
(2015) 01 KL CK 0113
In the High Court Of Kerala
Case No : Crl.Rev.Pet. No. 2040 of 2003

Kundukulam Veerankutty	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 279, 304A, 338

Citation : (2015) 01 KL CK 0113

Hon'ble Judges : K. Ramakrishnan, J.

Bench : Single Bench

Advocate : Preethy Karunakaran, R. Rajesh Kormath and Sanjana R. Nair, for the Appellant

Final Decision : Allowed

Judgement

K. Ramakrishnan, J.—Accused in CC. No. 126 of 1998 on the file of Chief Judicial Magistrate Court, Manjeri, is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Sub Inspector of Police, Areecode in Crime No. 67/97 of Areecode police station under section 279 and 304A of the Indian Penal Code.

3. The case of the prosecution in nutshell was that on 2.04.1997, at about 5.30 p.m., the revision petitioner was driving the tata sumo car with No. KL-9D 1449 from North to South along Areecode bridge in a rash and negligent manner so as to endanger human life and hit against a scooter driven by the deceased, which was coming from the opposite direction and caused grievous injuries to him and the deceased succumbed to the injuries, on 11.04.1997 from the medical college hospital while he was undergoing treatment and thereby he had committed the offence punishable under section 279 and 304A of the Indian Penal Code.

4. After investigation, final report was filed and the case was taken on file as CC. No. 126/1998 on the file of Chief Judicial Magistrate Court, Manjeri. When the

revision petitioner appeared before the court below, particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 14 were examined and Exts.P1 to P9 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution's evidence. He had further stated that there was no negligence on his part and the accident occurred due to the negligent driving of the scooter by the deceased. No defence evidence was adduced on his side in defence. After considering the evidence on record, the trial court found the revision petitioner guilty under section 279 and 304A of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for two years and also to pay a fine of Rs. 10,000/- in default to undergo simple imprisonment for six months more. Aggrieved by the same, the revision petitioner filed Crl. Appeal No. 40/2001 before the Sessions Court, Manjeri, and the learned Sessions Judge, by the impugned judgment allowed the appeal in part, confirming the order of conviction passed by the court below under section 279 and 304A of the Indian penal Code but reduced the substantive sentence to one year and fine to Rs. 5000/- and default sentence to one month. Aggrieved by the same, the present revision has been filed by the revision petitioner- accused before the court below.

5. Heard the counsel for the revision petitioner and the learned Public Prosecutor.
6. The counsel for the revision petitioner submitted that except the evidence of PW7, there is no other evidence to prove the negligence on the part of the revision petitioner. Further, his evidence is not consistent with the manner in which the accident occurred and relying on that evidence, it is not possible to come to a definite conclusion that the revision petitioner alone was responsible for the accident. Further, the scene mahazar was prepared after two days of the incident. Even going by the scene mahazar, it will be seen that the scooter was on the wrong side. So, under the circumstances, courts below were not justified in convicting the revision petitioner for the offence alleged.
7. On the other hand, the learned Public Prosecutor supported the concurrent findings of the courts below.
8. The case of the prosecution as emerged from the prosecution witnesses was as follows:-

On 02.04.1997, at about 5.30 p.m., the revision petitioner was driving the Tata Sumo car with No. KL-9D 1449 with PWs 1 to 4 as passengers, which belong to PW5 and it was given for the purpose of a marriage party to attend the marriage and when they reached the place of occurrence, on the fateful day at the fateful time, the scooter with No. KL-10E 3172 driven by the deceased came from the opposite direction and it collided with the car driven by the revision petitioner. The deceased was taken to hospital by PW7 with a help of an autorickshaw driver

