
(2002) 02 KL CK 0008
In the High Court Of Kerala
Case No : Criminal R.P. No. 184 of 1995 A

Aliyarkunju Shajahan

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (2002) CriLJ 1981

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : Varinjam N. Ramachandran Nair and T.R. Aswas, for the Appellant; T.K. Latif, Public Prosecutor (for No. 1) and M.K. Chandramonahandas, (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

M.R. Hariharan Nair, J.—The challenge in the revision is with regard to the legality, propriety and correctness of the Judgment of the Sessions Court, Kollam confirming the conviction entered against the appellant, who was the conductor of a bus, for the offence u/s 304-A of the I.P.C. and imposing sentence of R.I. for six months therefor. Earlier the Judicial First Class Magistrate's Court, Kottarakkara, which tried the case, had convicted the accused and imposed a sentence of R.I. for one year for the offence u/s 304-A, I.P.C.

2. According to the learned counsel for the petitioner there is no evidence available in the case to find the appellant guilty of the offence u/s 304-A. Counsel submits that the evidence available in the case is only to the effect that the bus was stopped in a place where a heap of metal had been placed only 80 cms. away from the door of the bus and that the deceased, who was the wife of P.W. 2, had already alighted from the bus and was on the heap of metal when the vehicle was started and that it was after the said event that the metal gave way resulting in the fall of the victim, along with the metal sliding towards the road in which process her feet got under the wheel of the moving bus resulting in

her eventual death.

3. This being a revision, a re-appreciation of the entire evidence will not be possible and the evidence can be looked into only to see whether the finding entered by the trial Court could have been made on the evidence available. If two views are possible perhaps the view that was taken by the trial Court should be upheld. At the same time, this being a criminal case the fundamental principle that the accused should always get the benefit of doubt has to be borne in mind while considering the evidence available.

4. The finding of guilty was entered based on the evidence of P.Ws. 2, 4 and 8. As already mentioned, P.W. 2 is the husband of the victim. P.W. 4, who was a passenger of the same bus, turned hostile. P.W. 8 is another passenger. Learned counsel for the petitioner submitted that none of these three witnesses have stated that it was the conductor who gave the bell signalling the driver to move the vehicle forward and that the mahazar prepared in the case does not show that the vehicle was even fitted with a bell. I do not think that this discrepancy is sufficient to shake the consistent version of the three witnesses that it was on the bell being given that the vehicle was moved forward. Of course they have not specifically stated that it was the conductor who gave the bell. But the bell in a stage carriage is not intended to be used by all and sundry. It is the duty of the conductor to give appropriate signal to the driver to stop or move the vehicle and in the circumstances it is possible to assume, on the available evidence, that the bell was given by the accused himself. But then that is not the end of the matter. The accused can be found guilty of the offence u/s 304-A of the I.P.C. only if it is shown that the cause of death was a rash or negligent act on the part of the accused. That, in turn, leads us to the question whether there was failure on the part of the accused to take care in the matter of moving the vehicle as expected of him. If the evidence were to the effect that the bell was given before or in the course of the passenger getting down from the vehicle, it would have been possible to draw an inference that he did not take care to see that the passenger got down safely. But a careful perusal of the evidence of the three witnesses aforementioned indicate that it was not the immediate movement of the vehicle or the giving of the bell before the victim got down from the vehicle that led to the accident.

5. The evidence of P.W. 2 is to the effect that five or six persons including himself and the victim got down from the vehicle at the particular stop and that the victim was the last one. As already mentioned, the heap of metal was only 80 cms. away from the door. According to P.W. 2, he passed over the metal heap and went over to the northern side for the victim to reach the place where P.W. 2 was standing, she had to pass through the heap of metal. In cross-examination P.W. 2 stated that while the victim was on the heap of metal, she fell towards the road in consequence of slipping and the metal giving way. P.W. 4 also stated that but for the availability of the metal there, the accident would not have happened. What P.W. 8 deposed in chief examination was that when the vehicle was moved

forward the victim hit against the foot board and went underneath the vehicle. In cross-examination he stated that when he saw the victim she was already under the vehicle. The cumulative effect of the evidence of the three witnesses is that the injury suffered was in consequence of a fall of the victim in consequence of the metal whereon she was standing giving away and not the immediate motion of the bus before she had completed the process of getting down from the bus. In such circumstances it cannot be said that there is adequate evidence to conclude that it was a negligent act on the part of the conductor that led to the accident. In fact he had given the bell only after seeing that the last passenger also had got out of the bus and was standing on the heap of metal. In such circumstances I am of the view that the accused is entitled to get the benefit of doubt in the matter.

Accordingly the impugned Judgments are set aside and the accused is found not guilty and acquitted.