

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 4TH APRIL 2005 / 14TH CHAITHRAM 1927

Crl.Rev.Pet.No. 1135 of 1996()

CRA.164/1992 of SESSIONS COURT, KOTTAYAM
CC.3/1990 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY
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REVN. PETITIONER:

TOM @ SUNNY, S/O.THOMAS, KULANGARA VEEDU,
NALUKODI BHAGOM, PAYIPPADY KARA,
DO VILLAGE.

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.B.S.SWATHY KUMAR

RESPONDENTS:

STATE - REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.THAVAMONY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04/04/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. HEMA, J.

CRI.R.P.No.1135 OF 1996

Dated this the 4th day of March, 2005

O R D E R

The petitioner challenges the concurrent conviction and sentence passed against him under Sections 304-A and 388 IPC. He was convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- under Section 304(A) IPC in default to undergo S.I. for one more month. He was also sentenced to pay a fine of Rs.1,000/- under Section 338 IPC in default to undergo simple imprisonment for one month. The accused is further sentenced to pay a fine of Rs.100/- under Section 134(b) of M.V.Act in default to undergo simple imprisonment for one week. No separate sentence is awarded under Sections 279 and 337 IPC.

2. The prosecution case is that on 4.7.1989 at about 12.20 p.m. the accused drove autorikshaw bearing registration No.KRA-217 in a rash and negligent manner so as to endanger human life on the wrong side of the road from east to west and hit against a bicycle on which PW1 was travelling from the opposite direction, with deceased Babu, as pillion rider. PW1 sustained injuries whereas deceased Babu succumbed to the same at about 10.20 p.m. on the same day while under treatment in the Medical College Hospital, Kottayam. The accused left the place without giving requisite information to the police.

3. The evidence consists of oral testimony of PWs 1 to PW16. Exhibits P1 to P11 were produced on the side of the prosecution. According to petitioner, the incident did not occur due to rashness

or negligence on his part, but PW1 came riding the bicycle negligently and he lost control and hit his vehicle.

4. On consideration of the oral evidence of the eye witnesses, PWs 1 to 5, the trial court as well as appellate court came to a conclusion that the incident is occurred as alleged. PW1 is the injured who drove the bicycle. PWs 2 to 5 are the eye witnesses. PW5 turned hostile to the prosecution. But he supported the prosecution case by a portion of his testimony. On a perusal of the judgment of the trial court as well as that of the appellate court, I do not find any impropriety or illegality committed by the court below in appreciating the evidence. It was found that the autorikshaw was on the extreme northern side of the road which is the wrong side. The case of the witnesses was that the accused was overtaking another vehicle and this explains the hit which took place on the wrong side.

5. The learned counsel for the petitioner submitted that there was a conflict between the evidence of PW1 and other eye witnesses in respect of the nature of the vehicle which is allegedly overtaken. PW1 stated that it was a bus that was overtaken whereas in the first information statement an autorikshaw was overtaken. Though PW1 was confronted with his previous statement he stuck his version that it was the bus which was overtaken. But PWs 2 to 4 (eye witnesses) deposed that the accused had overtaken an autorikshaw. This fact was considered by both the courts below and I do not find any impropriety in the findings entered by the lower courts on this aspect. The courts were of view that PW1 need not be disbelieved on this ground alone.

6. The alleged interestedness of PW4 and the evidence of

PW5 who is a hostile witness and various aspects pointed out by the defence were also considered by both the courts below and they have concurred in the findings. I do not think that the said findings are perverse or incorrect. In the above circumstances, unless the concurrent findings on facts are perverse, it will not be proper or legal for this Court to interfere.

7. The learned counsel for petitioner also argued in respect of the probability of a mistake being committed in identifying the accused. It was submitted that the information was gathered by the Investigating Officer only on the basis of a statement given by the owner of the autorikshaw, PW7. But it is curious to note that the accused has no case that he was not the driver at the time of occurrence. All eye witnesses identified the petitioner and they have stood the test examination. In such circumstances, I do not find any reason to accept the argument.

8. Except with respect to the appreciation of evidence and the details of evidence given by the eye witnesses and other evidence, the petitioner has not put forward any contention regarding illegality allegedly committed by the courts below. It is well settled that the revisional court cannot upset the concurrent findings of fact or interfere with the same, unless those are perverse. In the above circumstances, I do not find that any reason to interfere with the conviction or the question of sentence.

In the result, this petition is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.1135 OF 1996

O R D E R

4.3.2005