R. Nandakumar Vs State

Court: Madras High Court

Date of Decision: Sept. 24, 2013

Citation: (2014) 1 LW(Cri) 547 : (2013) 4 MLJ(Cri) 619

Hon'ble Judges: K.B.K. Vasuki, J

Bench: Single Bench

Advocate: S.N. Arunkumar, for the Appellant; C. lyyapparaj, Government Advocate (Crl. side), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.B.K. Vasuki, J.
The accused is the revision petitioner herein. The revision is filed by the petitioner against his conviction and sentence

made in C.C. No. 587 of 2004 as confirmed in C.A. No. 323 of 2006 for the offence u/s 304A IPC. The criminal law was set in motion against

the accused on the basis of the complaint given by P.W. 1, who is none else then the wife of the deceased Nagaraj. The complaint proceeds as if

407-Van was driven by the accused on Pollachi to Palacode Road and the same was driven at high speed in rash and negligent manner and hit and

dashed against one Nagaraj who was going on the southern side of the road, as a result, he sustained serious injuries and succumbed to the same,

thereby the accused committed the offence punishable u/s 304A IPC.

2. The prosecution in order to prove the guilt of the accused examined the defacto complainant and other independent witnesses, who are,

according to the prosecution, eyewitnesses of the occurrence, postmortem Doctor, Mahazar witnesses and police officials as P.W. 1 to P.W. 13

and produced Exhibit P-1 to Exhibit P-8 documents. The Trial Court on the basis of the available evidence, arrived at a conclusion that the van

dashed against the deceased from behind and the van driver was found guilty of the offence u/s 304A IPC and convicted and sentenced him for

the same. Aggrieved against the same, the accused preferred C.A. No. 323 of 2006. The lower Appellate Court on the basis of the same

evidence agreed with the findings of the Trial Court and confirmed the Trial Court judgment. Hence, the present revision by the accused before this

Court.

3. Heard the rival submissions made on both sides.

4. The learned counsel for the petitioner would vehemently attack the correctness of the judgment of conviction and sentence of the Courts below

on the following two grounds:

(i) there was no direct eyewitnesses to prove the manner in which the offending van was driven by the accused and the manner in which the

accident occurred and (ii) there is no specific finding about the rash and negligent driving of the accused resulting in the accident leading to the

death of the victim.

5. It may be true that the evidence of P.W. 11 -Mariappan, who is the owner of the vehicle, would disclose the factum and involvement of the

vehicle in the occurrence and the same would not automatically go to prove the manner in which the vehicle was driven and the accident occurred.

As already referred to, out of eight prosecution witnesses, P.W. 1 is admittedly not an eyewitness of the occurrence. It is categorically deposed by

her that she rushed to the scene of occurrence only after receiving information about the occurrence. P.W. 3 would also categorically say that

P.W. 3-Damodaran, P.W. 2-Swaminathan, P.W. 4-Balamurugan, P.W. 7-Krishnan reached the scene of occurrence only after hearing the noise

and at that time, the scene of occurrence was dark and no source of light was available in the same. If that is so, there is no possibility of their

having seen the accused, driving the vehicle in rash and negligent manner and dashed against the accused from behind. Even otherwise P.W. 2

except stating in the course of his chief examination that the vehicle came at speed, did not depose that the vehicle was driven in rash and negligent

manner at high speed. It is spoken only by P.W. 4-Balamurugan and P.W. 5-Ramalingam but P.W. 7-Krishnan has not deposed so either in his

chief or cross examination. But the evidence of P.W. 4 and P.W. 5 need not be attached any reliance for the simple reason that the same stands

contradicted by the evidence of P.W. 3.

6. Thus, the combined appreciation of evidence of P.W. 2 to P.W. 5 and P.W. 7 would amply demonstrate their evidence is not cogent and

convincing enough to prove the rash and negligent manner and at high speed, in which the Van was driven. On their failure to render cogent

evidence, both the Courts below have failed to render any specific finding in this regard.

7. Further, as rightly pointed out by the learned counsel for the petitioner, the presence of P.W. 2 to P.W. 5 and P.W. 7 is not even mentioned in

the complaint given by P.W. l/wife. Except mentioning the presence of P.W. 8-Sakthivel and another, she did not refer to the very presence of

other witnesses in the scene of occurrence. Out of two witnesses mentioned in the FIR, P.W. 8 did not support the case of prosecution and other

witness was conveniently committed to be brought into the witness box. It is also relevant to point out at this juncture that the witnesses as referred

to above did not admittedly say any thing about the rash and negligent manner in which the Van was driven in the statement given to the IO and the

IO has also categorically admitted in the course of his cross examination about the omission or failure to make one such statement from the

witnesses.

8. Here is the case, wherein not only the oral evidence of witnesses do not support the prosecution theory regarding the manner of occurrence, but

also, they do not disclose requisite ingredients to constitute the offence u/s 304A IPC and their evidence is not only bereft of material particulars,

but also stand contradicted. As the witnesses would uniformly say that the accident occurred, when the deceased was about to cross the road at

00.30 hours, the judgment of the Hon''ble Supreme Court in Mahadeo Hari Lokre Vs. The State of Maharashtra, will come to the aid of the

accused. The facts involved in that decision are identical to the facts of the present case. There again, the vehicle was driven on the public way and

the accident took place when the pedestrian suddenly crossed the road without noticing the bus. The Hon''ble Supreme Court was of the view that

if a pedestrian suddenly crossed a road without taking note of the approaching bus, there is every possibility of his dashing against the bus, without

the driver becoming aware of it and the bus driver cannot save accident however slowly he may be driving and therefore he cannot be held to be

negligent in such a case. The law laid down by the Hon''ble Supreme Court in the judgment above cited is squarely applicable to the facts of the

present case.

9. Considering the time and place of the accident and the manner in which the accident occurred, the direction from which the deceased was about

to cross the road and absence of the light if coupled with the failure of the witnesses to depose about the manner of accident would only lead to

serious doubt as to whether the accident occurred in the manner as narrated by the prosecution. Both the Courts below on the basis of the legally

permissible evidence ought to have raised genuine doubt about the involvement of the accused in the commission of the offence and on their failure

to do so resulted in totally erroneous and perverse judgment of conviction and sentence and the same deserves serious interference from this

Court. In the result, the criminal revision stands allowed and the order of conviction passed by both the Courts below stand set aside. The bail

bond if any executed by the accused shall stand cancelled and the fine amount if any paid by the accused shall be refunded to him.