

(2014) 01 KL CK 0060

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 1070 of 2003

P. Vijayan

APPELLANT

Vs

Sub Inspector of Police, Changaramkulam

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3)
Penal Code, 1860 (IPC) — Section 279 338

Citation : (2014) 01 KL CK 0060

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : K.G. Rajeesh, for the Appellant; S. Jamal, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—The accused in S.T. No. 935 of 1996 on the file of the Judicial First Class Magistrate Court, Ponnani and the appellant in CrI. A. No. 81 of 1999 on the file of the Additional Sessions Court, Manjeri is the revision petitioner herein. The appellant was charge sheeted by the Sub Inspector of Police, Changaramkulam alleging offences under Sections 279 and 338 of the Indian Penal Code in Crime No. 7 of 1996 of that Police Station. The case of the prosecution was that on 13.1.1996 at about 12 noon, the accused drove the bus with No. KL-10C-3466 along Kuttipuram-Trichur road in a rash and negligent manner so as to endanger human life and when it reached near Edapal-Chungam, hit against P.W. 3 and caused grievous hurt and thereby he had committed the offence punishable under Sections 279 and 338 of Indian Penal Code. After trial, the learned magistrate found the revision petitioner guilty under Sections 279 and 338 of Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one month and also to pay a fine of Rs. 1000/- u/s 279 of Indian Penal code and further sentenced him to undergo rigorous imprisonment for two months and also to pay a fine of Rs. 1000/- u/s 338 of Indian Penal Code and in default of payment of fine, directed

him to undergo further simple imprisonment for one month each. The substantial sentences were directed to run concurrently. Aggrieved by the same, the appellant filed Crl. A. No. 81 of 1999 before the Sessions Court, Manjeri and that was dismissed by the Second Additional Sessions Judge confirming the order of conviction and sentence passed by the trial court. Aggrieved by the same, the present revision petition has been filed by the revision petitioner.

2. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. The counsel for the revision petitioner submitted that the accident occurred not due to the negligence of the driver of the vehicle. None of the witnesses have supported the case of the prosecution. The trial court as well as the appellate court relied on the description of the place of occurrence in the scene mahazar and convicted the revision petitioner, which is not sustainable in law. The place of occurrence noted has not been proved by the prosecution as well. So, in the absence of any convincing evidence adduced on the side of the prosecution to prove the culpable negligence on the part of the driver of the bus, both the courts below were not justified in convicting the revision petitioner for the offence alleged.

4. The learned Public Prosecutor submitted that the evidence of P.W. 3 injured, coupled with the scene mahazar, will go to show that the accident occurred due to the negligent driving of the vehicle by the revision petitioner.

5. The case was registered on the basis of Ext. P1 First Information Statement given by P.W. 1 alleged to be an eye witness of the incident. The allegation in Ext. P1 was that P.W. 3 injured was walking along the western road margin and at that time, the bus driven by the revision petitioner came from behind and hit against him. Thereafter it proceeded further and hit against the median and stopped.

6. On the basis of Ext. P1, Ext. P6 First Information Report was registered by P.W. 6 and he had undertaken investigation and questioned the witnesses and thereafter filed the final report. The injured was examined by CW 7 doctor and issued the wound certificate marked as Ext. P3 and the discharge certificate was marked as Ext. P4, AMVI report was marked as Ext. P5. Ext. P2 scene mahazar was attested by P.W. 5. It is true that P.Ws. 1 and 2 did not support the case of the prosecution and they turned hostile. But that alone is not sufficient ground to disbelieve the prosecution case. P.W. 3 is the injured in this case who had categorically stated that he was walking along the western road margin and proceeding from south to north and at that time, the bus came and hit against him. He denied the suggestion that the accident occurred when he attempted to cross the road. That was the suggestion given to him and that was the case put forwarded by the revision petitioner in his 313 examination as well. But the scene mahazar was proved through P.W. 5 and he had admitted the signature in Ext. P2, and no cross examination has been done on that aspect. Further,

nothing was brought out to discredit the evidence of P.W. 6 as well, who prepared the scene mahazar regarding the place of occurrence shown in the scene mahazar. It is seen from the scene mahazar that the place of occurrence was noted as 10 c.m. west from the western road margin which shows that the accident occurred on the western road margin and not on the road as suggested by the revision petitioner. That falsifies the case of the revision petitioner that the accident occurred at the time when the injured P.W. 3 attempted to cross the road suddenly and in order to avoid the incident, he will have swerve the vehicle, in spite of that, the vehicle happened to hit against the injured.

