

Chelliah Nadar

Chelliah Nadar

SooperKanoon Citation : sooperkanoon.com/810815

Court : Chennai

Decided On : Apr-13-1970

Reported in : (1970)2MLJ392

Appellant : Chelliah Nadar

Judgement :

ORDER

K.N. Mudaliyar, J.

1. The revision petitioner (Chelliah Nadar) seeks to revise his conviction for an offence under Section 279 of the Indian Penal Code.

2. It is unnecessary for me to reiterate all the facts proved by P.Ws. 1 to 8. Suffice it for me to notice that, according to the evidence of P.W. 3, the revision petitioner (accused) was coming ahead in a bus, that he was coming at a good speed and that he dashed against his (P.W. 3's) bullock cart. The bullock met with instantaneous death at the spot as a result of the terrible impact on it. It is true that there had been a head-on collision and the injury sustained by the bullock had resulted in its death. I also take into consideration the fact that the road was a wide one with the result that two vehicles could pass through simultaneously. P.W. 8 was keeping his cart on its proper side. He further says that one of the wheels of his cart was on the tar portion of the road. He states that the petitioner was driving the vehicle without regard to the road rules of keeping to the left. Perhaps the accused

did not expect a cart in that part of the night. Both the Courts below find rashness and culpable negligence by reason of the uncontrollable speed on the part of the petitioner in driving the vehicle with the object of reaching the destination early.

3. It is argued before me that D.W. 1 is a conductor in the same State Express Bus. D.W. 1 Varadarajan was cited as a witness on behalf of the prosecution in the charge-sheet, but, for reasons best known to the prosecution itself, he was not examined. I have a feeling that the petitioner has exploited this omission on the part of the prosecution, and examined D.W. 1 in support of his case. D.W. 1 says that the bus in question left Coimbatore at 6-30 p.m. as it was bound for Madurai. The speed allowed by the permit is sixty kilometres per hour. Near the place of occurrence there is a bridge and there is a bend in the road. Therefore, the driver slowed down the speed. He further says that he used to sit near the driver's seat. The bus came at a speed of twenty kilometres at the place of occurrence. On seeing the cart the petitioner was blowing the horn. The road is wide enough to allow two vehicles to pass through. There was no light in the cart. The bullocks felt frightened. When the petitioner applied the brakes, the bullock was facing north-west. Due to sudden applying of the brake the vehicle was taken towards the northern side. No passengers were injured. The passengers scolded P.W. 3. D.W. 1 further says that the Head Constable did not examine him. He made a report at the police station at Samayanallur. Then he returned to the scene of occurrence in a lorry. The petitioner was still near the place of occurrence. On the basis of the evidence of D.W. 1, it has been argued that the evidence of D.W. 1 has gone unchallenged in cross-examination and, therefore, the prosecution case admits of at least a reasonable doubt. At the bar a number of authorities were quoted before this Court from both sides. Vide *Velu Pillai v. Paramanadam* A.I.R. 1954 Trav. Co. 152, *State of Orissa v. Kaushalya Dei* : AIR1965 Ori38 , *Ambika Singh v. State* : AIR1961 All38 , *Kansi Ram v. Jai Ram* , *Mookanadar v. Emperor* : AIR1943 Mad590 , and *In re, Subbiah* (1966) L.W. 77 and *Wigmore on Evidence*, Vol. V, paragraph 1371.

4. The evidence of D.W. 1 stands unrebutted, since he was not cross-examined by the Public Prosecutor. There is no reason why the evidence of D.W. 1 should not be accepted. The appellate Court (District Magistrate) has not even adverted to

the evidence of D.W. 1. The learned Magistrate has not given any finding as to the acceptance or rejection of the evidence of D.W. 1. With the prosecution case resting on the evidence of P.W. 3 principally on the one hand and corroborated by the other prosecution witnesses, and there being the evidence of D.W. 1 which goes unchallenged the petitioner is entitled to the benefit of doubt.

5. The revision petitioner is acquitted and the fine, if paid, is directed to be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com