2025:KER:1215

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 8TH DAY OF JANUARY 2025 / 18TH POUSHA, 1946

CRL.REV.PET NO. 2099 OF 2007

AGAINST THE ORDER/JUDGMENT DATED 17.03.2007 IN Crl.A NO.281 OF 2005 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, PATHANAMTHITTA ARISING OUT OF THE ORDER/JUDGMENT DATED IN CC NO.261 OF 2002 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,RANNI

REVISION PETITIONER/S:

MURALIDHARAN
PARACKALETHU HOUSE, MAMPARA,, PERUNAD

BY ADV SRI.V.PHILIP MATHEW

RESPONDENT/S:

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

OTHER PRESENT:

G SUDHEER,PP

2025:KER:1215

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:1215

“C.R.”

K.BABU, J

Crl.R.P. No.2099 of 2007

Dated this the 8th day of January, 2025

O R D E R

The challenge in this Crl. Revision Petition is to the judgment dated 16.08.2005 passed by the Judicial First Class Magistrate Court, Ranny, in C.C.No.261 of 2002 and confirmed by the Additional Sessions (Adhoc) Fast Track Court-II, Pathanamthitta, in the judgment dated 17.03.2007 in Crl.Appeal. No.281 of 2005. The revision petitioner faces offences under Sections 279, 337, 338 and 304(A) of the Indian Penal Code. The trial Court convicted him for the above-said offences and sentenced to undergo various terms of imprisonment.

Prosecution Case

2. The accused was the driver of a private bus bearing Regn No. KL-3/A-466. He drove the bus in a rash and negligent manner, endangering human life through Vadasserikara-Pampa Public Road from east to west on 06.07.2001 at 11.20 am, and the vehicle hit a KSRTC bus bearing Registration No.KL-15/1295 at Murikkayamukku in Perunad Village causing the death of two persons and hurt and grievous hurt to around 26 persons who were travelling in the KSRTC bus.

3. On the side of the prosecution, PWs 1 to 30 were examined. The prosecution also proved Exts.P1 to P41.

4. PW1 gave Ext.P1 FIS. He was a traveller in the KSRTC bus. He sustained injuries in the accident. He did not support the prosecution case that the accused drove the vehicle in a rash and negligent manner. The

occurrence witnesses, PWs 2 to 9, 12 and 13 to 15 also did not support the prosecution.

5. PWs 10, 11, 16 and 17 identified the accused as the driver who drove the offending vehicle. PW2, the driver of the KSRTC bus, stated that the bus driven by the accused hit the bus driven by him. He drove the vehicle in speed, the witness added.

6. PW16, another injured in the incident, deposed that the incident occurred due to the rash driving of the offending vehicle by the accused. PW17 stated that the over-speed of the vehicle driven by the accused resulted in the accident.

7. The learned trial Judge heavily relied on Ext.P3 scene mahazar to come to a conclusion that the description of the scene of occurrence would show that the offending vehicle had gone to the wrong side, causing the incident. Applying the principle *res ipsa loquitur,* the learned Magistrate came to the conclusion that the

prosecution has succeeded in proving its case beyond reasonable doubt. Ext.P3 scene mahazar narrated that the width of the tar road was 8m15cm, and the road margin had a width of 2m20cm on the north and 2m65cm on the south. In Ext.P3, it is noted that the right wheel of the private bus was found standing 43cm to the north west towards the place of occurrence. It is also noted therein that the front side of the private bus hit the front right side of the KSRTC bus behind its right wheel. Relying on Ext.P3 scene mahazar, the learned Magistrate, came to the conclusion that the incident occurred beyond the middle of the tar road towards the north. Therefore, the learned Magistrate concluded that the private bus went to the wrong side of the road.

8. The learned counsel for the revision petitioner relied on the following grounds to contend that the findings of the trial Court and the Sessions Court are untenable in law.

(a)The contents of Ext.P3 scene mahazar have not been proved by way of admissible evidence.

(b)Criminality cannot be presumed with the aid of the principle of *res ipsa loquitur*.

(c)The evidence that the accused drove the vehicle at high speed is not a ground to come to the conclusion that the accused drove it in a rash and negligent manner.

9. The 'evidence' consists of oral evidence and documentary evidence. The relevant facts in the case can be established either by oral evidence or documentary evidence. As per Section 59 of the Evidence Act, all facts, except the contents of documents or electronic records, may be proved by oral evidence. Section 60 of the Evidence Act says that oral evidence must, in all cases, whatever, be direct.

