

Eldose Vs. State of Kerala

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Court : Kerala

Decided On : Jul-03-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Eldose

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE P.UBAID THURSDAY, THE 3D DAY OF
JULY 2014/12TH ASHADHA, 1936 CrI.Rev.Pet.No. 2444 of 2011 ()
----- AGAINST THE

JUDGMENT

IN CRL.A3542009 of ADDITIONAL SESSIONS COURT, FAST TRACK NO.II -
ADHOC , THRISSUR AGAINST THE

JUDGMENT

IN CC8922007 of JUDICIAL FIRST CLASS MAGISTRATE- III, THRISSUR
REVISION PETITIONER(S)/APPELLANT/ACCUSED:

ELDOSE, S/O. POULOSE, MOOPPATTIL HOUSE, PAYYARAM DESOM, PEECHI
VILLAGE. BY ADV. SRI.V.BINOY RAM RESPONDENT(S)/COMPLAINANT:
----- STATE OF KERALA, REP:BY PUBLIC

PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R BY PUBLIC PROSECUTOR SRI. GITHESH R THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 0307-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sab P.UBAID, J.

----- Crl. R.P No. 2444 of 2011 -----
Dated this the 3rd day of July, 2014.

ORDER

The revision petitioner herein is aggrieved by the conviction and sentence under Section 279 and 304 -A IPC. He faced prosecution before the Judicial First Class Magistrate Court - III, Thrissur in C.C892 of 2007. The accident alleged in this case occurred in February 2003 and final report was filed in court in 2003 itself. Later the case was transferred from the court of the Judicial First Class Magistrate Kunnamkulam to the Court of the Judicial First Class Magistrate III, Thrissur. Trial was thus delayed for years. The prosecution case is that at about 12 noon on 14.02.2003, the revision petitioner drove the 'Sonaly' bus No. KL-10-G-8668, rashly and negligently along the Thrissur - Kunnamkulam public road, that he hit down one Rajan who came riding on his scooter from the opposite direction, and the said Rajan succumbed to the fatal injuries sustained in the said accident. It is alleged that the unfortunate accident occurred solely due to the Crl. R.P No. 2444 of 2011 2 extreme rashness and negligence on the part of the revision petitioner. He pleaded not guilty to the accusations in the trial court and claimed to be tried.

2. The prosecution examined 17 witnesses in the trial court and marked Exts. P1 to P11. The revision petitioner maintained a defence of total denial during trial. However no defence evidence was adduced by him. On an appreciation of the evidence adduced by the prosecution, or specifically believing the evidence of 2 of the 17 witnesses, and also relying on the proved materials in the scene mahazar the learned Magistrate found him guilty. On conviction, he was sentenced to undergo simple imprisonment for one month under Section 279 IPC and to undergo rigorous imprisonment for one year under Section 304 - A IPC.

3. Aggrieved by the conviction and sentence, the revision petitioner approached the court of Session, Thrissur with Crl. A354 of 2009. In appeal the learned Additional Sessions Judge (Adhoc - II) confirmed the conviction and sentence, and accordingly dismissed the appeal. Now he is before this court in Crl. R.P No. 2444 of 2011 3 revision, challenging the legality and property of the conviction and sentence.

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. Of course, as many as 17 witnesses were examined in the trial court, but the material witnesses among them are only two. They are PW5 who was conductor of the bus involved the accident at the relevant time, and PW15, who was a passenger in the bus. The other witnesses examined by the prosecution to prove the incident did not support the prosecution during trial. The Ext. P5 scene mahazar also gives materials and circumstances proving the guilt of the revision petitioner.

5. Of course as regards the reason for the accident PW5, the bus conductor did not support the prosecution. But he stated in evidence that the accused was in fact the driver of the bus at the time of the accident. PW15 also identified the revision petitioner as driver of the bus involved in the accident at the relevant time. Though PW5 did not say what was the reason for Crl. R.P No. 2444 of 2011 4 the accident, PW15 affirmed in the evidence that the accident occurred due to the rashness and negligence on the part of the bus driver. He affirmed even in cross examination that Rajan happened to be knocked down only because the bus driver rashly and negligently overtook another bus. This definite evidence given by PW15, proving the reason for the accident, stands not discredited. PW15 has no reason to give any false evidence against the revision petitioner. He has also no special interest in the prosecution. Thus I find that he was rightly believed by the trial court.

6. The Ext. P5 scene mahazar shows that the width of the road at the place of accident is 7 mtrs. It has come out in evidence that the revision petitioner was coming from south to north and the deceased was proceeding from north to south.

The exact spot of accident noted in the scene mahazar is 6.2 mtrs away from the western tar end. This shows that the revision petitioner was proceeding along the wrong side. Evidence also satisfies the court that one would get straight sight for meters at the scene of incident. Had the revision petitioner been in normal CrI. R.P No. 2444 of 2011 5 speed, or had he been careful while overtaking the other bus, he would not have hit down the deceased who could have been seen from a long distance. Thus the scene mahazar which stands proved by the investigating officer, also well proves the guilt of the revision petitioner. Anyway there is the definite evidence given by PW15 who has no reason to give evidence against the revision petitioner. The identity of the bus driver stands further proved by the bus conductor examined as PW1. Thus I find that the prosecution has well proved the case on facts by satisfactory and strong evidence, including the circumstances and materials described in the scene mahazar. I find no illegality or irregularity or impropriety in the conviction made by the courts below under Sections 279 and 304 -A IPC.

7. The learned Counsel for the revision petitioner finally made a request for some leniency in the matter of sentence. Of course as stated earlier, the incident happened in February 2003, but the judgment of conviction came only in May 2009. Now we are in 2014. Trial of the case was delayed, and it is quite probable that the revision petitioner had to undergo much mental CrI. R.P No. 2444 of 2011 6 stress over the years, since the date of accident. Considering the whole facts and circumstances, I feel that the sentence in this can be reasonably reduced to rigorous imprisonment for six months. With this modification in sentence this revision can be allowed in part. In the result, this revision petition is allowed in part, confirming the conviction under Sections 279 and 304 - A IPC. However the sentence imposed by the courts below under Section 304 IPC will stand modified and reduced to rigorous imprisonment for six months. The revision petitioner will surrender before the trial court to serve out the sentence, within one month from this date voluntarily, on failure of which steps shall be taken by the trial court to enforce the sentence promptly. Sd/- P.UBAID, JUDGE sab /TRUE COPY/ PA TO JUDGE