
Abhijit Vs Sub Inspector Of Police

Criminal Revision Petition No.19 Of 2016

Court: High Court Of Kerala

Date of Decision: Sept. 15, 2023

Acts Referred:

Code of Criminal Procedure, 1973 " Section 313(1)(b), 397, 401#Indian Penal Code, 1860
" Section 279, 304A#Motor Vehicles Act, 1988 " Section 3(1), 181

Citation: (2023) 09 KL CK 0119

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: Sunny Mathew, P G Manu

Final Decision: Dismissed

Judgement

A. Badharudeen, J

1. This Revision Petition has been filed under Sections 397 r/w 401 of the Code of Criminal Procedure ("Cr.P.C." hereinafter) and the revision

petitioner is the sole accused in C.C.No.473/2010 on the files of the Judicial First Class Magistrate Court-II, Mananthavadi. Respondent herein is the

State of Kerala. The revision petitioner impugns judgment in C.C.No.473/2010 dated 13.03.2014 rendered by the Judicial First Class Magistrate Court-

II, Mananthavadi as well as the judgment in CrI.Appeal No.43/2014 dated 27.11.2015 on the files of the Additional Sessions Court, Mananthavadi

arising therefrom.

2. Heard the learned counsel for the revision petitioner/accused and the learned Public Prosecutor appearing for the State.

3. The prosecution case runs as under:

The case of the prosecution is that at about 6.45 p.m on 14.04.2010, the defacto complainant, who travelled as pillion rider, on a motor bike bearing

Registration No.KA 01 E G 4310 ridden by one Ratheesh, met with an accident. The specific case is that, when they reached at Kuzhinilam, an

autorickshaw bearing Registration No.KL12A 3452 came from the opposite direction after overtaking another autorickshaw in a rash and negligent

manner so as to endanger human life, through Thalappuzha " Peruva Public Road, knocked down the defacto complainant and Ratheesh. In this

occurrence Ratheesh died and the defacto complainant sustained injuries. On this premise, crime was registered alleging commission of offence

punishable under Section 279 and 304A of the Indian Penal Code ('IPC' for short hereafter) as well as under Section 3(1) r/w Section 181 of the

Motor Vehicles Act, 1988 ('M.V Act' for short hereafter) and later on investigation, final report also was filed in this regard.

4. The trial court took cognizance of the above offences, secured the presence of the accused for trial and recorded evidence. PWs 1 to 9 were

examined and Exts.P1 to P11 were marked on the side of the prosecution.

5. When opportunity was given to the accused to adduce evidence after questioning him under Section 313(1)(b) of Cr.P.C, the accused did not

adduce any evidence.

6. The trial court appraised the evidence after addressing the arguments tendered by the learned Assistant Public Prosecutor as well as the learned

counsel appearing for the revision petitioner/accused, finally convicted him for the said offences and sentenced him as under:

"In the result accused is sentenced to undergo Rigorous Imprisonment for 3 months u/s 279 IPC and Rigorous Imprisonment for 6 months u/s 304(A) IPC. He is

also sentenced to undergo Simple imprisonment for 3 months (Three months) and to pay a fine of Rs.500/- (Rupees five hundred only) u/s 3(1) r/w 181 of Motor

Vehicle Act, 1988. Sentence shall run concurrently. Set off, if any, is allowed.

7. Aggrieved by the conviction and sentence imposed by the trial court, the revision petitioner filed appeal before the Sessions Court, Wayanad, vide

Crl.Appeal No.43/2014. As per the judgment dated 27.11.2015, the learned Sessions Judge, on re-appreciation of evidence, confirmed the conviction

as well as the sentence.

8. While assailing the concurrent verdicts of conviction as well as sentence, the learned counsel for the revision petitioner given emphasis to Ext.P4

scene mahazar to contend that the place of occurrence was not proved in this case since witness to Ext.P4 scene mahazar is not a person who

witnessed the occurrence. Apart from that the learned counsel for the revision petitioner/accused argued that on reading the narrations in Ext.P3 body

mahazar in relation to the motorcycle as well as the autorickshaw, there is anomaly in the prosecution case regarding the manner in which the

accident occurred. It is argued further that, as such, prosecution miserably failed to prove the case beyond reasonable doubt. Therefore, the courts

below went wrong in convicting and sentencing the accused and the revision petitioner deserves acquittal.

9. Whereas the learned Public Prosecutor would submit that the evidence of PW1, the injured, who had given candid version as to the rash and

negligent driving of the autorickshaw driver, who had driven the auto rickshaw bearing Registration No.KL 12A 3452 at the time of accident after

overtaking another autorickshaw and overlapping on the side of the motorcycle is well established and there is no effective cross examination to

challenge the direct evidence of eye witness. In such a case, there is no reason to disbelieve the prosecution case merely on the ground that the eye

witness not shown the place of occurrence to prepare Ext.P4 scene mahazar. It is argued by the learned Public Prosecutor further that even by

reading the narration in the body mahazar Ext.P3, then also, the accident, as stated by PW1 and as alleged by the prosecution, is very much

established. It is also submitted by the learned Public Prosecutor that the accused was found guilty for the offence punishable under Section 3(1) r/w

181 of the M.V Act, since he had driven the auto rickshaw without a driving licence. Therefore, the conviction and sentence do not require any

interference, is the submission of the learned Public Prosecutor.