10. In the present case, the crucial document relied on by the trial Court, Ext.P3 scene mahazar, contains the

facts the Investigating Officer saw at the scene. The Investigating Officer has clearly narrated in the mahazar the facts he observed on the scene. Ext.P3 was marked through PW18, a witness to the scene mahazar. The witness through whom Ext.P3 was marked did not tender any evidence regarding the contents of the mahazar. He did not give any evidence regarding the place of occurrence. He only identified his signature in Ext.P3. The question is, how can the contents of Ext.P3 be proved? Going by the mandate of Sections 59 and 60 of the Evidence Act, as Ext.P3 contains what the Investigating Officer saw at the place of occurrence, the contents of the same could have been proved only by way of the oral evidence given by the Investigating Officer or any of the witnesses who narrated about the place of occurrence. In ***Narbada Devi Gupta v. Birendra Kumar Jaiswal And Anr*** [(2003) 8 SCC 745], the Supreme Court held that mere production and marking of

a document as Exhibit by the Court, cannot be held to be a due proof of its contents. In ***Rameshwar Dayal v. State of U.P.*** [AIR 1978 SC 1558], the Supreme Court observed that, that part of such documents which is based on the actual observation of the witness at the spot being direct evidence in the case is clearly admissible under Section 60 of the Evidence Act. In ***Ramji Dayawala and Sons (P) Ltd. v. Invest Import*** [(1981) 1 SCC 80], the Supreme Court held that undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. And the truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, that is by the evidence of those persons who can vouchsafe for the truth of the facts in issue. In ***Mohanan v. State of Kerala*** [2011 (3) KHC 680], this Court held that the observations made

personally by the Investigating Officer at the scene, such as what he saw etc., have to be deposed to by him in Court in the light of Section 60 of the Evidence Act.

11. In the present case, the Investigating Officer did not give evidence. None of the prosecution witnesses gave evidence regarding the scene of occurrence. The learned Magistrate, relying on the description in Ext.P3, came to the conclusion that the offending vehicle had gone to the wrong side of the road which resulted in the incident. Based on Ext.P3, the contents of the same left without admissible proof, the learned Magistrate applied the principle of *res ipsa loquitur*.

12. The general purport of the words, *res ipsa loquitur,* is that the accident speaks for itself or tells its own story.

13. Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does

not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care. The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle (***Ballard v. North British Railway Co.***, 1923 SC (HL) 43). The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. [Vide: ***Sanjay Gupta v. State of Uttar Pradesh*** [(2022) 7 SCC 203].

14. In ***State of Karnataka v. Satish*** [(1998) 8 SCC 493] on the application of the principle *res ipsa loquitur, t*he Supreme Court held thus:-

> "4.....In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions.... "

15. The Privy Council in ***Ng Chun Pui v. Lee Chuen Tat*** [1988] R.T.R 298 : (1988) 5 WLUK 235] held that there is not, even where *res ipsa loquitur,* any legal presumption of negligence which would effect the putting of the legal burden of disproving negligence on the defendant.

16. On the question whether an inference of negligence could properly be drawn based on the doctrine of *res ipsa loquitur,* this Court in ***Kesava Pillai***

v. State of Kerala [1985 KLT SN 62 (C.No.92)] held thus:-

> "In criminal cases the maxim is available only as a ratiocinate aid in the assessment of evidence in drawing permissive inferences. In civil cases the maxim operates as an exception to the general rule that burden of the alleged negligence in the first instance is on the plaintiff. That is because of the presumption of negligence arising from the circumstances of the accident. But in criminal cases the burden of proving everything essential for the establishment of the charge is on the prosecution. Criminality cannot be presumed subject to statutory exception. No such statutory exception requiring drawing of mandatory presumption of negligence could be imported in criminal liability. There cannot be any statutory presumption of crime having been committed. That is why the maxim is available in criminal cases only as an aid for assessment of evidence."

17. Therefore, the principle of *res ipsa loquitur* can be extended to criminal cases, only as an aid for assessment of evidence.

18. In the present case, relying on the inadmissible contents in Ext.P3 scene mahazar, the learned Magistrate

applied the principle of *res ipsa loquitur* to convict the accused, which is untenable in law.

19. Yet another aspect that requires consideration is that no witness gave evidence that the accused rashly or negligently drove the vehicle at the time of occurrence. PWs 16 and 17 deposed that the accused drove the vehicle in high speed. Vehicles are expected to be driven on the road at a fairly high speed. The prosecution has to bring on record materials of proof as to what is meant by high speed in the facts and circumstances of each case. In ***State of Karnataka v. Satish*** (Supra), the Supreme Court observed thus:-

> "4.Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case....."

20. In the instant case, the prosecution failed to establish that the accused drove the vehicle in a high speed within the meaning of rashness and negligence. The trial Court and the Sessions Court came to unreasonable conclusions. There is palpable misreading of records. The conviction of guilt is liable to be set aside.

Therefore, the Crl.R.P. is allowed. The judgment dated 16.08.2005 passed by the Judicial First Class Magistrate Court, Ranny, in C.C.No.261 of 2002 and confirmed by the Additional Sessions (Adhoc) Fast Track Court-II, Pathanamthitta, in the judgment dated 17.03.2007 in Crl.Appeal. No.281 of 2005 stands set aside. The accused is acquitted of the offences alleged. He is set at liberty.

Sd/-
K.BABU JUDGE

kkj