
(2007) 03 MAD CK 0268
In the Madras High Court
Case No : Criminal RC No. 449 of 2005

R. Shanmugam	Vs	APPELLANT
State, by Inspector of Police		RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207
Penal Code, 1860 (IPC) — Section 279, 304, 304A

Citation : (2007) 03 MAD CK 0268

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : D. Selvaraju, for the Appellant; V.R. Balasubramaniam, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—This revision has been preferred against the order passed in C.A. No. 257 of 2004 on the file of the Court of Additional Sessions Judge(Fast Track Court-2) Gobichettipalayam.

2. The case of the prosecution in brief relevant for the purpose of deciding this revision is as follows:

On 19.4.1999 at about 4.10p.m., the accused was driving a Government Bus bearing Registration No. T.N.33/N 0737 in a rash and negligent manner dashed against one Palanisamy who was riding TVS 50 bearing Registration No. 36/B-2916 at the time of accident, resulting his instantaneous death and causing injury to the pillion rider Lakshmi, the wife of Palanisamy and she also found dead and the complaint preferred by Dhanraj(P.W.2) who is the eye witness to the said occurrence.

3. P.W.11, the Sub Inspector of Police under Crime No. 160 of 1999 u/s 279 and 304(a) IPC. P.W.12 who investigated the case has laid a charge sheet. After completing the formalities against the accused on 30.4.1999, the learned Judicial

Magistrate has taken the case on file in C.C. No. 86 of 2000 and on appearance of the accused on summons, the learned trial Judge has furnished copies u/s 207 Cr.P.C. to the accused and when the offence was explained to the accused, they pleaded not guilty.

4. Before the trial Court, on behalf of the prosecution P.Ws 1 to 13 were examined and Exs P1 to P11 were exhibited and M.O1 and M.O. 2 were marked.

4a) P.W.2, an eye witness to the accident would depose that on 19.4.1999 at about 3.00pm., to 3.15 pm., while he was standing at Palanigoundenpalayam Bus Stand for boarding a bus, he saw Viswanthan and Subbaiyan came in a moped and on seeing him, they stopped the moped and they were talking each other and at that time, the deceased Palanisamy came in an another moped along with his wife from south to north who were followed by N.R.S. Town bus which was followed by a Government bus route No. 11 and the driver of the Government bus was driving the Government bus in a rash and negligent manner dashed against the moped in which Palanisamy was riding, due to the impact Palanisamy was thrown out of his moped and he fell down 25" away from the place of accident on the mud road and the pillion rider Lakshmi was pulled away by the bus for nearly 450" north and the Government bus after the accident sped away. The said Palanisamy was found unconscious stage with fracture on the leg and grievous injuries on the head and chin and was found dead on the spot. Lakshmi, the pillion rider had sustained grievous injuries and she also found dead on the spot and that the police visited the place of occurrence at about 8.00p.m in the night and conducted inquest on the corpse of Palanisamy and Lakshmi. P.W.2 has preferred Ex P2 complaint.

4b) P.W.3 another eye witness would depose that he has also corroborated the evidence of P.W2 and that the accident had occurred only due to rash and negligent driving of the driver of the Government bus.

4c) P.W.11 is the Inspector of police who had registered the case under Crime No. 166/1999 under Sections 279 and 304(a) IPC on the basis of the complaint preferred by P.W.2. Ex P6 is the first information report.

4d) P.W.12 is the investigating Officer who after conducting the investigation visited the place of occurrence and prepared observation mahazar Ex P1 in the presence of P.W1. He has also prepared Ex P7 rough sketch. Under Ex P8 Mahazar, he has recovered the broken piece of bumper of the bus which involved in the accident and its number plate. M.O.1 the broken bumper piece and M.O2 is the broken number plate of the bus. He conducted an inquest from 8.00p.m., to 10.00p.m on the corpse of Palanisamy and Lakshmi in the presence of panchayatars. Ex P10 is the inquest report relating to the deceased Palanisamy and Ex P9 is the inquest report relating to the deceased Lakshmi.

4e) P.W.4 has identified the corpse of Lakshmi and Palanisamy to the police. P.W.5 is not an eye witness. He would depose to the fact that on the fateful day, Palanisamy and his wife Lakshmi went in a moped TVS 50 bearing Registration

No. TN/36B 2916.P.W.6 has not supported the case of the prosecution. Hence he was treated as hostile witness. P.W.7 is the doctor who had conducted an autopsy on the corpse of Lakshmi and issued Ex P3 post mortem certificate. P.W.8 is the doctor who had conducted postmortem on the corpse of Palanisamy and issued Ex P4 post mortem certificate.

