

Anil Kumar Vs. the Sub Inspector of Police

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Court : Kerala

Decided On : Jan-24-2014

Judge : Honourable Mr. Justice K.Abraham Mathew

Appellant : Anil Kumar

Respondent : The Sub Inspector of Police

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW FRIDAY, THE 24TH DAY OF JANUARY 2014 4TH MAGHA, 1935 CrI.Rev.Pet.No. 1293 of 2003 ()
----- AGAINST THE

JUDGMENT

IN CRA2312000 of ADDL.DISTRICT COURT (ADHOC-I), KOZHIKODE DATED 1001-2003 AGAINST THE

JUDGMENT

IN CC7841995 of J.M.F.C.-I, KOZHIKODE DATED 2904-2000 REVISION PETITIONER(S): ----- ANIL KUMAR, S/O CHANDRAN, EDAKKAD HOUSE, MANNUR VALAVE. KADALUNDI AMSOM, MANNUR DESOM, KOZHIKODE BY ADV. SRI.SUNNY MATHEW COMPLAINANT(S): ----- THE SUB INSPECTOR OF POLICE, CITY TRAFFIC, CALICUT, REPRESENTED BY THE PUBLIC PROSECUTOR ,

HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. BIJU MEENATTOOR THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24-01-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K.ABRAHAM MATHEW,J.

----- CRL.R.P.No. 1293 of 2003
----- Dated this the 24th day of January, 2014

ORDER

The revision petitioner is the accused who has been convicted of the offences under Section 279 and 304 A of Indian Penal Code and sentenced to undergo imprisonment and who has been disqualified.

2. On 14-5-1995 at about 10.55 a.m. riding a motorcycle one Rajeev was going along the Medical College Hospital road at Kozhikode, when a bus which came from the opposite direction knocked him down. As a result of injuries sustained by him he died at the Medical College Hospital.

3. The learned counsel for the revision petitioner has fairly admitted that the identity of the revision petitioner as the driver of the bus involved in the accident stands proved by the unchallenged testimony of PW7, who was the conductor of the bus.

4. The only dispute is with regard to the reason for CRL.R.P.No. 1293 of 2003 2 the accident. The only witness on whose evidence the prosecution relies is PW2 Anwar Hussain. He deposed that he along with one Noushad was going on a motorcycle about 10 - 20 feet behind the motorcycle of the deceased when the accident happened. He testified that the accident happened one meter south of the northern end of the tarred portion of the road lying east-west and the bus was going at a high speed. The submission of the learned counsel for the revision petitioner is that the presence of PW2 at the place of occurrence cannot be believed. Reliance is placed on the evidence of DW1 doctor who examined the deceased at the causality of the Medical College Hospital. In the column form the name of victim it is written 'unknown'. The entry means that the person who brought the person to the causality didn't know the name of the victim. The name

of the person who gave the information to the doctor is Ashraf. It follows that Ashraf didn't not know the name of the victim. That is no ground CRL.R.P.No. 1293 of 2003 3 to hold that PW2 was not present at the hospital or that he was not present at the place of occurrence. A perusal of the evidence of PW2 inclines me to believe that the courts below rightly reached the conclusion that he is an occurrence witness and his evidence is of a reliable character.

5. It came out in the evidence of PW2 that the occurrence took place one meter south of the northern end of the tarred portion of the road. It is clear that the accident took place on the wrong side of the revision petitioner. Along with this the unchallenged testimony of PW2 that the bus was going at a high speed should be considered. That is sufficient to hold that there was recklessness on the part of the revision petitioner. The conviction of the appellant cannot be upset.

6. It is noticed that some irregularities have been committed by the trial Magistrate. The deposition of PW2 that he identified the revision petitioner at the police CRL.R.P.No. 1293 of 2003 4 station was not only recorded but also acted upon in his judgment by the learned Magistrate. This is quite illegal. Any statement to the police during the investigation of the case is hit by 162 Cr.P.C. The contents of Ext.P3 post mortem certificate was not brought out in the evidence of the doctor. So also the contents of Exts.C1 and C2 reports of the Motor Vehicle Inspector and of Ext.P2 scene mahazar were not brought out in the evidence of the witnesses concerned. Still the learned Magistrate as well as the learned Sessions Judge relied on the contents of these documents. These are all former statements of the witness examined in the court. They may be used only for contradiction under Section 145 or for corroboration under Section 157 of the Evidence Act. Mere marking of these documents will not prove their contents and they are not substantive evidence as held by the Supreme Court in Kanu Ambu Vish Vs State of Maharashtra (AIR 1971 SC2256 and State of U.P Vs Mohd. Iqram and another CRL.R.P.No. 1293 of 2003 5 (2011) 8 SCC80.

7. The doctor who examined the deceased of the causality was examined by the prosecution as PW5. The learned Magistrate recalled the witness and examined him as CW1 (court witness), which should not have been done.

8. In spite of the commissions and omissions mentioned above, the conviction has to be upheld as mentioned above in the light of the cogent evidence available in the case.

9. For the offence under Section 279 I.P.C the revision petitioner has been sentenced to undergo simple imprisonment for the six months and for the offence under Section 304 (A) I.P.C simple imprisonment for 2 years. The incident happened about 18 years ago. Having regard to these facts, I am inclined to reduce the term of imprisonment for the offence under Section 304 A I.P.C. Simple imprisonment for one year will be sufficient to meet the ends of justice. CRL.R.P.No. 1293 of 2003 6 In the result this revision petition is allowed in part and the sentence is modified to the extent that the simple imprisonment awarded for the offence under Section 304 A of the Indian Penal Code is reduced to simple imprisonment for one year. In all other respects the sentences are confirmed. Sd/- K.ABRAHAM MATHEW, JUDGE. //TRUE COPY// PA TO JUDGE rmm CRL.R.P.No. 1293 of 2003 7

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