Muthu Vs. State

Muthu Vs. State

SooperKanoon Citation : sooperkanoon.com/792882

Court : Chennai

Decided On : Oct-13-1988

Reported in : 1990ACJ530

Judge : Janarthanam, J.

Appeal No. : Cr. R.C. 539 of 1985

Appellant : Muthu

Respondent : State

Advocate for Def. : Kanappa Rajendran, Adv.

Advocate for Pet/Ap. : C. Rajagopal, ;T. Sivanatham and ;E. Ethiraj, Advs.

Judgement :

Janarthanam, J.

1. The revision petitioner is the accused in C.C. No. 2108 of 1984 on the file of the IV Metropolitan Magistrate, Saidapet. He was found guilty for the offences under Sections 304-A and 338 (two counts), Indian Penal Code and Sections 116 and 86(1) read with Section 112 and Rule 215(a) read with Section 112, Motor Vehicles Act, convicted thereunder and sentenced to rigorous imprisonment for one year and a fine of Rs. 500/-, in default rigorous imprisonment for three months for the offence under Section 304-A, Indian Penal Code, a fine of Rs. 600/-, in

default to undergo rigorous imprisonment for four months for each of the two counts under Section 338, Indian Penal Code, a fine of Rs. 100/-, in default simple imprisonment for four weeks for the offence under Section 116 of the Motor Vehicles Act, a fine of Rs. 25/-, in default simple imprisonment for two weeks for violation of Section 86(1) read with Section 112 of the Motor Vehicles Act, and a fine of Rs. 50/-, in default simple imprisonment for two weeks for violation of Rule 215 (a) read with Section 112 of the Motor Vehicles Act.

2. He preferred the appeal in C A No. 147 of 1985 on the file of the IV Additional Sessions Judge, Madras. The learned Additional Sessions Judge confirmed the conviction and also the sentence in respect of the offences and the violation of the rules and sections of the Motor Vehicles Act, except reducing the sentence of rigorous imprisonment of one year into one of four months alone under Section 304-A, Indian Penal Code.

3. The gravamen of the accusation against the revision petitioner was that on 16/17.12.1983 at 00.45 hour, he drove the water-tanker lorry TMS 6159 in a rash and negligent manner towards west in the east-west Green-ways Road and caused the accident while turning towards north, in the sense that the lorry capsized and the water tank placed on the lorry fell on the pavement and caused the death of one Vijaya, who was sleeping on the platform, besides causing grievous injuries to PWs 2 and 3, who were travelling in the cabin at that time. The prosecution relied upon the testimony of PWs 1 to 3 as regards the rash and negligent driving of the vehicle by the revision petitioner at the relevant point of time. PW 1, at the time of the accident, was sitting near the road and had the fortuitous opportunity of witnessing the accident. He did not say anything in evidence that the water-tanker lorry was driven in a breakneck speed and he could simply state that the lorry, which was proceeding from east to west while negotiating the curve, had capsized and the tank placed on it fell on the platform resulting in the death of the deceased Vijaya. PW 2 did not say anything at all in the evidence as regards the speed of the vehicle, at that time. Of course, PW 3 could say in his deposition that the water-tanker was driven at a breakneck speed at the relevant point of time. But, this aspect of the matter had not been deposed to by him in his earlier statement before the investigating officer, PW 12. This vital omission, amounting to a

contradiction, had been duly proved by putting questions in cross-examination to PW 3 as well as to PW 12 on this aspect of the matter. The net result is that practically there is no evidence available on record either with regard to the rashness or negligence on the part of the driver of the vehicle, revision petitioner, at the relevant point of time.

4. The appellate court appears to have relied upon the doctrine of res ipsa loquitur in proof of rashness and negligence on the part of the driver of the vehicle. The appellate court, on the application of this doctrine and in the absence of any explanation forthcoming from the revision petitioner as to how the accident happened, came to the conclusion that the revision petitioner was guilty of rash and negligent driving at the relevant time.

5. Learned counsel appearing for the revision petitioner contended with all force and vehemence that in a criminal prosecution, the burden to prove the ingredients of the offence is always on the prosecution and the burden never shifts at all at any point of time to the accused. He amplified his argument by further stating that the doctrine of res ipsa loquitur is not at all applicable to criminal proceedings and criminal liability cannot at all be fastened or mulcted upon the revision petitioner solely on the basis of the application of the doctrine of res ipsa loquitur. In support of his contention he placed reliance upon the following observations of the Supreme Court in the decision reported in Syad Akbar v. State of Karnataka 1980 ACJ 38 (SC):

In our opinion, for reasons that follow, the first line of approach which tends to give the maxim a larger effect than that of a merely permissive inference, by laying down that the application of the maxim shifts or casts, even in the first instance, the burden on the defendant, who in order to exculpate himself must rebut the presumption of negligence against him, cannot, as such, be invoked in the trial of criminal cases where the accused stands charged for causing injury or death by negligent or rash act. The primary reasons for non-application of this abstract doctrine of res ipsa loquitur to criminal trials are: Firstly, in a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution, as every man is presumed to be

innocent, until the contrary is proved, and criminality is never to be presumed subject to statutory exception. No such statutory exception has been made by requiring the drawing of a mandatory presumption of negligence against the accused where the accident 'tells its own story' of negligence of somebody. Secondly, there is a marked difference as to the effect of evidence, viz., the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

6. From the above observations, it is crystal clear that for the proof of the offence under Section 304-A, Indian Penal Code, either rashness or negligence has to be necessarily proved in the manner allowed by law by the prosecution and in the absence of proof forthcoming on these aspects, it is not possible to fasten criminal liability upon the accused and the doctrine of res ipsa loquitur has no application at all in criminal proceedings. As such, the conviction and sentence of the revision petitioner for the offences under Sections 304-A and 338 (2 counts), Indian Penal Code, and for violation of Section 116 of the Motor Vehicles Act are liable to be set aside.

7. So far as the conviction and sentence of the revision petitioner under Section 86(1) read with Section 112 and rule 215 (a) read with Section 112 of the Motor Vehicles Act, are concerned, it is an undisputed fact that the revision petitioner did not produce the trip sheet as well as the licence before PW 11, notwithstanding the fact that the revision petitioner had been directed to produce them for his inspection before a particular date. The revision petitioner produced the licence alone during the course of his examination under Section 313, Criminal Procedure Code and till today he did not opt to produce the trip sheet. As such the conviction and sentence of the revision petitioner for the refraction or violation of Section 86(1) and Rule 215 (a) read with Section 112 of the Motor Vehicles Act are

confirmed.

8. In the result, the revision petition is partly allowed, the conviction and sentence under Sections 304-A and 338 (two counts), Indian Penal Code and under Section 116 of the Motor Vehicles Act are set aside and the revision petitioner is acquitted of those charges. The fine paid, if any, under those provisions is directed to be refunded to the revision petitioner. In other respects, the criminal revision case shall stand dismissed. The bail bond executed by the revision petitioner shall stand cancelled.