation. He would also further contend that according to the Inspector of Police, the investigation started at 10.30 a.m. When there are such vital contradictions, the court ought not to have convicted the accused/ revision petitioner. He would further contend that none of

the witnesses, excepting the Investigation Officer has stated from which direction the bus was going on and where the deceased has crossed the road. When there is no specific allegation regarding the way in which the vehicle was driven and the way in which the accident has occurred, the court ought not to have granted the conviction and sentence. 5. The learned Government Advocate (Crl. Side) would contend that all the three eye-witnesses have categorically stated that the revision petitioner was the driver of the offending vehicle and he was trying to overtake the vehicle, namely, the bus standing in the bus-stand and the deceased person was only walking in the road and met with the accident and died on the spot. Therefore, they cannot be construed as person who has not seen the accident. He would further contend that, at the same time, the evidence of the Investigation Officer is very clear and he has spoken about the direction. Therefore, the contradictions have not been taken much note of. 6. Heard both parties. By consent of both the parties, the main revision itself is taken up for final disposal. 7. Though unfortunately, a 60 years old person died when crossing the road, even as admitted by the case of the prosecution, the prosecution has totally failed to prove that there was rash and negligent act on the part of the driver of the vehicle to seek for conviction. 8. In this case, the prosecution has relied upon the so-called eye-witnesses P.W.3 to P.W.5, but, when we analyse the evidence of P.W.3 to P.W.5, P.W.3 categorically states that he was behind the offending vehicle as well as the bus which was standing in the bus stand and that he was driving a two wheeler. In the evidence, he has also categorically stated that he only saw the front portion of the bus hitting the person, but, if he was really standing much behind the two vehicles, he could not have seen what has happened, coupled with the fact that he has not stated from which side, the vehicle was going and where the deceased was crossing the road and how the accident occurred. 9. Similarly, when we examine the evidence of P.W.4, he has categorically stated that there were three buses going, two busses and a government bus and the revision petitioner over-took the government bus. How that third bus came, we do not know. He would further admit in the cross-examination that he saw the accident 100 feet away from the occurrence spot. In the evidence, he would also state that the vehicle was overtaking the government bus which was also on the move. Hence, there are definite contradictions between the evidence of P.W.3 and

P.W.4. 10. Similarly, when we analyse the evidence of P.W.5, according to him in the chief examination itself, he would say that he was coming along with P.W.4 when the accident took place and that the bus driven by the revision petitioner first overtook a lorry and then overtook a Government bus and then hit against the deceased person who was walking on the Northern direction, and the person died on the spot. But he does not say that he has seen the accident as to how the accident took place. In the cross examination, he states that he was a van driver by profession. Then he could not have missed the correct identity. For the first time, a lorry comes into place which is not the case of the prosecution. Therefore, this contradiction is fatal to the case of the prosecution. 11. When we also consider the evidence of the conductor of the bus driven by the revision petitioner and who was examined as P.W.11, he would state that there was a bus stop and in the bus stop, the Government bus was standing and the bus which was driven by the driver was overtaking the bus and also would admit that the deceased person was crossing the road on the front of the government bus from West to East. Therefore, he crossed the road and the accident has taken place. In fact, this has been elicited in the cross-examination. 12. When we analyse the evidence of the Sub-Inspector of Police, examined as P.W.9, he would state that when he was in the police station on 15.08.2000 at about 1.15 hours, P.W.3 came and gave a complaint and that has been registered as F.I.R. Ex.P.4. But, when we examine the evidence of the Investigation Officer, examined as P.W.12, he says that when he was in the police station on 15.08.2000 at about 9.15 hours in the morning, he had received the F.I.R. registered by P.W.9 and went to the occurrence spot at 10.00 a.m. and examined the witnesses and prepared the observation mahazer Ex.P.6 and rough sketch Ex.P.7 and conducted the inquest enquiry between 10.30 a.m. to 1.00 p.m. and prepared the inquest report Ex.P.8. Therefore, there is contradiction in respect of the time when the F.I.R. was registered. The Sub-Inspector of Police, examined as P.W.9 says that the F.I.R. was registered at 1.15 hours and the Inspector of Police, examined as P.W.12 says that he received the F.I.R. at 9.15 in the morning and started investigation at 10.00 a.m. which is a vital contradiction. 13. Further, in the cross-examination of the Investigation Officer, he would state that "tpgj;J nuhl;od; ,lJ g[wk; jhd; ele;Js;sJ/" Therefore, we do not find any evidence to show that the vehicle was driven in such a rash and negligent

manner by the eye-witnesses. What we transpire is that the person who was alighting from the bus, the person who has crossed in front of the standing state government bus has been hit by this bus. 14. In this connection, the learned counsel for the revision petitioner would also rely upon the decision of the Hon'ble Supreme Court reported in 1972 Cri.L.J.49 (Mahadeo Hari Lokre vs. The State of Maharashtra) for the proposition that if a pedestrian suddenly crosses a road without taking note of the approaching bus there is every possibility of his dashing against the bus without the driver becoming aware of it. The bus driver cannot save accident however slowly he may be driving and therefore he cannot be held to be negligent in such a case. 15. The facts of the case cited supra, squarely applies to the facts of the present case. The accident is admitted and the driver of the vehicle is admitted. When the bus was driven and somebody crosses the road suddenly, the accident takes place and the driving is beyond his control is the answer given by the revision petitioner. Further, from the evidence, we are not able to establish that there is rash and negligence on the part of the driver. Therefore, following the decision of the Hon'ble Supreme Court reported in 1972 Cri.L.J.49 (Mahadeo Hari Lokre vs. The State of Maharashtra) this Court feels that this is the fittest case where the Court has to interfere with the order passed by both the courts below as there is no clear cut evidence at all. 16. Hence, this revision is allowed and the conviction and sentence of the courts below is set aside. At this stage, the learned counsel for the revision petitioner fairly submitted before the Court that the revision petitioner was the driver of the vehicle which is admitted. The accident is also admitted. But, it was beyond his control. As it shakes his conscience, the revision petitioner would like to compensate the deceased person and has voluntarily come forward to pay a compensation of Rs.50,000/- (Rupees Fifty Thousand Only) to the family members of the deceased person. 17. Hence, at the time of acquittal of the revision petitioner, the gesture made by the revision petitioner is accepted. The revision petitioner is permitted to deposit the sum of Rs.50,000/- (Rupees Fifty Thousand Only) as compensation to the family members of the deceased person within a period of two months from the date of receipt of a copy of this order to the credit of C.C.No.485 of 2000 on the file of the learned Judicial Magistrate No.1 at Pollachi. 18. The learned Judicial Magistrate No.1, Pollachi is directed to issue notice to P.W.2, since P.W.2 is the

son of the deceased and ascertain the details of the family members of the deceased and then disburse the compensation amount of Rs.50,000/- (Rupees Fifty Thousand Only), deposited by the revision petitioner to the family members of the deceased. 19.In the result, this revision is allowed. The judgment passed by the learned Additional District Judge, Fast Track No.1, Coimbatore in C.A.No.469 of 2004 dated 24.01.2007 confirming the judgment made in C.C.No.485 of 2000 dated 06.10.2004 by the learned Judicial Magistrate No. 1, Pollachi, is set aside. At the same time, the gesture made by the revision petitioner in seeking to pay compensation is also recorded. 28.01.2013 Index:Yes/No Internet:Yes/No pri To 1.The Additional District, Fast Track No.1, Coimbatore. 2.The Judicial Magistrate No.1, Pollachi. B.RAJENDRAN,J., pri CrI.R.C.No.138 o

28. 01.2013

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