

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

Cr1.Rev.Pet.No. 358 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 96/1998 of ADDL.DISTRICT & SESSIONS COURT
(ADHOC FAST TRACK COURT-II), MANJERI, DATED 28-09-2002

AGAINST THE JUDGMENT IN CC 355/1996 of J.M.F.C., PARAPPANANGADI
DATED 29-06-1998

REVISION PETITIONER/APPELLANT/ACCUSED::

KUNHAN BAVA, S/O. SAIDALAVI,
PUTHIYA KADAPPURAM, TANUR, MALAPPURAM DIST.

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.M.G.VENUGOPALAN

RESPONDENT/RESPONDENT/COMPLAINANT::

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

BY PUBLIC PROSECUTOR SRI.K.K. RAJEEV

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

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Crl.R.P.No.358 of 2003
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Dated this the 6th day of January, 2015.

O R D E R

The accused in C.C.No.355/1996 on the file of the Judicial Magistrate of the First Class, Parapanangadi is the revision petitioner herein. The revision petitioner was charge sheeted by the Sub Inspector of Police, Tanur in Crime No.76/1996 under Sections 279 and 338 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that, on 13.4.1996, at about 5.30 p.m, the revision petitioner being the driver of the auto rickshaw bearing Reg.No.KL 10 B-9375 drove the same in a rash and negligent manner and at overspeed through the Unniyal - Beach road and when reached near the Beach road junction at Niramaruthur amsom, it went off the road and dashed against a four year old child, namely Abdul Nazer, who was standing at the road margin in front of the Akbar Hotel and due to the hit, he fell down and the vehicle ran over his leg and caused fracture to his leg, thereby the revision petitioner has committed the offence under sections 279 and 338 of the Indian Penal Code.

3. After investigation, final report was filed and it was taken on file as C.C.No.355/1996 on the file of the Judicial First Class Magistrate Court, Parapanangadi. When the revision petitioner appeared before the court below, particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 7 were examined and Exts.P1 to P7 were marked on their side. After closure of the prosecution evidence, the revision petitioner was examined under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that the accident occurred as the injured boy fell on the auto rickshaw while he was rushing to pick up the notices distributed from a jeep as part of the election campaign and he had not committed any offence. No defence evidence was adduced on his side.

4. After considering the evidence on record, the trial court found the revision petitioner guilty under Sections 279 and 338 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for six months under Section 279 of the Indian Penal Code and

further, sentenced to undergo simple imprisonment for three months under Section 338 of the Indian Penal Code and directed the sentences shall run concurrently.

5. The revision petitioner filed Crl.A.No.96/1998 before the Sessions Court, Manjeri, which was made over to Additional Sessions Court (Fast Track-II), Manjeri for disposal and the learned Additional Sessions Judge dismissed the appeal confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

6. Heard the counsel for the revision petitioner and the learned Public Prosecutor.

7. The counsel for the revision petitioner submitted that the evidence of Pws 1 and 2 is contradictory to each other and the case of the prosecution was that the injured child of aged 4 years was sent to purchase articles by the mother, who was standing on the side of the road and thereby she was negligent in sending the child. Pws 1 and 2 do not deny the suggestion given as well. So under the circumstances, the courts below were not justified in convicting the revision

petitioner for the offences under Sections 279 and 338 of the Indian Penal Code. Further, there is a delay of two days in registering the crime also. Further, the sentence imposed is harsh.

8. The learned Public prosecutor supported the concurrent findings of the court below.

9. The case of the prosecution as emerged from the prosecution witnesses is as follows:

On 13.4.1996 at about 5.30 p.m, the injured boy, aged 4 years, came to the shop of PW1 and while he was standing on the road margin, the auto rickshaw driven by the revision petitioner came through the road from north to south and when it reached the place of occurrence, it hit the child and thereafter ran over the left leg of the child. The child was immediately taken to the hospital and it was found that his left leg was fractured. On the basis of Ext.P1 statement given by PW1, PW7 registered Ext.P5 First Information Report as Crime No.76/1996 against the revision petitioner alleging offences under Sections 279 and 337 of the Indian Penal Code. Thereafter investigation was undertaken by him and he went to the place of occurrence and prepared Ext.P3 scene mahazer

in the presence of PW4 and another and he seized the vehicle and got it examined by PW5, the Assistant Motor Vehicle Inspector and obtained Ext.P4 report. The Assistant Sub Inspector of Police gave Ext.P6 report to add Section 338 of the Indian Penal Code in stead of Section 337 of the Indian Penal Code. He collected Ext.P2 and Ext.P7 certificates issued by PW3 and PW8 to prove the injury sustained by the injured. He completed investigation and submitted final report.