10. In this matter the specific case of the prosecution is that while Ratheesh (deceased) was riding his motorcycle along with PW1, as pillion rider,

from west to east, through the northern side of the road and when they reached at Kuzhinilam, an autorickshaw bearing Registration No.KL 12A 3452

driven by the accused/revision petitioner herein, came in the opposite direction after overtaking another autorickshaw, hit against the motorcycle and

thereby PW1 sustained serious injuries and rider of the motorcycle Ratheesh succumbed to the injuries. PW1 examined in this case is the pillion rider

on the motorcycle. He had given evidence in support of the prosecution and stated that while he was travelling as a pillion rider on a motorcycle ridden

by Ratheesh from Mananthavadi to Kottiyoor at about 6.45 p.m on 14.04.2010 an autorickshaw bearing Reg.No.KL 12A 3452 came from

Mananthavadi towards Thalappuzha, hit down the motorcycle at Kuzhinilam. According to PW1, the autorickshaw hit on the handle of the motorcycle

and both of them fell down. PW1 admitted that he had given statement in this occurrence to the police and the said statement is Ext.P1. He identified

the accused as the driver of the autorickshaw at the time of occurrence. Regarding the identity of the accused as the driver of the autorickshaw, no

question asked during cross examination and identity of the accused is not a subject matter under challenge. During chief examination, as I have

already extracted, the evidence of PW1 is that the autorickshaw hit on the handle of the motorcycle and during cross examination PW1 clarified that

the right side of the autorickshaw hit on the motorcycle.

11. The suggestions made during cross examination of PW1 was that a false case was registered in order to grab compensation to Ratheesh, who

died in the occurrence. PW2 is a witness to the inquest report marked as Ext.P2 and he supported Ext.P2. Ext.P3 is the body mahazar of the vehicle.

Ext.P3 has been given much reliance by the learned counsel for the accused to shake the prosecution case. According to him, as per Ext.P3, there

was damage on the petrol tank of the motorcycle and at the same time, the damage to the autorickshaw is on the rear side. On perusal of Ext.P3, it

could be gathered that the damage was noted in relation to the motorcycle on its right handle and on the petrol tank. Coming to the damages to the

autorickshaw, there was damage on the right side near back tyre and damage to the mudguard on the rear side. In this case, the case of the

prosecution as deposed by PW1 is that the autorickshaw came from the opposite direction, after overtaking another autorickshaw, hit on the handle of

the motorcycle. As per Ext.P3, damage on the handle and the petrol tank adjacent to the handle has been narrated. Similarly, the back portion of the

autorickshaw hit against the motorcycle and thereby there are damages on the right and right rear side of the autorickshaw, as per Ext.P3. Therefore,

it could not be held that the prosecution case is not probable, as argued by the learned counsel for the revision petitioner.

12. Coming to Ext.P4, the scene mahazar, even though PW1 is not the person who had shown the place of occurrence, no cross examination was

effected at the time when author of Ext.P4 was examined and there was not even remote suggestion disputing the place of occurrence as per Ext.P4.

Therefore, the revision petitioner/accused cannot raise objections in the matter of scene mahazar without raising challenge before the trial court at the

time of examination of PW9, who had prepared Ext.P4. Even otherwise evidence of PW1 as to occurrence tallies with the narration of Ext.P4 and,

therefore, it would not help the accused in any manner. Ext.P4 mahazar was proved, through PW9 as well as PW4, who signed Ext.P4 and no cross

examination effected to disbelieve the version of PW4. PW5, the owner of the autorickshaw, admitted that the accused was entrusted to drive the

autorickshaw on the relevant date of occurrence and he took the autorickshaw on kychit after the occurrence from the police.

13. As regards to cause of death of Ratheesh, the rider of the motorcycle, PW6 Dr.Hakeem given evidence that death was due to head injury and

shock from hemo thorax and he had given evidence in support of Ext.P4 certificate justifying the same. PW7 is the Head Constable attached to

Mananthavadi Police Station and he recorded Ext.P1 F.I.S and Ext.P1(a) FIR and he supported this part of evidence.

14. In so far as the rash and negligent driving on the part of the revision petitioner/accused is concerned, the evidence of PW1 supported by the other

evidence, as discussed herein above, would establish the same without any reasonable doubt. Therefore, the trial court as well as the appellate court

concurrently held that the accused herein committed offence punishable under Sections 279 and 304(A) of IPC as well as Section 3(1) r/w 181 of the

Motor Vehicle Act. Similarly, the prosecution established the fact that the accused did not have the driving licence at the time of occurrence and the

accused did not produce driving licence to establish that he had driving licence at the time of occurrence. Thus the conviction rendered by the trial

court and confirmed by the appellate court does not require any interference. Coming to sentence, the same is also very moderate, considering the

nature of offence. Therefore, the sentence also does not require any interference at the hands of this Court.

15. Accordingly, this Revision Petition stands dismissed.

16. The order suspending sentence and granting bail to the revision petitioner shall stand cancelled as also, the bail bond executed by him.

17. The revision petitioner/accused is directed to surrender before the trial court within two weeks to undergo the sentence. If he fails to do so, the

trial court is directed to execute the sentence without fail.

Registry is directed to forward a copy of this order to the trial court for information and execution of the sentence without fail.