and the revision petitioner himself and he was admitted in the hospital, PW7 informed the incident to PW6, the wife of the deceased who was working as a Nurse in a hospital. The case was registered on the basis of Ext.P1 statement by PW11, who registered Ext.P5 First Information Report, for the offence under section 279 and 338 of the Indian Penal Code against the revision petitioner. The investigation in this case was undertaken by PW13. He went to the place of occurrence, and prepared Ext.P8 scene mahazar in the presence of witnesses. He questioned the witnesses and recorded the statement. On 11.04.1997, the deceased died on account of the injuries sustained in the accident. So, offence under section 338 of Indian Penal Code was deleted and 304A of the Indian penal Code was added. He conducted inquest on the body of the deceased and prepared Ext.P3 inquest report in the presence of PW9 and others. He prepared Ext.P2 body mahazar of the scooter in the presence of PW8 and another. As per the instructions given by the investigating officer, PW10, the doctor attached to the medical college hospital conducted the postmortem examination on the body of the deceased and issued Ext.P4 postmortem certificate in which he opined that the deceased died on account of the injuries sustained in the accident. The vehicles were inspected by PW12, who issued Exts.P6 and P7 reports regarding the vehicles. Ext.P9 body mahazar of the tata sumo car was also prepared. The further investigation in this case was conducted by PW14 and he verified the investigation and completed the investigation and submitted final report in the case. 9. The identity of the revision petitioner was as the driver of the Tata Sumo car has not been disputed as PWs 1 to 4 were passengers in the Tata Sumo car had identified the revision petitioner as the driver of Tata Sumo car at the relevant time. Further, PW5 the owner of the vehicle was also deposed before the court that the vehicle was given to the marriage party and it was driven by the revision petitioner at the relevant time. So, the identity of the revision petitioner is not in dispute. The fact that the car collided with the scooter at all most the middle portion of the bridge was also not in dispute. Further, PWs 1 to 4 were passengers in the car had deposed that there was no negligence on the part of the driver of the car and the scooter came from the opposite direction hit against the car. So, the only evidence available is that of PW7, who is a friend of the deceased to attribute negligence against the revision petitioner. According to him, he was coming from South to North behind the deceased's scooter at a distance of 75 metres and he had deposed that when he reached the bridge, he saw the car and the scooter colliding and the scooter falling down. Immediately he went to the place and saw the deceased lying in the road with bleeding injury and at that time he identified him as Mohandas who is a friend of his. Immediately he took the injured to hospital with the help of an autorickshaw driver and the driver of the car itself. Further, his evidence will go to show that according to him, the scooter was proceeding through proper side and the tata sumo car driven by the revision petitioner came from the opposite direction through the wrong side. But he had admitted in his evidence that the scooter hit the middle portion of the tata sumo car and then fell down. He had also stated that he did not know whether the tata sumo car proceeded further after hitting

the scooter. He had further stated that the driver of the tata sumo car applied brake only after hitting against the scooter. His evidence also will go to show that there were number of persons standing on the side of the road. But he did not know whether any football match was going on in the ground below the bridge on the western side of the road. Further, he had also stated that he had seen the vehicles after the accident. In the scene mahazar, it was mentioned that the accident occurred 3.36 metres from the eastern side from the western barricade of the bridge and it was having a width of 6.65 metres. But the tyre marks of the vehicle were noted in the scene mahazar and it is seen from the tyre mark that eastern tyre mark is 2.61 metres west from the eastern barricade of the bridge and the western tyre mark was 2.44 metres west from the western barricade. If that tyre marks were taken as the place of occurrence, then the distance of 3.36 metres mentioned as the place of occurrence, in the scene mahazar could not be the correct place of occurrence. Further, the scene mahazar was prepared after two days of the incident and the vehicle were not there at that time. So, under the circumstances, it is not to safe to rely on the description of the place of occurrence as mentioned in the scene mahazar for the purpose of coming to the conclusion that the accident occurred at the place where it was located as the scene of occurrence by the investigating officer.

10. Then the evidence is only that of PW7 to prove the incident. His evidence also will go to show that he had seen the vehicles after the accident. He had further stated that he did not know whether the tata sumo car had proceeded further after applying brake after hitting the scooter. If the overall circumstances have been analysed the evidence of PW7 alone is not sufficient to come to a definite conclusion that as to who was responsible for the accident especially when his evidence will go to show that the scooter had hit the middle portion of the tata sumo car when it fell down. If that be the case, the driver of the tata sumo car cannot be said to be negligent at all. So, under the circumstances, the courts below were not justified in relying on the description of the scene mahazar, which do not tally with the evidence of PW7 and also the evidence of PW7 it is not consistent through out regarding the manner in which the incident occurred, so as to come to the conclusion that the accident occurred, due to the rash and negligent driving of the tata sumo car by the revision petitioner, which resulted in the accident and death of the deceased who was driving the scooter at the relevant time.

11. It is true that a person died in the accident. But that alone is not sufficient to come to the conclusion that the driver of the tata sumo car was responsible for the accident, so as to convict him for the offence under section 279 and 304A of the Indian Penal Code. The prosecution has to prove beyond reasonable doubt that the accident occurred due to the reckless and negligent driving of the vehicle by the revision petitioner, which alone is responsible for the accident. Such an evidence is lacking in this case. So, under the circumstances, the finding of the courts below that the prosecution has proved beyond reasonable doubt that the revision petitioner had driven the vehicle in a negligent manner and

caused the death of the deceased and thereby he had committed the offence punishable under section 279 and 304A of the Indian Penal Code is unsustainable in law and the finding is liable to be set aside. So, the revision petitioner is entitled to get acquittal of the charge levelled against him giving him the benefit of doubt. In view of the finding that the revision petitioner is entitled to get acquittal. The sentence imposed by the courts below is also unsustainable in law and the same is also set aside.

In the result, the revision petition is allowed and the order of conviction and sentence passed by the court below and modified by the appellate court are set aside and the revision petitioner is acquitted of the charge levelled against him giving him the benefit of doubt. He is set at liberty. The bail bond executed by him will stand cancelled. The fine amount if any deposited by him before the court below is directed to be released him, on making an application before that court for that purpose.

Office is directed to communicate this order to the concerned court immediately.