10. Pws 1 and 2 were the eye witness to the incident. The evidence of Pws 3 and 8 who are doctors, who treated the injured and issued Exts.P2 and P7 wound certificates will go to show that the injured child sustained fracture to his leg, which is a grievous injury and that fact was not disputed as well. PW1 has given Ext.P1 statement, on the basis of which, the crime was registered. He had deposed in tune with the statement given in Ext.P1. He had categorically stated that the injured child came to the shop and while was standing on the road margin, the revision petitioner, who had driven the auto rickshaw, came to the road margin and hit the child and ran over the left leg of the child and he was immediately taken to the hospital from where he was seen by PW3, who

issued Ext.P2 wound certificate. He had further stated that he gave Ext.P1 statement on the second day of the incident. He had further stated that since he was having other engagement, he could not go to the police station and give the statement and when the police called him, he went there and gave statement regarding the incident. Further, the injured is only 4 years old. The delay in registering the case cannot be taken as a ground for disbelieving the case of the prosecution. Any negligence on the part of the police in not registering the crime or the doctor, who examined the injured, did not inform the police, are not grounds to disbelieve the case of the prosecution and the delay cannot be said to be fatal in such cases.

11.PWs1 and 2 had categorically stated that the auto rickshaw came to the road margin and hit the child. The case of the revision petitioner was that the child suddenly rushed to the road for taking the election notice distributed from a jeep and in that process, he was hit by the auto rickshaw. The fact that the incident occurred on the road margin was also not seriously disputed as well. Except the version given by the revision petitioner at the time of section 313 examination, there is no other evidence adduced on the side of the revision

petitioner to prove the defence that the incident occurred due to the negligence of the child in running to the road for taking election notice said to have been distributed from the jeep. Pws 1 and 2 categorically stated that they did not see any vehicle at that time. There is no explanation forthcoming from the side of the revision petitioner for his vehicle going to the road margin or hitting the child and no negligence can be attributed towards a child of about 4 years as well. So, under the circumstances, the courts below were relying on the evidence of Pws 1 and 2, justified in coming to the conclusion that the revision petitioner was driving the vehicle at the relevant time and it was due to his rash and negligent driving that the injured boy sustained fracture and thereby he had committed the offence punishable under Sections 279 and 338 of the Indian Penal Code and rightly convicted him for the above said offences and the concurrent findings of the court below do not call for any interference.

12. The court below had sentenced the revision petitioner to undergo simple imprisonment for six months under Section 279 and further sentenced to undergo simple imprisonment for three months under Section 338 of the Indian Penal Code

and directed the sentences shall run concurrently. It is true that accidents are increasing and due to reckless driving, innocent people are being sustained injuries. However considering the circumstances, this Court feels that sending a person to jail is not required and imposing sentence with some compensation which may compensate the injured will meet the ends of justice. So the sentence imposed by the courts below are set aside and the same is modified as follows:

The revision petitioner is sentenced to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month under section 279 of the Indian Penal Code and further sentenced to undergo imprisonment till the rising of court and also to pay compensation of Rs.10,000/-, in default to undergo simple imprisonment for one month under section 357(3) of the Code and that will meet the ends of justice. If compensation is realized, the same be directed to be paid to the mother of the child after getting proper acknowledgment for the same. The petitioner is directed to surrender before the court below on 31.1.2015 to receive the sentence.

With the above modification of the sentence alone, the revision is allowed in part and disposed of accordingly.

Office is directed to communicate this order to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

K. RAMAKRISHNAN, J.

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Crl.R.P.No.358 of 2003

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6th day of January, 2015.

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