

Suyambu Vs. State

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Court : Chennai

Decided On : Nov-07-2000

Reported in : 2001CriLJ1577

Judge : K. Natarajan, J.

Acts : Indian Penal Code (IPC) - Sections 279, 304-A and 337

Appeal No. : Criminal Revision Case No. 600 of 1998

Appellant : Suyambu

Respondent : State

Advocate for Def. : V.R. Balasubramaniam, Govt. Adv.

Advocate for Pet/Ap. : A. Shivkumar, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

K. Natarajan, J.

1. This Criminal Revision Petition has been preferred against the order and judgment of the learned Principal Sessions Judge, Tirunelveli in C.A.No. 32 of 1998 dated 16-4-1998 confirming the judgment of the learned Judicial Magistrate

No. I, Tirunelveli in C.C.No. 47 of 1996 dated 27-1-1998.

2. The short facts are : On 18-5-1995 at 11.15 a.m., the bus bearing Registration No. TB-74-N0286 belonging to the Nesamani Transport Corporation was driven by the revision petitioner from south to north i.e. from Nagercoil to Tirunelveli, while in the opposite direction, i.e., from Tirunelveli to Nagercoil, the jeep bearing Registration No. TCP 8518 was driven.

3. As per the case of the prosecution, the revision petitioner drove the bus at a high speed in a rash and negligent manner and dashed against the jeep, with the result, three passengers in the bus, namely, P.Ws. 1 to 3 were injured and the four persons in the jeep died at the spot. After investigation, charge sheet under Section 279, IPC one count, 337, IPC three counts, 304A, IPC four counts were filed by the Investigation Officer, 13 witnesses were examined, 16 exhibits and two material objects were marked on the side of the prosecution. No one was examined on the side of the revision petitioner or any document was marked. On an appreciation of the evidence, the trial Magistrate concluded that the accident took place due to rash and negligent driving of the revision petitioner. Therefore he found him guilty under all charges. For the offence under Section 279, IPC he sentenced the revision petitioner to under go simple imprisonment for three months and to pay a fine of Rs. 250/- in default to under go simple imprisonment for one month. For the offence under Section 337, IPC, he was sentenced to under go simple imprisonment for three months on each count and to pay a fine of Rs. 250/- on each of the counts in default to under go simple imprisonment for one month. For the offence under Section 304A, IPC, he was sentenced to undergo simple imprisonment for six months on each of the four counts and to pay a fine of Rs. 2,000/- on each of the counts and in default to undergo simple imprisonment for three months. Total fine is Rs. 9,000/-. Aggrieved with the said conviction and sentence, the revision petitioner has preferred C.A.No. 32 of 1998 on the file of the learned Principal Sessions Judge, Tirunelveli. The learned Principal Sessions Judge on a reappraisal of the evidence concurred with the reasoning of the learned trial Magistrate, confirmed the conviction and sentence and dismissed the appeal.

4. The point for determination is whether both the Courts below have committed an error of law and their finding is perverse?

5. The learned counsel for the revision petitioner took me through the evidence of P.Ws. 1 to 3 the eye witnesses to the occurrence and submitted all the three of them have only stated that the bus was driven at a high speed, which is not sufficient to record the conviction under Section 304A, IPC.

6. Reliance was placed on the decision of the Supreme Court in *Suleman Rehiman Mulani v. State of Maharashtra* reported in 1968(2)SCR515:(1968 Cri LJ 1013). In the said judgment, the Apex Court has held :

The requirements of Section 304A, IPC are that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words, there must be proof that the rash or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused.

The same principle has been reiterated in the decision in *Tukaram Sitaram Gore v. State* : AIR1971 Bom164 .

7. Even though this is a revision and appreciation of the evidence in detail is not necessary, I have gone through the evidence to find out whether the findings of both the Courts below that the rash or negligent act of the revision petitioner as spoken to by the prosecution witnesses was the proximate cause of death and there is direct nexus between the death of the persons travelled in the jeep, and the rash or negligent driving of the accused.

8. After carefully analysing the evidence, I find it very difficult to accept the submission of the learned counsel for the revision petitioner that apart from the fact that the bus was driven at a high speed, there is no evidence to show that the rash or negligent act of the accused was the proximate cause of death and that there is no direct nexus between the death of the persons travelled in the jeep and the driving of the accused. Though P.W. 1 had only stated that the bus was driven at a high speed, P.Ws. 2 and 3 the other passengers in the bus have deposed

without any shadow of doubt that not only the bus was driven at a high speed but also due to the rash or negligent driving of the bus by the revision petitioner, the bus dashed against the jeep coming in the opposite direction, which caused the death of all the passengers in the jeep.

9. The attention of this Court was invited by the learned counsel for the revision petitioner to the evidence of the Motor Vehicles Inspector and some photographs taken at the accident spot. Relying on the evidence by the Motor Vehicles Inspector that no damage was found in the front portion of the jeep, it was argued that there was no head on collision and that the jeep cut across the road and dashed against the bus and the revision petitioner had no other alternative except to go to the eastern side of the road for which he cannot be blamed.

10. The learned Government Advocate for prosecution points out that the bus which was proceeding from the south ought to have travelled on the western side of the road and there is no need for the bus to come to the middle of the road or to the eastern side. Inviting the attention of this Court to the sketch Ex. P12 drawn by the Investigating Officer, it was submitted that the accident took place towards the eastern side of the road, which only shows that the bus came at a high speed and on the wrong side of the road and dashed against the jeep on its right side and pushed the jeep to a distance of sixty feet as noticed by the Investigating Officer.

11. On an analysis, I am of the view that there is absolutely no evidence to show that the jeep cut across the road and there was compulsion on the part of the revision petitioner to come to the eastern side of the road to avoid the accident. It appears that the revision petitioner drove the bus at a very high speed and lost control and came to the eastern side of the road and dashed on the right side of the jeep and the rash or negligent driving of the revision petitioner is the proximate cause of death of the persons travelling in the jeep. In my opinion, the photographs will not help the case of the revision petitioner in any way, in view of the discussions made above. The revision petitioner has not gone into the box to give evidence that the jeep cut across the road and came to the western side then there was compulsion for him to turn to the eastern side to avoid the jeep. As per the Motor Vehicles Inspector, there is no mechanical defect in the bus and

therefore, I am of the clear view that both the Courts below have not committed any error of law and the rash or negligent act of the revision petitioner was the direct cause for the accident. In my opinion, the submission of the learned Government Advocate that the principle of ipso loquitur [sic] will apply to the facts of the case is correct as the incident speaks for itself and there is no merits in the revision petition.

12. In the result, the conviction and sentence imposed on the revision petitioner are confirmed and the revision petition is dismissed.

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