

(2009) 07 MAD CK 0061

In the Madras High Court

Case No : Criminal R.C. No. 274 of 2007

Siva Subramanian

APPELLANT

Vs

State rep. by the Sub Inspector of Police

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 401

Evidence Act, 1872 — Section 105, 106

Penal Code, 1860 (IPC) — Section 279, 304(A), 307, 338, 393

Citation : (2009) 07 MAD CK 0061

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S.P. Meenakshisundaram, for the Appellant; Hasan Md. Jinnah, Assistant Public Prosecutor, for the Respondent

Judgement

G. Rajasuria, J.—Animadverting upon the judgement dated 7.2.2007 passed by the Additional Sessions Judge cum Fast Track Court No.

II, Gopichettipalayam, in C.A. No. 260 of 2006, modifying the judgement dated 8.8.2006 passed by the Judicial Magistrate II,

Gopichettipalayam, in C.C.No.580 of 2004, this criminal revision case is focussed.

2. A resume of facts, which are absolutely necessary and germane for the disposal of this criminal revision case would run thus:

(a) The police laid the police report in terms of Section 173 of Cr.P.C. as against the accused for the offences under Sections 279, 338 and

304(A) of IPC. The revision petitioner entered appearance and contested the matter. Whereupon, the trial was conducted.

(b) During trial, on the prosecution side P.W.1 to P.W.18 were examined and Exs.P1 to P9 were marked. On the accused side, no documentary

or oral evidence was adduced.

(c) Ultimately, the trial Court recorded the conviction and imposed the sentences as under:

Case No. Offence Punishment

C.C. No. 589 of 2004 279 IPC Fine of Rs. 1000/-, in default, two weeks rigorous imprisonment

338 IPC Fine of Rs. 1000/-, in default, two weeks rigorous imprisonment

304(A) IPC One year rigorous imprisonment and fine of Rs. 5000/-, in default, three months rigorous imprisonment

(d) Being aggrieved by and dis-satisfied with the judgement of the lower Court, the appeal in C.A.No.260 of 2006 was filed before the Additional Sessions Judge cum Fast Track Court No. II, Gopichettipalyam, which Court confirmed the findings of the lower Court, but reduced the sentence from one year R.I. to six months simple imprisonment for the offence u/s 304(A) IPC.

3. Challenging and impugning the judgements of both the Court below, this revision is focussed on various grounds, the warp and woof of them would run thus:

Both the Courts below failed to appreciate the evidence in the proper perspective in passing the judgements. Ex.P1-the F.I.R. reached the Court

only on 29.6.2004, even though it is claimed to have been registered on 24.6.2004 at about 6.15 hours. The police did not investigate the matter

properly even as revealed by the evidence of witnesses. Accordingly, the revision petitioner prayed for setting aside the findings of both the Courts

below and for acquitting the accused.

4. Heard both sides.

5. The point for consideration is as to whether there is any perversity or non-application of law in analysing the evidence and rendering the

judgements by both the Courts below.

6. Pithily and precisely, tersely and briefly, the case of the prosecution, as could be understood from the records, is to the effect that on 24.6.2004

at about 6.15 hours, the accused was driving the Tata Sumo car bearing registration No. 58/F.6989 from South to North direction along

Nambiyur-Gobi Main Road in a rash and negligent manner and dashed as against the Tea stall situated on the side of the road near Amarjothy Mill

and thereby caused the death of Varadaraj and grievous hurt to one Chinnaiyan. The principle of *res ipsa loquitur* if not to be applied in this case, I

am at a loss to understand as to in what case it could be successfully pressed into service.

7. The occurrence took place at 6.15 a.m. so to say, during morning hours and there was sufficient natural light and in such a case, it was for the

accused under Sections 105 and 106 of the Indian Evidence Act to explain as to how the occurrence took place. During 313 examination also

there is no whisper as to what prompted him to dash as against the tea stall. On the other hand, he would simply plead that the entire case is a false

one. The evidence of eyewitnesses, as considered by both the Courts below, would clearly evince and evidence that the accident occurred due to

the rash and negligent driving of the said offending vehicle referred to supra. The deceased and the injured, at the relevant time of the accident,

were taking tea near "Angulakshmi tea shop" of Kuppuswamy-P.W.6. In fact, P.W.2-Chinnaiyan would clearly narrate as to how the Tata Sumo

car came in a rash and negligent manner and entered into the tea stall itself and it is not the case of mere grazing somebody, who is standing on the

side of the road and causing the accident.

8. At this juncture, my mind is reminiscent and redolent of the following decisions of the Honourable Apex Court:

(i) 2002 SCC (CrI) 1448 - Bindeshwari Prasad Singh alias B.P. Singh and Ors. v.

State of Bihar (now Jharkhand) and Anr. an excerpt from it would run thus:

13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has

repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial court. In the absence of

manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction

at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that

of the trial court. But that by itself is no justification for exercise of revisional jurisdiction u/s 401 of the Code of Criminal Procedure against a

judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed

out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial

vitiating the trial itself.

