courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 04/11/2025

(2014) 06 KL CK 0217

High Court Of Kerala

Case No: Crl. Rev. Pet. No. 2227 of 2003

Vidyadharan APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision: June 3, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 354(4)
- Penal Code, 1860 (IPC) - Section 279, 304A, 304-A

Citation: (2014) 06 KL CK 0217

Hon'ble Judges: P. Ubaid, J

Bench: Single Bench

Advocate: B.S. Swathy Kumar, Sri Remya Murali, Sri Ashish Mohan and Sri Rajesh A.K, Advocate for the Appellant; Lilly Leslie, Public Prosecutor, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Ubaid, J.
The revision petitioner challenges the conviction and sentence against him under Sections 279 and 304-A IPC. One Bhaskaran was knocked down on the Murukkumpuzha - Mangalapuram public road at about 8.45 p.m on 23.08.1995 by the autorickshaw No. KL-01 F 896 driven by the revision petitioner. Due to the fatal injuries sustained in the accident Bhaskaran died on the next day in the hospital. On the allegation that the said accident occurred due to the rashness and negligence on the part of the revision petitioner, a crime was registered against him in the Mangalapuram police station. After investigation, the police submitted final report before the Judicial First Class Magistrate Court -II, Attingal.

2. The revision petitioner pleaded not guilty during trial. The prosecution examined 13 witnesses, and also marked Exts. P1 to P11 documents and MO.1 series properties.

When examined u/s 313 Cr.PC also the revision petitioner denied the incriminating circumstances. In defence he examined a doctor as DW1 and proved Ext. D1 to prove that he had also sustained some injuries in the alleged accident. On an appreciation of the evidence adduced by the prosecution the trial court found him guilty under Sections 279 and 304-A IPC. On conviction he was sentenced to undergo simple imprisonment for six months u/s 279 IPC and to undergo simple imprisonment for two years u/s 304A IPC. As regards the defence evidence, the trial court found that it will not in any manner justify the accident.

3. Aggrieved by the conviction and sentence the revision petitioner approached the court of Session Thiruvananthapuram with Crl. Appeal No. 223/1999. In appeal the learned Sessions Judge confirmed the conviction and sentence, and accordingly dismissed the Crl. Appeal.

4. On hearing both sides and on a perusal of the case records including the evidence given by the material witnesses I find that the prosecution has well proved the case on facts. Practically there is no dispute regarding the death of Bhaskaran in a motor accident involving the autorickshaw driven by the revision petitioner. When the prosecution alleges that the alleged accident occurred to his rash and negligence, the case pleaded by him is that the unfortunate accident occurred, or Bhaskaran happened to be knocked down, when he carelessly crossed the road. Of the 13 witnesses examined by the prosecution the material witnesses are PW1 to PW3. Of them PW 3 turned hostile during trial. The crime was investigated by the Circle Inspector, Mangalapuram, who was examined as PW13. I do not find any irregularity or illegality or flaw in the investigation conducted by the Circle Inspector. In fact the evidence of officials in this case including that of the doctor who conducted postmortem examination is formal. On facts there is not much dispute, except regarding the cause of accident.

5. Of course, PW1 is the son of the deceased and PW2 is the grandson. Their evidence cannot be rejected or doubted simply on the ground that they are related to the deceased. These two witnesses have no reason to given any false evidence against the revision petitioner. Both the witnesses well identified the revision petitioner in court as the driver of the vehicle involved in the accident, and they are well consistent and definite that the deceased happened to be knocked down due to the rashness and negligence on the part of the revision petitioner. This evidence given by them stands not discredited effectively. They also denied the defence case that Bhaskaran happened to be knocked down when he carelessly crossed the road. Both are consistent that Bhaskaran was proceeding along the proper side of the road and he was knocked down by the Autorickshaw which came up from behind. I find that finding regarding rashness and negligence was properly made by the two courts below on the basis of satisfactory and acceptable evidence given by the material witnesses who witnesses in the entire incident. I find nothing wrong in the findings made by the two courts below or in the conviction made under Sections 279 and 304-A IPC. I find no irregularity or illegality for interference.

6. Of course, some interference is felt necessary in the sentence. Every accident is quite unfortunate. It is quite natural that the person who was responsible for the accident will try to find out some excuse. In this case, the material witnesses are consistent regarding the reason for the accident. Still some slight doubt remains. But this is not of a high degree, or of such a nature that benefit of it could be given to the accused for an order of acquittal. However this will have to be considered in deciding the quantum of sentence. The Ext. P2 scene Mahazar will show that the exact spot of accident was 90 cms away from the southern road margin. If this is accepted, the court will have to find that the revision petitioner was on the wrong side. But both the material witnesses are consistent that the accident occurred at the northern side of the road and they have no case that the autorickshaw came along the wrong side. Though such a slight doubt is there the factual aspect stands proved that the revision petitioner was in fact responsible the accident. That is why I said that this doubt is not something, the benefit of which could be given for an acquittal. The alleged accident occurred in August 1995, and now we are in June 2014. Considering the long lapse of years since the date of accident, the age of the accused, and also the probable mental stress under gone by the revision petitioner on the thought of conviction and sentence. I feel that some modification can be made in the sentence by reducing it to the minimum possible u/s 354(4) Cr.PC. Accordingly the sentence can be limited to simple imprisonment for three months in view of Section 354(4) Cr.PC, which the revision petitioner can undergo in the District Jail.

7. In the result, this revision petition is allowed in part, confirming the conviction against the revision petitioner under sections 279 and 304-A IPC, however modifying the sentence to the limited extent, that the substantive sentence of imprisonment imposed under Sections 279 and 304-A IPC will stand reduced to simple imprisonment for three months each, which the revision petitioner can undergo concurrently. The revision petitioner will surrender before the trial court within one month from this date to serve out the sentence, on failure of which steps shall be taken by the trial court to enforce the sentence.