

P.M. John Vs State of Kerala, Represented by its Public Prosecutor High Court of Kerala

Court: High Court Of Kerala

Date of Decision: March 11, 2016

Acts Referred: Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2016) 2 CriCC 795 : (2016) 4 Crimes 387 : (2016) 2 KHC 441 : (2016) 2 KLT 331

Hon'ble Judges: K.P. Jyothindranath, J.

Bench: Single Bench

Advocate: Liji J. Vadakedom, Advocate, for the Appellant; Jibu P. Thomas, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.P. Jyothindranath, J.â€”This Criminal Revision Petition is filed against the concurrent finding of conviction by the trial court and the appellate

court. The judgment dated 30.11.2004 in CrI. Appeal No.463/2003 on the file of the Additional Sessions Court, Kottayam and the conviction

passed by the Chief Judicial Magistrate, Kottayam in C.C.No.671/2002 are under challenge. The conviction is under Section 279 and 304 (A) of

IPC. The sentence imposed is rigorous imprisonment for three months and to pay a fine of Rs. 1000/- under Section 279 of IPC and to undergo

rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- under Section 304(A) of IPC.

2. Shorn of unnecessary details, the facts in this case are as follows :

A road traffic accident occurred on 6.11.2002 at about 3.45 p.m. on the K.K. Road at Kottayam involving a lorry bearing Reg. No.KL I 2216

and a bus bearing Reg. No.KEK 9379. The lorry was proceeding from west to east direction. The width of the road on that area is 7.96 metres

and the spot of incident as evident from the scene mahazar is 46 cm. southwards from the northern tar end. It is the case that the deceased K.J.

Joseph, who is the owner of the bus bearing Reg. No. KEK 9379 sandwiched in between the lorry and his bus. On the said incident, a crime is

registered for the offences under Section 279 and 304(A) of IPC.

3. The prosecution examined three eye witnesses as PWs 1 to 3 and Exts.P1 to P10 were marked. Altogether there are 10 witnesses on the side

of the prosecution. On the side of the defence, Ext.D1 is seen marked. After appreciating the evidence, both the courts below found that the

revision petitioner/accused committed the offence.

4. When the revision petition came up for hearing, the learned counsel for the revision petitioner submitted before me that here is a case where the

courts below committed illegality and the impugned judgments are perverse in nature. It is a fit case where the revisional powers of the court have

to be invoked. It is the submission that the courts below erred in its finding regarding the criminal negligence attributed against the petitioner. It is an

admitted case that it is a case of collision. It is the further submission that admittedly the lorry was on its proper side of the road and the case of the

prosecution is that the bus was trying to turn to go towards Kalathippadi. For the said purpose, the bus was moving in a reverse direction. The bus

was then moving across the road. It is submitted that the three witnesses examined by the prosecution mutually contradict in this aspect. It is also

submitted that PW1 is none other than the son of the deceased, whereas the second witness is an employee of the deceased and third witness is

none other than the driver of the bus involved in the accident.

5. The learned counsel for the revision petitioner further submitted before me that in this case when the accident occurred on the proper side of the

road through which the lorry has to be plied, the burden upon the prosecution is very high to prove that the petitioner committed criminal

negligence. The prosecution got a case that there was a traffic jam. But at the very same time, no other independent witnesses were examined to

show that there was such a traffic jam. PW1 was also allegedly therein saying that he also was driving another bus of the deceased and happened

to be therein. It is the submission that the evidence of PW1 is an interested version. The driver of the bus involved also will be an interest witness.

PW2 is an employee of the deceased. Naturally there is every chance of implicating the petitioner herein, especially when prosecution got a definite

case that deceased was the owner of the bus. If deceased was the owner, he cannot claim any compensation from the Insurance Company of the

bus as there is negligence on the part of deceased and the insured is the deceased himself.

6. I heard the learned Public Prosecutor. The learned Public Prosecutor submitted before me that in this case the trial court as well as the appellate

court correctly found that the petitioner is guilty. When there is a concurrent finding, interference by this court is warranted only when there is

illegality or perversity.

7. I perused the records in this case. It is a case where the accident occurred near to the northern margin of the road. At the place of incident, the

road is in a straight line for about 250 metres i.e. there is a clear vision of about 100 metres towards west and further there is a clear vision of 150

metres towards east. Two vehicles are involved in the accident. Surely, the evidence of PW1 shows that while the bus was trying to take

backwards, the incident occurred, whereas the evidence of PW2 is to the effect that it is not so. On a perusal of the judgments of the courts

below, it can be seen that while appreciating the evidence, the trial court highlighted that ""an argument was advanced on the side of the defence that

accident occurred while the bus was taken in reverse direction. None of the prosecution witnesses stated such a case. Truly, while cross examining

PWs 1 to 3 certain minor contradictions and omissions were crept. Those contradictions and omissions not at all destroy the case attempted to

establish on the side of the prosecution."" But the appellate court in its judgment in paragraph 4 stated that ""After traffic jam the bus was reversed

for proceeding further. The deceased was giving direction to the bus driver by standing on the public road near the side of the bus. At that time

accused drove the lorry in a rash and negligent manner hit on the deceased and thereafter crushed him with the bus."" Highlighting the above

evidence of PW1, it is further held by the appellate court that ""PW2 also has given a similar version given by PW1. Even after traffic jam accused

had driven the lorry in a rash and negligent manner and hit against the deceased. It is clear from the evidence of PW2 that the accused had driven

the lorry through the road not considering the road block. PW3 stated that the deceased was talking with him at the time of incident on the public

road.

8. PW3 is the driver of the bus bearing Reg. No.KEK 9379. Thus, what comes out is that, as per the evidence of PW1, the vehicle was moving in

a reverse direction. That was accepted by the appellate court, whereas the trial court was of the opinion that it is not so. Similarly, it is highlighted

by the appellate court that the driver of the bus, who was examined as PW3 was talking to the deceased i.e. when the deceased was on the tarred

portion of the road and was talking to the driver of the bus, the accident occurred.

9. The accident occurred on the tarred portion, that also on the proper side of the road in respect to the lorry involved. When the road is in a

straight line for about 250 metres at that place and one of the vehicles was moving in reverse direction, that also across the road and the driver was

talking to the deceased, it cannot be said that the revision petitioner alone was responsible for the accident. The appellate court find fault with the

revision petitioner on the ground that there was traffic block. Apart from the interest testimony of PW1 to PW3 there is no other evidence on this

aspect. If there was traffic block, it would not be possible for the driver of the lorry to proceed with speed as well as it would not be possible to

turn the bus across the road. The accident shows that front portion of the lorry hit against the right side of the bus. Thus, I feel that appreciation of

evidence by the trial court as well as by the appellate court was not correct. It is perverse in nature. This is a fit case where revisional powers of

this court can be invoked.

10. If that is so, when two vehicles are involved in an accident, i.e., when a person is sandwiched in between two vehicles, that also on the tarred

portion of a road and the bus involved was seen reversing across the road, it may be unsafe to come to a conclusion that there is criminal

negligence on the side of the driver of the lorry, when admittedly the driver of the bus involved was talking to the deceased, that also on the tarred

portion of the road.

11. Thus, it is a fit case where this Court can interfere. The conviction and sentence passed by the courts below are hereby set aside. The revision

petitioner is set at liberty. The bail bonds stand cancelled.

12. The revision petition is accordingly allowed.