4f) P.w.9 is the witness inEx P1 mahazar. P.W.10 the Motor Vehicle Inspector who would depose that the accident had not occurred due to any mechanical defects. Ex P5 is the report. P.W.13 is the Motor Vehicle Inspector who had examined TVS 50 which involved in the accident and gave Ex P11 report which shows that there was no mechanical defects in the moped bearing Registration No. TN/36B 2916.

5. When incriminating circumstances were put to the accused, he denied his complicity with the crime. After going through the oral and documentary evidence, the learned trial Judge has found that the accused guilty u/s 304(a) IPC and convicted and sentenced to undergo one year rigorous imprisonment and a fine of Rs. 1000/- under each count with default sentence. Aggrieved by the findings of the learned trial Judge, the accused had preferred an appeal in C.A. No. 257 of 2000 before the Additional Sessions Judge(Fast Track Court-2) Gobichettipalayam,Erode. The learned Sessions Judge, after going through the evidence and also giving due deliberation to the submissions made by both counsel has dismissed the appeal thereby confirming the conviction with modification of sentence. The first appellate Court has reduced the sentence from one year to three months in each count without altering the fine amount imposed by the trial Court. Hence the revision.

6. Now the point for determination in this revision is whether the Judgment of the first appellate Court in C.A. No. 257 of 2004 is liable to be set aside for the reasons stated in the memorandum of revision?

7. The Point:

When the revision was taken up, the learned Counsel appearing for the revision petitioner would contend that no reliance can be attached to the evidence of P.W.2 who, according to the prosecution, is an ocular witness. The learned Counsel appearing for the revision petitioner would point out in the deposition of P.W.2 in the cross examination that there was no wind or rain at the time of occurrence whereas both P.W.3 and the Investigating Officer would admit that there was wind and heavy rain and that in the evidence of Investigating Officer , he would state that he could not even collect the blood stain from the place of occurrence due to heavy rain. On a perusal of Ex P7rough sketch will go to show that the corpse of Palanisamy was lying about 65" away from the place of occurrence and the corpse of Lakshmi was lying about 480" away from the place of occurrence. It is in evidence that after the impact, the body of Lakshmi, the pillion rider in the ill-fated TVS 50 driven by the deceased Palanisamy was dragged away by the bus after the accident for nearly 480" from the place of occurrence. The learned Counsel appearing for the revision petitioner would

contend that only due to the contributory negligence of the deceased Palanisamy, the accident had occurred. At the time of accident, the deceased along with his wife Lakshmi as pillion rider was proceeding from south to north and suddenly he swerved to right and at that time, the accused who was driving the Government bus was over taking another private bus and due to lack of clear vicinity, due to heavy rain and wind, the accident had occurred. It is seen from the evidence of Investigating Officer that at the time of accident, there was wind and heavy rain. The manner of accident can easily be inferred from Ex P7 rough sketch. The impact was so heavy so as to throw the victim to a distance of 65" and even after the accident the driver has not stopped the bus. But the body of the pillion rider Lakshmi was carried away by its driver to a distance of 480" by the bus. So Ex P7 is *res ipsa loquitur* to know about the rash and negligent act of the driver at the time of accident. The learned Counsel appearing for the revision petitioner would contend that due to poor vicinity at the time of accident alone, the accident had occurred.

8. Taking into consideration, the heavy rain and wind at the time of accident, I am of the view some leniency can be shown on the accused while sentencing him u/s 304(A) IPC. The first appellate Court taking into consideration of this fact in favour of the accused only has reduced the sentence from one year to three months. The learned Counsel appearing for the revision petitioner would contend that after conviction, the accused was imprisonment for nearly 20 days before grant of bail by this Court. Under such circumstances, to meet the ends of justice, I am of the view that by confirming the conviction, the sentence can be modified to that of a fine of Rs. 2500/- for each counts. Point is answered accordingly.

9. In the result, the revision is dismissed and the sentence alone is modified to that of a fine of Rs. 2,500/- for each counts instead of three months rigorous imprisonment. The learned Counsel appearing for the revision petitioner would represent that the accused had already paid a sum of Rs. 2,000/- So the accused has to pay a sum of Rs. 3,000/- towards the balance of fine amount.