7. Merely because P.W. 3, the injured alone supported the case of the prosecution, is not sufficient to disbelieve the case of the prosecution and acquit the accused on that ground. It is not the number of the witness examined, but the quality of the evidence adduced on the side of the prosecution that has to be appreciated by the court. There is nothing brought out to disbelieve the evidence of P.W. 3 regarding the incident and regarding the negligence on the part of the revision petitioner. So under the circumstances, the courts below were perfectly justified in relying on the evidence of P.W. 3, the injured witness and the location of place of occurrence as mentioned in Ext. P2 scene mahazar and rightly come to the conclusion that the accident occurred due to the rash and negligent driving of the vehicle by the revision petitioner, while he was driving the vehicle in a negligent manner through the public road. So the courts below were justified in convicting the revision petitioner for the offence u/s 279 of Indian Penal Code.

8. It is true that the doctor who examined P.W. 3 was not examined to prove Ext. P2 wound certificate, but that was proved through the investigating officer and the discharge card was proved through P.W. 3 injured, which will go to show that he had lost four teeth in the accident which is a grievous injury, which caused on account of the negligent act of the revision petitioner and thereby the courts below were justified in convicting the revision petitioner for the offence u/s 338 of Indian Penal Code as well. So, I do not find any reason to interfere with the order of conviction entered by the courts below against the revision petitioner under Sections 279 and 338 of the Indian Penal Code.

9. The counsel for the revision petitioner submitted that the sentence imposed is harsh.

10. The revision petitioner was sentenced to undergo rigorous imprisonment for one month and also to pay a fine of Rs. 1000/- and in default to undergo rigorous imprisonment for one month u/s 279 of the Indian Penal Code and also sentenced to undergo rigorous imprisonment for two months and also to pay a fine of Rs. 1000/- and in default to undergo simple imprisonment for one month u/s 338 of the Indian Penal Code. The substantive sentences were directed to run concurrently.

11. It is true that the accidents are increasing nowadays on account of the negligent driving of the vehicle, by its drivers on public road causing injury or

death to innocent pedestrians and it has to be viewed seriously. But at the same time, imposing fine alone will not serve the purpose as fine provided under the penal provision is very meagre. The principles of Victimology can be applied in such cases. Sending the accused to prison or imposing maximum fine provided u/s alone will not serve the purpose. Instead of that, awarding compensation to the victim and minimising the sentence of imprisonment will be sufficient and that will meet the end of justice. So considering the circumstances and also the nature of injury sustained, I feel that the sentencing the revision petitioner to undergo imprisonment till rising of court and also to pay a compensation of Rs. 5,000/- u/s 279 of Indian Penal Code and also sentencing him to undergo imprisonment till rising of court and also to pay a compensation of Rs. 5,000/- u/s 338 of the Indian Penal Code and in default of payment of compensation directing him to undergo simple imprisonment for two months each u/s 357(3) of the Code of Criminal Procedure will be sufficient punishment and that meet the end of justice. So, while confirming the order of conviction passed by the courts below against the appellant under Sections 279 and 338 of Indian Penal Code, the sentence imposed by the court below are set aside and the same is modified as follows:

The revision petitioner is sentenced to undergo imprisonment till rising of court and also to pay a compensation of Rs. 5,000/- u/s 279 of Indian Penal Code and also sentenced him to undergo imprisonment till rising of court and also to pay a compensation of Rs. 5,000/- u/s 338 of the Indian Penal Code and in default of payment of compensation by him to undergo simple imprisonment for two months each u/s 357(3) of the Code of Criminal Procedure. If the compensation amount is realised, the same will be paid to P.W. 3 by the court below. The revision petitioner is directed to appear before the court below on 25.2.2014 to receive the sentence.

With the above modification of the sentence imposed by the court below, the revision petition is disposed of.