

Murugan Vs. State

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Court : Chennai

Decided On : Jan-03-2013

Judge : B. Rajendran

Appellant : Murugan

Respondent : State

Advocate for Def. : Ms. Jayasri Baskar Legal Aid Counsel

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

03. 01-2013 Coram THE HONOURABLE MR. JUSTICE B. RAJENDRAN Criminal Revision Case No. 1348 of 2007 Murugan .. Petitioner Versus State by The Inspector of Police SIPCOT Police Station Ranipet Vellore District .. Respondent Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. against the Judgment dated 24.08.2007 made in CrI.A. No. 66 of 2006 on the file of the Additional District and Sessions Judge, Ranipet (Fast Track Court not II), Ranipet modifying the order dated 17.08.2006 made in C.C. No. 312 of 2004 on the file of the Judicial Magistrate not II, Wallajapet, Vellore District. For Petitioner : Ms. Jayasri Baskar Legal Aid Counsel For Respondent : Mr. R. Prathap Kumar Government Advocate ORDER The petitioner stood charged for the offence punishable under Section 279 and 304-A of IPC and after trial, he was convicted for the offence under Section 279 of IPC and sentenced to pay fine of Rs.300/-, in default, to undergo simple imprisonment for a period of one month and also

convicted for the offence punishable under Section 304-A of IPC and sentenced to undergo simple imprisonment for a period of one year with fine of Rs.3000/- failing which to undergo simple imprisonment for a period of six months. On appeal, the first appellate Court, while upholding the conviction imposed on the petitioner under Section 279 and 304-A of IPC, modified the punishment imposed under Section 304-A of IPC from one year to three months and also set aside the sentence of fine imposed on him. As against the judgment of conviction passed by the first appellate Court, the petitioner has filed the present Criminal Revision Case.

2. The case of the prosecution, as could be unfolded from the records made available, is that on 11.09.2004 at about 6.45 pm, the petitioner had driven the lorry bearing Registration No. MSM 943.near the Brandy Shop situate in the National Highways, Lalapet Village, Ranipet, towards Ponnai in a rash and negligent manner and dashed against the cyclist Raghavan and caused his death on the spot. In this context, a complaint was given by Ramanan, PW1, who had witnessed the occurrence, to the respondent on the basis of which the case in Crime No. 256 of 2004 came to be registered against the petitioner for the offences under Section 279 and 304-A of IPC.

3. The learned counsel for the petitioner would contend that the evidence of PW1, who was projected as an eye witness to speak about the occurrence, is not reliable and trustworthy inasmuch as he has not seen the occurrence at all. PW2 was stated to have witnessed the occurrence and he was also a witness to the observation mahazar prepared by the respondent. However, PW2 was treated as hostile in so far as observation mahazar is concerned and he was not subjected to cross-examination with respect to his deposition as an eye witness. Therefore, by placing reliance on the evidence of PW2, the Courts below are not justified in basing a conviction against the petitioner, which is not only illegal but not in accordance with law and she prayed for allowing the Criminal Revision Case.

4. The learned Government Advocate appearing for the respondent would contend that PW1 is the complainant, on whose complaint, the criminal prosecution came to be launched against the petitioner. PW1 in categorical terms deposed that he

witnessed the accident in which the lorry ran over the cyclist and caused his instantaneous death. Such evidence of PW1 was also corroborated by PW2, who also witnessed the accident. Pws 3 and 4 have reached the scene of occurrence after the accident, however, they have categorically deposed that they saw the deceased in a pool of blood in the accident spot beneath the back side wheel of the vehicle. Further, there is no evidence adduced on the side of the accused to show that the Cyclist, in any way, contributed to the accident and in the absence of the same, it is not open to the petitioner to question the conviction and sentence imposed on him, The learned Government Advocate would further submit that the Motor Vehicle Inspector, who was examined as PW7, had categorically deposed that the lorry, which was driven by the petitioner, is free from any mechanical defect. While so, the Courts below are justified in convicting and sentencing the petitioner accused. In fact, the first appellate Court has reduced the sentence from one year to three months, while so, no further leniency be shown to the petitioner/ accused and he prayed for dismissal of the Criminal Revision Case 5. I heard the counsel for both sides and perused the materials placed on record. The accident was witnessed by Pws 1 and 2. PW1 has categorically deposed that he saw the lorry driven in a rash and negligent manner and hit the cyclist, with the result, the cyclist was crushed to death beneath the back wheel of the vehicle. PW2 deposed that when he was conversing with PW1 in front of the brandy shop, which is situate in a busy locality, he saw the lorry driven by the petitioner in a haphazard manner with high speed and hit the cyclist. Merely because PW2, in his cross-examination says that he saw the deceased lying in a pool of blood after hearing a huge sound, it will not vitiate the case of the prosecution or it cannot be said that he has not witnessed the accident. In fact, no suggestion was made to Pws 1 and 2 in regard to the fact that they have not witnessed the accident at all. Further, PW2 was cross-examined by the petitioner, who was treated hostile in so far as observation Mahazar is concerned. However, there was no suggestion made by the petitioner as to whether PW2 witnessed the accident or not when his testimony with regard to the accident is trustworthy and reliable. Therefore, there is cogent evidence adduced by the prosecution witnesses about the manner in which the vehicle was driven by the petitioner which resulted in the accident. Thus, if the entire evidence available on record namely Pws 1 and 2, who are eye witnesses,

Pws 3 and 4 and PW7, Motor Vehicles Inspector is taken into account, coupled with the fact that the deceased died due to the accident, this Court is of the view that the Courts below are justified in basing a conviction and sentence as against the petitioner. In fact, the trial Court imposed sentence of one year, which was reduced by the first appellate Court to three months and set aside the fine amount by showing leniency. There is no appeal filed by the prosecution as against the reduction of sentence and sought for enhancement of the sentence imposed on the petitioner. Under those circumstances, I am not inclined to interfere with the judgment of conviction passed by the first appellate Court.

6. In the result, the Criminal Revision Case is dismissed. The learned Judicial Magistrate not II, Wallajapet, Vellore District is directed to take steps to secure the presence of the petitioner and confine him to imprisonment so as to undergo the remaining period of sentence. 03-01-2013 rsh Index : No Internet : Yes To 1. The Additional District and Sessions Judge Fast Track Court not II Ranipet 2. The Judicial Magistrate not II Wallajapet Vellore District.

3. The Member Secretary Tamil Nadu Legal Service Authority High Court Buildings Chennai

104. B. RAJENDRAN, J rsh Crl RC No. 1348 o

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