

D. Selvaraj Vs. State

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Court : Karnataka

Decided On : Oct-31-2006

Reported in : 2007(1)AIRKarR104; 2007CriLJ909

Judge : V.G. Ramesh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304A and 338

Appeal No. : Cri. R.P. No. 434 of 2006

Appellant : D. Selvaraj

Respondent : State

Advocate for Def. : Mukbul Ahamed, GP

Advocate for Pet/Ap. : S. Nagaraju, Adv.

Judgement :

ORDER

V.G. Ramesh, J.

1. This revision is filed against the order of the Addl. District Judge/Fast Track Judge Illrd, Bangalore Rural District in Cri. A. 61/2005.

2. The petitioner was charge-sheeted by the Attibele Police before the JMFC, Anekal for the offences under Sections 279, 338 and 304-A, I.P.C. alleging that on

8-1-2003, around 3.45 p.m. in front of Chikkanahalli Road near Attibele Checkpost when C.W. 1 along with his friend Shanker was going on a motor cycle bearing No. KA 05 FA 7485 from Bangalore towards Hosur on NH 7, the petitioner being the driver of Bus bearing No. TN 27 N 1387 coming from Hosur towards Bangalore on the wrong side at great speed in a rash and negligent manner so as to endanger human life, dashed against the motor cycle due to which C.W. 1 sustained grievous injuries and the pillion rider who also sustained grievous injuries succumbed to the same on the spot. The learned Magistrate on filing of the charge-sheet, after recording the plea of the accused and after trial, held the accused guilty of the abovesaid offences and the accused was sentenced to pay a fine of Rs. 500/- and in default, to undergo simple imprisonment for 3 months for the offence under Section 279, I.P.C. Further, he was also sentenced to pay a fine of Rs. 1,000/- and in default, to undergo simple imprisonment for six months for the offence under Section 338, I.P.C. Further, he was also sentenced to undergo simple imprisonment for one year and to pay a fine of Rs. 1,000/- for the offence punishable under Section 304-A, I.P.C. and in default, to undergo simple imprisonment for three months and also directed that out of the fine amount, Rs. 500/- shall be paid to P.W. 1 injured and Rs. 1,000 shall be paid to the legal representatives of the deceased-Shanker. Against the said order, appeal was preferred before the Fast Track Court III, Bangalore Rural District. The said Court, after hearing, dismissed the appeal while confirming the order of the learned Magistrate. Hence, this revision.

3. Heard the counsel for the petitioner and the Government Pleader.

4. It is the submission of the petitioner's-counsel that there is no legal evidence on record. Further, the doctor who conducted the autopsy and the Motor Vehicles Inspector's report was not examined and the evidence of P.Ws. 1 and 2 is of interested witnesses. Further, it is submitted that the rider of the motor cycle in an attempt to overtake the on-going vehicle, dashed to the bus and fell down. As such, due to his own negligence, the pillion rider fell down and died in the accident. It is also submitted that there is no report to show that the vehicle had any mechanical defect.

5. Per contra, Government Pleader submitted that there is cogent evidence on record to hold the accused guilty of the offences and accordingly resisted the petition.

6. In the light of the arguments advanced, let me consider whether both the Courts below have committed any illegality in passing the impugned order.

7. It appears, four witnesses have been examined by the learned Magistrate during the trial. It appears, as many as six documents were marked namely, post-mortem report, rough sketch, inquest, mahazar, wound certificate and the complaint. But, in the instant case as noted, both the Courts below, based on the cogent evidence of the witnesses to the incident, and also based on the documents available on record, have held the accused guilty of the offence. But in so far as the non-examination of the Motor Vehicles Inspector's report and the doctor, it was of the view that there is cogent evidence on record and the non-examination of those two witnesses may not be essential. However, of course in so far as non-examination of the doctor is concerned, it appears the defence counsel is said to have given consent to mark the inquest and postmortem report but, in so far as non-examination and not marking the Motor Vehicles Inspector's report, it was of the view that since the prosecution has proved that the accused came from the wrong side and dashed to the motor cycle, not marking of the said report is not fatal to the case of the prosecution.

8. However, it is to be seen despite the fact the vehicle was coming from the wrong side, whether there was any mechanical defect in the vehicle has to be ascertained as there would have been possibility of the petitioner losing control over the vehicle at the time of the alleged accident either due to failure of the brake or any other reason. In this regard, it has to be ascertained by securing the report of the Motor Vehicles Inspector and marking the same to know exactly as to whether there was any mechanical defect or not and if need be, to examine the Inspector of Motor Vehicles who has inspected the vehicle. Only to that limited extent the matter requires re-appreciation.

9. For the foregoing reasons, while setting aside the order of both the Courts below, the matter is remitted back to the learned Magistrate only for the limited

purpose, to record the evidence of the Motor Vehicle's Inspector I by securing him to know whether there was any mechanical defect or not and to pass orders in accordance with law. Accordingly, the petition is allowed in part.

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