

---

**(2009) 05 KL CK 0025**

**In the High Court Of Kerala**

**Case No : Criminal Rev. Petition No. 45 of 2001**

V.R. Raman Nair

APPELLANT

Vs

State

RESPONDENT

---

**Date of Decision : 26-05-2009**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 134, 174, 187  
Penal Code, 1860 (IPC) — Section 279, 304A

**Citation : (2009) 05 KL CK 0025**

**Hon'ble Judges : R. Basant, J**

**Bench : Single Bench**

**Advocate : O.V. Maniprasad, for the Appellant; Public Prosecutor, for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

R. Basant, J.—In this revision petition the petitioner assails the concurrent verdict of guilty, conviction and sentence in a prosecution, inter alia, u/s 304A IPC.

2. The prosecution alleged that at 8.30 p.m. on 1.4.92 at the scene of the crime the revision petitioner was driving his lorry along the M.C. road from north to south in a rash and negligent manner. On account of rashness and negligence of the revision petitioner the vehicle driven by him hit against a bicycle in which the deceased Johny was proceeding in the opposite direction. The accident allegedly took place on a 8.40 Mtrs. wide road; but the spot of the accident, it is alleged, was 2.90 Mtrs. to the east of the western kerb. In the First Information Statement that was registered there was no allegation against the revision petitioner; nor was there even an allegation that the petitioner's vehicle or any lorry was involved in the accident. The First Information Statement was registered at 10.30 p.m. on the same night. Investigation commenced. After completing the investigation, P.W.11 - the Investigating Officer filed the final report.

3. The accused denied the offences alleged against him and thereupon the prosecution examined P.Ws.1 to 11 and proved Exts.P1 to P12. M.Os.1 to 5 were also marked.

4. P.W.1 is the owner of the lorry who had given Ext.P1 letter to P.W.11 to confirm that he is the owner of the lorry and that the vehicle at the time of the accident was entrusted to the revision petitioner as a paid driver. P.W.2 is the brother of the deceased. He was not an eye witness. The alleged accident took place at about 8.30 p.m. He received information shortly thereafter. He rushed to the scene of the occurrence. His brother was lying injured there. Local people had assembled. He along with some others took his brother in a vehicle to the Doctor. The Doctor pronounced him dead. Thereafter, he lodged Ext.P2 First Information Statement at 10.30 p.m. P.Ws.3 and 4 claimed to be the eye witnesses to the occurrence. According to them, they had witnessed the occurrence as they were available at the scene of the occurrence. They are persons residing in that locality. According to them, it was a case of hit and run. The vehicle involved in the accident was driven away without stopping after the incident by its driver to the southern side. It will be relevant to note that the final report is filed under Sections 279 and 304A IPC as also Section 134(a) and (b) read with Section 187 of the M.V. Act. But both P.Ws.3 and 4 claimed that they had identified the number of the vehicle and were also in a position to identify the driver of the vehicle at the relevant time. According to them, the petitioner was the driver of the vehicle. P.W.5 is the attesor to Ext.P3 scene mahazar. The scene mahazar shows that the road at the relevant place had a width of 8.40 Mtrs. The cycle involved in the accident was at the middle of the road. 2.90 Mtrs. is the distance from the western kerb to the front wheel of the bicycle on the west; whereas 3 Mtrs. is the distance from the rear wheel of the vehicle to the eastern kerb of the road. There were tyre marks to the south of the scene of the occurrence. Blood marks were also available near the scene of the occurrence. P.W.6 is the attesor to Ext.P4 under which Ext.P10 General Vehicle Record of the lorry of P.W.1 was seized by the police. That shows that the petitioner was the driver of the vehicle at the relevant time. P.W.7 is the attesor to Ext.P5 inquest report prepared by P.W.11 Investigating Officer. That shows that even at 11 a.m. on 2/4/92 when the inquest report was closed they had no clue that a lorry was involved in the accident. P.W.8 is the Head Constable who registered Ext.P6 FIR on the basis of Ext.P2 P.W.9 Doctor conducted the post-mortem examination and issued Ext.P7 certificate. P.W.10 is the Motor Vehicle Inspector who inspected the vehicle of P.W.1 on 6/4/92 and issued Ext.P8 inspection report which showed that there were marks on the vehicle which suggested involvement in a recent accident. P.W.11, as stated earlier, completed the investigation and filed the final report. According to him, the petitioner appeared and produced the vehicle before the police on 6/4/1992. He had on 7/4/92 submitted Ext.P9 report to the court to confirm the number of the vehicle involved in the accident as also the complicity of the petitioner herein. Ext.P12 report was filed to include the allegations u/s 134 of the M.V. Act.