(ii) 2005 SCC (Cri) 276 *Sathyajit Banerjee and Ors. v. State of W.B. and Ors.*, an excerpt from it would run thus:

22. The cases cited by the learned Counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to

be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in

flagrant miscarriage of justice.

9. A bare perusal of those decisions would exemplify and demonstrate that the High Court, while exercising its revisional jurisdiction is not

expected to interfere with the finding of fact arrived at by both the Courts below simply because one other view is possible or a different view

could be taken.

10. Both the Courts below taking into consideration the evidence of eyewitnesses correctly arrived at the conclusion that the accident was due to

the rash and negligent driving of the vehicle by the accused.

11. The contention on the side of the revision petitioner that the investigation was not done properly etc., in this case fails to carry conviction with

this Court for the reason that this case is different from other cases. Here the eyewitnesses candidly and categorically spoke about the occurrence

and as pointed out by me supra, without being tautologous, the principle of res ipsa loquitur is applicable to the facts and circumstances of this

case. The discrepancies in the investigation conducted by the police would not in any way cut at the genuineness of the very prosecution case itself.

Simply because, the investigating agency may not be prompt in sending the FIR to the Court, no adverse inference could be drawn as against the

prosecution case itself.

12. In this case even though the FIR was registered as early as on 24.6.2004, it reached the Magistrate Court on 29.6.2004. Suffice to say that

such delay on the part of the investigating agency in sending the FIR should be deprecated in unmistakable terms and I avoid as such strong meat

to deprecate such a practice. P.W.16-the Head Constable in his deposition would detail and delineate, express and expatiate that he despatched

the FIR on the same day of registration. The laches on the part of the Police should be pulled up by the higher officials. However, in this case, such

belated receipt of FIR by the Court in no way should be taken as fatal to the prosecution case.

13. I make it clear that in all cases such belated submission of FIR to the Magistrate should not be condoned automatically. But in this case,

relating to the occurrence is concerned, there is absolutely no doubt. Soon after the accident, the injured person Chinnaiyan-P.W.2 was taken to

the hospital and he took treatment as revealed by Ex.P4-the Wound Certificate. The Doctor-P.W.14 also recorded the history as under:

alleged to have(sic)(been) knocked down by van in front of Amarjothi Mills at Nambiyur at 7.00 a.m. On 24.6.2004:

(i) Lacerated injury lower hip 5x3xbonedepth

(ii) Lacerated injury ...3x2cm (3) Abrasion Rt knee joint 2x1 cm (4) Lacerated injury Rt leg Foot 3x1cm (5) Lacerated injury toe 2x1 cm (6)? #

Upper mandible 1½ referred to Erode G.H.

14. The history recorded therein by the Doctor-P.W.14 is admissible in evidence

by virtue of the decision of the Honourable Apex Court in

Rehmat Vs. State of Haryana, , an excerpt from it would run thus:

10. There is also another aspect which goes in favour of the appellant. Admittedly Padam Singh (P.W.4) along with Vijay Singh had first gone to

the Primary Health Centre for medical help but he did not disclose the name of the assailant to the Doctor. Ordinarily, in a medico legal case, the

doctor is supposed to write down the history of the injured but admittedly in this case, medical papers of Padam Singh (PW4) do not indicate the

name of the assailant. The names were disclosed only at the time when the complaint was recorded by SI Narain Singh at about 9.00 p.m. which

was treated as a formal FIR. The learned Counsel for the appellant, therefore, rightly urged that the appellant was later on implicated in the present

crime at the instance of the complainant and his friends. It may also be stated that the prosecution case even otherwise appears to us improbable

because Padam Singh (PW4) claims to have got up early in the morning and saw the appellant running from the side of his room at about 3.30 a.m.

In these circumstances, it is not possible to sustain the conviction of the appellant under Sections 307/393 of the Indian Penal Code.

(emphasis supplied)

15. As such, this piece of evidence is not only proving the occurrence, but also it saves the prosecution from being labelled as false due to the lapse

on the part of the investigating agency in submitting the F.I.R. in time to the Magistrate. P.W.14 - the Doctor spoke about the treatment given to

the injured and P.W.15-is the doctor, who conducted the postmortem. As such, the evidence of P.Ws.14 and 15, coupled with the Wound

Certificate and Postmortem Certificate would unambiguously support the prosecution version. Hence, I could see no infirmity in the finding of fact

recorded by both the Courts below.

16. Regarding the sentence is concerned, the learned Counsel for the accused would submit that the sentence might be reduced.

17. The trial Court imposed the sentence of one year rigorous imprisonment, which was reduced to six months by the appellate Court, without

disturbing the fine imposed .

18. Taking into consideration the fact that the accused was 28 years old, so to say a man of young age, I am of the view that the sentence could be

reduced to three months simple imprisonment, leaving intact the fine imposed.

19. The criminal revision case is ordered accordingly. The trial Court shall take steps to secure the presence of the accused and send him to jail to

undergo the three months simple imprisonment, if not already undergone.