
(2001) 02 MAD CK 0119

In the Madras High Court

Case No : Criminal R.C. No. 271 and Cri. R.P. No. 269 of 2000

Jerald

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 27-02-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2001) 2 ALT(Cri) 226 : (2001) CriLJ 3656 : (2001) 2 LW(Cri) 615

Hon'ble Judges : N. Dhinakar, J

Bench : Single Bench

Advocate : T. Sudanthiram, for the Appellant; N.R. Elango, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Dhinakar, J.—The petitioner is the accused in C.C. No. 54 of 1997 on the file of Judicial Magistrate No. II, Kancheepuram. Though he was tried under Sections 279 and 304-A, IPC, the learned Magistrate convicted him only u/s 304-A, IPC and sentenced him to suffer simple imprisonment for a period of six months and also directed him to pay a fine of Rs. 2000/- with a default sentence of three months" simple imprisonment. The learned Magistrate, however, did not give any finding as regards the offence u/s 279, IPC.

2. The allegation against the petitioner is that he being a driver of a bus belonging to a Transport Corporation, drove the same in a rash and negligent manner at 6.30 p.m. on 4-11-1996 from North to South and dashed the vehicle against one Pattammal, who was crossing the road in front of her house after taking water from the pond and as a result of the said impact, Pattammal died. The prosecution, to speak about the accident, apart from other witness, examined PWs-1, 2 and 3. The motor vehicle was also subjected to inspection and the Motor Vehicle Inspector examined the vehicle and gave a certificate that the accident did not occur on account of any mechanical defect. The body of Pattammal was also subjected to post-mortem and a Doctor conducted autopsy.

The learned Magistrate, on the evidence adduced, convicted and sentenced the petitioner as stated above, on which, an appeal was preferred by the petitioner and the same was dismissed. Hence the present revision.

3. The learned counsel appearing for the petitioner submits that the petitioner is entitled for acquittal since the prosecution has miserably failed to prove the cause of death. Ex. P-6, the post-mortem certificate, was produced before the Court by the Investigating Officer and the Doctor, who conducted autopsy had not been examined and the prosecution has not given any reason for non-examination of the Doctor. According to him, the non-examination of the Doctor is fatal for the prosecution and the contents of the documents are inadmissible as they were not spoken to by the person who prepared it. I see every force in the contention of the learned counsel. The Doctor, who issued the certificate, though according to the prosecution conducted autopsy, was not examined and no explanation was offered by the prosecution before the Court, as to why he was not examined. This Court cannot presume the cause of death as it cannot rely upon Ex. P-6, as the said document was not proved in terms of the provisions of the Evidence Act. As the cause of death is not proved, in my view, the petitioner is, entitled for acquittal and he is, accordingly, acquitted. The revision is allowed.