

**Lakshmipathy Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/816397](http://sooperkanoon.com/816397)

**Court :** Chennai

**Decided On :** Oct-31-1989

**Reported in :** I(1990)ACC583

**Judge :** Arunachalam, J.

**Appellant :** Lakshmipathy

**Respondent :** State

**Judgement :**

**Arunachalam, J.**

1. The petitioner was tried in C.C.No. 3043 of 1984 on the file of IV Metropolitan Magistrate, Saidapet, Madras for an offence under 8.304(A), I.P.C.(2 counts) and sentenced to undergo 5 months rigorous imprisonment under each count. The petitioner also faced a charge under Section 16 of the Motor Vehicles Act, found guilty and sentenced to undergo rigorous imprisonment for 6 weeks.

2. The aggrieved petitioner preferred Crl. Appeal No. 105 of 1985 on the file of the VIII Additional Sessions Judge, Madras. The Appellate Court concurred with the findings of the trial Court and dismissed the appeal, confirming the convictions and sentences imposed by the trial Court.

3. In this revision, the correctness of the convictions and sentences are challenged. The brief facts are necessary for the disposal of this revision can now be stated. The petitioner was a driver of Pallavan Transport Corporation bus TMI 8807. On 6.5.1984 at about 7.15 A.M. he drove the said bus along N.S.K. Road from the western direction and was proceeding towards east. In the opposite direction, in a motor cycle TMV 401, the two deceased in this case, Rajappa and Balasurbramaniam were travelling. The petitioner, who attempted to overtake a bus, went on the right side of the road and hit against motor cycle, resulting in the driver and pillion rider being thrown away, resulting in their fatality. P.W.1, an auto rickshaw driver and P.W.2, an employee of Esplanade Fire Service were the ocular witnesses. P.W.3, who was also cited as an eye witness and who was an employee in a tea shop, did not support the prosecution and was, therefore, treated hostile. Soon after the incident, on a message, P. W.7 the Sub-Inspector of Police reached the scene and recorded a complaint Ex.P.1 from P.W.1. Investigation followed and the petitioner was charge-sheeted.

4. The case of the petitioner was that P.Ws. 1 and 2 were uttering falsehood and that he was driving the bus on the proper side of the road, but the motorcycle, which was driven zig-zag, hit against the bus, which was attempted to be turned towards right. Both the trial and appellate Courts accepted the prosecution case, convicted and sentenced the petitioner as stated earlier.

5. Mr. Rajagopal, the learned Counsel appearing for the petitioner contended that P-.W. 1 could not have been an ocular witness and the first information report could have not been recorded at the scene at 9.20 A.M. as alleged. To draw support for his argument, apart from referring to evidence of P.W.1 in cross-examination, he contended that the non-seizure of the trip-sheet to fix the presence of P.W. 1, would effect the very foundation of the prosecution.

6. I have carefully perused the evidence of P.W.1. In the examination-in-chief, P.W.1, has stated that when he was standing outside the tea shop along with his auto rickshaw TMI 3679, he noticed the bus driven by the petitioner coming from Vadapalani in a rash manner. He has also deposed that the police came to the scene and took the complaint from him, which has been marked as Ex.P1. In

cross-examination, it has been elicited from him, that he had parked his auto-rickshaw, at the stand, about half a furlong away from the scene and at or about 9.10 a.m, he took the auto-rickshaw with some passengers to Eldams Road, and that he returned to the scene at or about 12.45 noon and that he was taken from his house to the Police Station. The answers of P.W. 1 in cross examination certainly shows that after the occurrence he was present near about of the scene. He had to leave the scene of occurrence approximately at 9.10 a.m. We cannot by arithmetical calculations, exclude the coming into being of Ex.PI at or about 9.20 a.m. at the scene. We cannot over-look the evidence of P. W-7 that he had received information about the occurrence at about 7.50 a.m. and soon thereafter reached the scene and recorded the first information report. The few minutes difference in time as to when P.W. 1 left the scene, extracted above, does not throw any suspicion either on the truth of the evidence of P.W.I or the genesis of the first information report.

7. As far as the trip-sheet is concerned, P.W.I had definitely stated in cross-examination that he had shown the trip-sheet to the police. The investigating agency could have very well seized and produced the trip sheet before the Court, but the non-seizure, on fact, does not enure in favour of the petitioner. The petitioner had taken the auto rickshaw at or about 6.45 a.m. in the morning, and before he had any customer, he had seen this impact of the bus and motor cycle at or about 7.15 a.m. The trip-sheet, even if seized, would only show the further movements of the auto-rickshaw from the scene. Since, I have already held that the evidence of P.W. 1 as an ocular witness cannot be doubted and his version had been rightly accepted by both the courts below, the non-seizure of the trip-sheet does not go to the root of the case. The evidence of P.W.2 fully corroborates the version of P.W.1 Both of them have no motive to depose against the petitioner. The evidence of the investigating officer, taken in the light of the oral evidence of P.Ws. 1 and 2 and the scene sketch, clearly confirm that the petitioner had driven the bus rashly and negligently had caused the death of two persons, because of his act, the convictions imposed for both the offences by the trial .Court and confirmed by the appellate Court will have to be sustained.

8, As far as the sentence to be imposed is concerned, the learned Counsel for the petitioner brings to my notice G.O.Ms.No.150 dated 28-1-1989, by which the Governor of Tamil Nadu, in exercise of the power conferred by S.432, CrI.P.C, had remitted the sentences of certain categories of prisoners, who have been convicted and punished for various offences, on the eve of the 20th death Anniversary of late Dr. C.N. Annadurai. The petitioner's case will fall under the second category and the remission he would be entitled to will be 6 months. The petitioner having been sentenced to 5 months rigorous imprisonment and 6 weeks rigorous imprisonment respectively for the two different offences, and the sentences having been directed to run concurrently, he would certainly be entitled to the benefit of G.O.Ms.No.150. In view of the Government Order aforementioned, the petitioner need not have to surrender to undergo the unexpired portion of the sentences of imprisonment.

9. This revision is dismissed with the above observations.

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