

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 25TH OCTOBER 2005 / 3RD KARTHIKA 1927

Crl.Rev.Pet.No. 1045 of 1997()

CRA.8/1995 of ADDL.SESIONS COURT-II, KOZHIKODE
CC.251/1992 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE
.....

REVN. PETITIONER:

RAFIQ, S/O.MUHAMMED KOYA
NALLALAM, KOZHIKODE

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS:

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

BY PUBLIC PROSECUTOR SMT.NOORJI NOUSHAD

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25/10/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. HEMA, J.

CRL.R.P.No.1045 of 1997

Dated this the 25th day of October, 2005

O R D E R

Petitioner herein challenges the conviction and sentence passed against him under Sections 279 and 337 IPC to undergo 4 months simple imprisonment each which are to run concurrently. The concurrent findings of guilt, conviction and sentence are challenged in this revision.

2. According to the prosecution, on 5.11.1991 at about 4 p.m. the appellant was driving the autorikshaw from south to north on the Kozhikode-Kannur road, in a rash and negligent manner and in overspeed so as to endanger human life and when he reached the road near the Nadakkave Police Station junction, the appellant suddenly swerved the autorikshaw and took a 'U' turn, without giving any signal to the other vehicles and consequently CW1 who was riding the cycle happened to hit the autorikshaw and he sustained injuries and he was taken to the hospital, from where he has given first information statement, Exhibit P2.

3. On an analysis of the evidence of the injured, PW2 and the eye witness, PW8 who supported the prosecution and the documents, Exhibits P1 to P5 marked on the side of the prosecution,

the lower appellate court held that the incident spoken to by PWs 2 and 8 can be accepted as true. The conviction passed by the trial court was upheld, but the sentenced was reduced to two months. Learned counsel appearing for petitioner vehemently contended that the incident could not have occurred as alleged by the prosecution. A close reading of the evidence of PWs 2 and 8 coupled with the mahazar prescribed in respect of autorikshaw and cycle will go to show that the incident could not have occurred as alleged by PWs 2 and 8, it was strongly argued. He has drawn my attention to the evidence of PWs 2 and 8.

4. PW2 has given evidence that he was riding the cycle from south to north along the public road, while the autorikshaw swerved to the opposite direction without any signal and hit against the cycle. In the cross-examination it was brought out that PW2 was proceeding towards Eranhipalam side and that there was a three-line traffic at the place of occurrence and he was expected to ride the vehicle through the middle line. He was to travel through the middle traffic line, but he was riding the cycle through the left line on the road, whereas the autorikshaw was being driven through the center line. He has given evidence that the autorikshaw was also going from south to north, while the incident occurred and the autorikshaw had turned to the right side. The lower appellate court in paragraph 8

of the judgment it was observed, "according to PW2, he was proceeding along the western line so that it was not possible to hit the autorikshaw if the autorikshaw had suddenly turned towards right". If the evidence of PW2 is accepted as a whole, it is unlikely that the autorikshaw which turned towards the right will hit the cycle which was being driven on the left side of the road.

5. The petitioner has also drawn my attention to Exhibit P5, as per which the damage on the autorikshaw was on the right side. If the cycle was on the left side of the autorikshaw and the autorikshaw had turned to right side as alleged by PW2, it is unlikely and improper that the autorikshaw will have damage on the right side. So, in what manner the incident had actually occurred is not disclosed from the evidence of PW2. Except that an incident occurred, no negligence can be attributed to the driver of the rickshaws, based on the evidence given by PW2. Though the court below held that a possibility as disclosed from the evidence of PW2 is not there, the lower court found that the evidence of PW2 can be accepted as true. This finding is illegal and not sustainable.

6. PW8 has also spoken to almost in the same line. He is a Police Constable who was working in the City Traffic Station at the relevant time and he was on duty at the traffic island which was situated 50 yards away from the place of occurrence. He deposed

that he had seen the incident and according to him, the autorikshaw had overtaken the cycle and it hit against the cycle and that the accused was responsible for the accident. According to PW8, the autorikshaw without showing signal had taken a 'U' turn. If as a matter of fact, the incident occurred as alleged by PW8, the damage on the right side of the autorikshaw cannot be explained. The first information statement, Exhibit P2 also would show that the autorikshaw had overtaken the cycle. Though the evidence of PW8 is consistent with the first information statement that the autorikshaw was overtaking the cycle but if a 'U' turn is taken, it is unlikely that it would hit against the cycle which was being ridden by PW2 along the western side of the rickshaws. The place of occurrence is 1.52 meters away from the western margin towards the east, as per the scene mahazar.

7. In the above circumstances, the evidence given by PWs 2 and 8 are inconsistent and it is also belied by the documentary evidence showing the damage on the vehicle on the right side. These aspects have not been taken into consideration by the court below and it went wrong in accepting the evidence of PW2 and PW8 to convict the accused. The conviction and sentence passed against the petitioner, therefore, cannot be sustained.

In the result, the conviction and sentence passed against the petitioner are set aside. The petitioner is found not guilty of offences under Sections 279 and 337 of IPC and he is acquitted of the said offences. He is set at liberty forthwith.

The petition is allowed.

K. HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.1045 OF 1997

O R D E R

25.10.2005