5. The accused took up a defence of total denial. He did not adduce any evidence.
6. The courts below concurrently came to the conclusion that the oral evidence of P.Ws.3 and 4 can safely be accepted when they stated that the vehicle K.E.F. 2032 belonging to P.W.1 was involved in the accident. The courts below further found that the evidence of the disinterested witnesses P.W.3 and 4 can be accepted when they identified the petitioner as the driver of the vehicle at the relevant time. The courts below further drew inspiration for the evidence of P.Ws.3 and 4 from Ext.P8 inspection report which suggested that the vehicle was involved in some recent accident. Accordingly, the courts below proceeded to pass the impugned concurrent verdict of guilty, conviction and sentence.
7. The learned Counsel for the petitioner and the learned Public Prosecutor have advanced their arguments. The learned Counsel for the petitioner argues that this is unfortunately a case where the suspicion raised on the basis of the testimony of P.Ws.3 and 4 has resulted in wrong and incorrect implication of the petitioner. The learned Counsel for the petitioner submits that, in any view of the matter, the petitioner is entitled to the benefit of doubt. The evidence of P.Ws.3 and 4 may not be accepted as gospel truth notwithstanding the inability of the petitioner to suggest specific motive for P.Ws.3 and 4 to falsely implicate the petitioner. The totality of circumstances may be taken into consideration. Probabilities may not be ignored, contends the learned Counsel for the petitioner.
8. To my mind the crucial question is whether the oral evidence of P.Ws.3 and 4 about the identification of the vehicle involved in the accident can be accepted or not. If the courts were satisfied that the vehicle K.E.F. 2032 (of which as per Ext.P1, P.W.1 is the owner and as per Ext.P10(a) the petitioner was the driver) were involved in the accident, a safe conclusion of guilt against the accused can be drawn. But basically the question is whether P.Ws.3 and 4 had witnessed the incident and they had seen that the deceased was knocked down by the said lorry. The learned Counsel submits, and I feel persuaded to accept the submission, that the evidence of P.Ws.3 and 4 deserves to be scrutinised very closely and carefully.
9. At the out set, it is pointed out that P.W.2 who reached the scene of the crime long later after receiving information about the incident was not told and did not gather or understand that a lorry was involved in the accident. This is perhaps clear from the evidence of P.Ws.2 as also Ext.P2 First Information Statement lodged by him. The learned Counsel for the petitioner argues that if P.Ws.3 and 4 had witnessed the incident and they were able to understand that a lorry was involved in the accident and that the said lorry bore the number K.E.F. 2032, it is very unlikely that P.W.2 would have been ignorant about the vehicle involved in the accident. Ext.P2 indicates clearly that the identity of the vehicle was not traced ( - some vehicle). The learned Counsel for the petitioner contends that the fact that P.W.2 was not able to report to the police that a lorry was involved in the accident (leave alone the number of the vehicle) is crucial while considering the evidence of P.Ws.3 and 4 on the probabilities.

10. The learned Counsel further submits that Ext.P5 inquest report is also crucial. P.W.11 who conducted the inquest u/s 174 had examined yet another person who had reached the scene of the occurrence and had taken the deceased to the hospital. Even then, the Investigating Officer who prepared Ext.P5 report and completed the preparation at 11 a.m. on 2/4/92 had not come to know that a lorry was involved in the accident, the conclusion in Ext.P5 is also only that some vehicle was involved in the accident. That to my mind is crucial and of vital significance.

11. It is true that specific motive has not been alleged against P.Ws.3 and 4 to justify an admitted false implication by them. The suggestion is that they knew the deceased and his brother and that to support a claim for compensation such statements are being given by P.Ws.3 and 4. The absence of mention of the fact that a lorry was involved in the accident in Ext.P2 as also Ext.P5 persuades me to agree with the learned Counsel for the petitioner and conclude that, in any view of the matter, it will be safer, more just and reasonable to concede to the accused the benefit of doubt which is aroused in the mind of the courts on the basis of those two crucial circumstances.

12. It will be inapposite in this context to note that while in the witness stand there is a serious incongruity between the evidence of P.Ws.3 and 4 about the number of the vehicle involved in the accident. While P.W.3 stated that K.E.F.2032 was involved in the accident, P.W.4 stated that K.E.F.6032 was involved in the accident. There is no specific evidence of any authentic earlier identification of the lorry or the driver by P.Ws.3 and 4 in the course of investigation. By itself there may not be crucially relevant; but in the broad facts and circumstances of this case even these inadequacies which are not attempted to be clarified at any stage do appear to me to be relevant. They cannot be ignored. It is true that Ext.P8 indicates that there were some marks on the lorry concerned. But the oral evidence of P.W.10 indicates that he is not able to assert that those marks suggested any recent damage suffered by the vehicle. The damage noted on the vehicle under Ext.P8 does not also, in these circumstances, persuade me not to concede the benefit of doubt to the revision petitioner.

13. The conclusion appears to be inevitable, in these circumstances, that this revision petitioner is entitled to succeed.

14. In the result:

(a) This revision petition is allowed.

(b) The concurrent verdict of guilty, conviction and sentence imposed on the petitioner is set aside.

(c) He is found to be entitled to the benefit of doubt. Consequently, he is found not guilty and acquitted.