

T. Gurumurthy Vs. State

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Court : Kolkata

Decided On : Jan-14-2004

Reported in : 2004(2)CHN91

Judge : N.C. Sil, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 282, 304A and 338; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397(1) and 401

Appeal No. : C.R.R. No. 006 of 2004

Appellant : T. Gurumurthy

Respondent : State

Advocate for Def. : R.S. Saroop, Adv.

Advocate for Pet/Ap. : C.S. Chauhan and ;A.S. Zinu, Adv.

Judgement :

N.C. Sil, J.

1. The present revisional application arose out of the modified order dated May 15, 2003, passed by Shri N. N. Ghosh, learned District and Sessions Judge, Andaman & Nicobar Islands, in connection with Criminal Appeal No. 13 of 2001. The said appeal was preferred against the judgment and order of conviction dated

24.7.2001 passed by Shri S. K. Verma, learned Chief Judicial Magistrate, Car Nicobar, in connection with G. R. Case No. 103 of 2000 corresponding to T. R, No. 133 of 2001.

2. The learned Trial Court appears to have convicted the revisionist/accused for the offences under Sections 304A, 279 and 338 of the Indian Penal Code and sentenced them rigorous imprisonment for six months for the offence under Section 279 IPC, rigorous imprisonment for one year for the offence under Section 304A IPC and fine of Rs. 1000/- i. d. to simple imprisonment for two months and no separate punishment was awarded for the offence under Section 338 IPC.

3. The revisionist preferred an appeal against the said judgment and order of conviction passed by the learned Trial Magistrate and the learned Sessions Judge, Andaman & Nicobar Islands, upheld the judgment of conviction passed by the learned Trial Magistrate, but he was pleased to set aside the judgment of conviction for the offence under Section 279 of the Indian Penal Code. The learned Sessions Judge was also pleased to reduce the term of sentence to some extent. Against the said modified order passed by the learned Sessions Judge in appeal the present revision has been preferred.

4. It is stated in the grounds of revision that the judgment of conviction and sentence passed by the learned Sessions Judge in appeal is bad both of facts and in law. It is also stated that the learned Sessions Judge ought to have held that no vehicle can be driven with high speed on such zigzag road and so the appeal should have been allowed setting aside the judgment of conviction passed by the learned Trial Magistrate. Amongst the grounds it is also taken that some of the important witnesses have not been examined and the accident occurred due to the contributory negligence of the naval/armed personnel.

5. Mr. C. S. Ghauhan, learned advocate, appearing with Ms. A. S. Zinu, submits before me that there is no evidence of rash and negligent driving, but still then both the Courts below came to the conclusion for conviction. It is also argued by the learned counsel for the revisionist that there was contributory negligence and in this connection Ms. Zinu has referred to the ratio decided in the case of V.R. Bhate and Ors. v. State of Maharashtra, : 1970 CriLJ1261 , in which the matter of

consideration was where the overloading of the launch had not caused danger to the passengers but the launch capsized on account of sudden onrush of persons waiting at the jetty on to the deck of the launch and passengers on the launch wanting to get down at the port which caused the launch to tilt and resulted in displacement of balance.

6. In such circumstances, the Hon'ble Apex Court was pleased to hold that the capsizing could not be held to be due to negligence of the owner or the master of the launch and that the conviction under Section 282 of Indian Penal Code was not proper.

7. Mr. R. S. Saroop, learned Public Prosecutor appearing for the State/respondents, submits that there is no ground so worthy to attract the provisions of Section 397 read with Section 401 of the Code of Criminal Procedure. It is also submitted by him that there is sufficient evidence adduced by the prosecution as regards the rash and negligent driving. It is also pointed out by him that the question of contributory negligence can be the matter of consideration only in the Motor Vehicles Claim cases.

8. After hearing the submissions of the learned counsels for the parties, it seems to me that the matter for consideration in the revisional application is only to explore as to whether there is sufficient evidence to warrant conviction of the revisionist.

9. Clause (1) of Section 397 of the Code of Criminal Procedure reads as below:

'The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.'

10. Thus, from the plain reading of the above quoted clause, it appears that the High Court in revisional jurisdiction can examine as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by the lower Courts. This has prompted me to go into the records of the lower Courts, particularly, the evidence of the witnesses produced by the prosecution to justify the conviction passed against the revisionist.

11. In the instant case as many as 23 witnesses had been examined, I find from their evidence that the revisionist/driver was driving the vehicle in a high speed for which some of the passengers of the vehicle asked him to drive the vehicle slowly. It is also in the evidence of the witnesses that the vehicle was moving in a zigzag road. May be the position of the road was zigzag, but in that case the driver was expected to be more cautious. It further appears from the evidence of the witnesses that they flatly denied the suggestions put to them that the driver was driving the vehicle in normal speed. That being the position it cannot be said by any sense sitting in the limited jurisdiction in revision that the judgment and order of conviction passed by the learned Courts below were incorrect, illegal or improper.

12. Thus, I do not find any merit in the present revisional application to interfere with the judgment and order of conviction passed by the learned lower Courts below. Accordingly, the revisional application is dismissed.

13. It appears from the record of the Court that the revisionist was released on bail by the order of this Court. Thus, the learned Chief Judicial Magistrate, Car Nicobar, is directed to take appropriate measures so that the revisionist appears or is produced before him, as the case may be, in order to serve out the remainder of sentences.

14. There will be no order as to costs.