

(1995) 09 KL CK 0012
In the High Court Of Kerala
Case No : Criminal R.P. No. 524 of 1992

Paulose

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 294
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1996) CriLJ 203 : (1996) 1 ILR (Ker) 376

Hon'ble Judges : Dhinakar, J

Bench : Single Bench

Advocate : P. Velayudhan and T.M. Chandran, for the Appellant; E. Thankappan), for the Respondent

Final Decision : Allowed

Judgement

Dhinakar, J.—The Petitioner now stands convicted for offences under Sections 279 and 304A I.P.C. For the former he was sentenced to suffer rigorous imprisonment for 2 months and for the latter he was sentenced to rigorous imprisonment for 6 months. He was also directed to pay a fine of Rs. 1,000/- for the said offence u/s 304A and in default of payment of fine he was directed to suffer simple imprisonment for a period of 2 months. The sentences of imprisonment were directed to run concurrently. There was also a further direction that the driving licence of the petitioner will be suspended for a period of one year. The case of the prosecution is, that on 28-9-1987 at about 3.30 p.m. on the road in front of the house of one Sanku, situated at Nellikkurussi amsom and desom, the petitioner being the driver of the temple van bearing registration No. KER 900, drove the same from east to west through the Nellikkurussi-Murukkumpatta public road in a rash and negligent manner and in a high speed and when the vehicle driven by him reached at the place of occurrence, it hit the body of a boy, Kader, aged about 8 years. On account of the said impact the boy sustained grievous injuries on his head who was then removed to the Medical College Hospital, Trichur, where he succumbed to the injuries on 6-10-1987.

2. P.W.1 is the first informant and Ext.P1 is the first information statement. He is an eye-witness to the occurrence. P.Ws 2 to 4, though were examined as eye-witnesses, P.W.4 alone supported the case of prosecution. P.W.5 was cited to prove the scene mahazar and he proved Ext.P2, the scene mahazar. Similarly P.W.6 who was examined to prove Ext.P3, the mahazar prepared for the seizure of the clothes from the dead body, supported the prosecution and proved Ext.P3. Ext.P4 was proved through P.W.7. P.W.8 was the doctor attached to the Medical College Hospital, who sent the death intimation Ext. P5 to the police and P.W.9 is the Assistant Motor Vehicles Inspector, Ottapalam, who inspected the vehicle and issued the inspection report, Ext.P6 wherein he has stated that the occurrence was not due to any mechanical failure. P.W.10, the Circle Inspector of Police, completed the investigation and laid the final report against the accused u/s 173 of the CrI.P.C. P.W.10 filed Ext.P7 the postmortem certificate alleged to have been issued by a doctor who conducted the postmortem of the dead body of Kader, the deceased in the case.

3. The counsel for the petitioner contended that the prosecution has miserably failed to prove the cause of death of the boy in as much as the doctor who conducted the postmortem on the dead body of the deceased was not examined before the court and the postmortem certificate Ext. P7 was also not proved in terms of the Evidence Act or in terms of Section 294 CrI.P.C. Section 294 CrI.P.C. reads as follows:

294. No formal proof of certain documents. --(1) where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed;

Provided that the Court may, in its discretion, require such signature to be proved.

A reading of the above section shows that when a document is filed before any court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document. It also interdicts that the list of documents shall be in such form as may be prescribed by the State Government. Only where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, or trial without the proof of the signature of the person to whom it purports to be signed. There is no

material before this Court to show that before Ext. P7 was produced and marked as an exhibit, the petitioner was called upon to admit or deny the genuineness of Ext. P7. Ext. P7 was also not filed through a list which shall be in the (sic) prescribed by the State Government as contemplated under sub-section (2) of Section 294 Crl. P.C.

4. I have perused the evidence of P.W.10 and he has stated as follows:

I obtained the postmortem certificate of the deceased Kaderkutty in this case from Dr. Sadasivam and produced before the court. The said certificate is the one showed to me. It is marked as Ext. P7.

There is nothing in the evidence to show that before the marking of the document the accused was called upon to admit or deny the genuineness of that document. As the prosecution did not strictly comply with the provisions of Section 294 Crl.P.C., I am of the view that Ext.P7 ought not have been marked and proved as a document evidencing the cause of death of the deceased Kader.

5. In Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Others, the apex court held that the mere marking of a document as an exhibit does not dispense with the proof of document. A Full Bench of the Bombay High Court in Shaikh Farid Hussinsab v. The State of Maharashtra (1983 CrL.L.J. 487) took the view that a document becomes both relevant and authentic evidence of its contents without the proof of its authenticity by the author or anybody else by force of Section 294 on its conditions being complied with. It is not in dispute that the conditions contemplated u/s 294 were not complied with in this case and in my view the non-compliance of the conditions contemplated u/s 294 makes Ext. P7 inadmissible and it is rejected.

6. As the prosecution has not proved the cause of death, the charge against the petitioner u/s 304A has to be set aside and accordingly it is set aside. As the prosecution did not examine any doctor to prove the nature of injuries sustained by the injured the petitioner is entitled for an acquittal u/s 279 I.P.C. also. For the reasons mentioned above this revision petition is allowed. The petitioner is acquitted and his bail bonds shall stand cancelled. The fine amount, if already paid, will be refunded to the petitioner.