

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

Crl.Rev.Pet.No. 633 of 2003 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.277/2001 of SESSIONS COURT, KOZHIKODE
DATED 15-02-2003**

**AGAINST THE JUDGMENT IN C.C.NO.27/1997 of CHIEF JUDICIAL MAGISTRATE
COURT, KOZHIKODE DATED 28-04-2001**

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**SIVADASAN, S/O. DAMODARAN,
AKKARATHOTTATHIL HOUSE, THALAKKAD AMSOM AND DESOM.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.C.S.SUNIL**

RESPONDENT(S)/RESPONDENT/COMPLAINANT::

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

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.R.P.No.633 of 2003

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Dated this, the 29th day of January, 2015.

ORDER

Accused in C.C.No.27/1997 on the file of the Chief Judicial Magistrate Court, Kozhikode is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Circle Inspector of Police, City Traffic Police Station in Crime No.1011/1996 under Sections 279, 337, 304(A) of Indian Penal Code and Rule 224 of Kerala Motor Vehicles Rules read with Section 177 of Motor Vehicles Act.

3. The case of the prosecution in nutshell was that on 09.07.1996 at about 12.15 p.m, the revision petitioner as driver of the jeep with No.KL.8.B-3484 was carrying passengers including PW1 and a sick person from Tanur to Kozhikode and when it reached the place of occurrence on the Kozhikode - Meenchantha Mini Bye Pass road, it collided with a bus with No.KL.10.C.612 which came from the opposite direction and two persons in the jeep sustained grievous injuries and they succumbed to the injuries while they were

taken to hospital and some persons in the bus also sustained injuries and the driver of the jeep - the revision petitioner did not maintain the trip sheet of the jeep and thereby, he had committed the above said offences. After investigation, the investigating officer filed A and B charge in respect of this incident against the revision petitioner and the driver of the bus who was examined as PW4 in the case and case against the revision petitioner was taken on file as C.C.No.27/1997 on the file of the Chief Judicial Magistrate Court, Kozhikode.

4. When the revision petitioner appeared before the court below, the 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 15 were examined and Exts.P1 to P13 were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence. The accident occurred due to the negligence of the bus driver. No defence evidence was adduced on his side.

5. After considering the evidence on record, the trial court found the revision petitioner not guilty under Section 338 of Indian Penal Code and acquitted him of that charge, but, found him guilty under Sections 279, 337, 304(A) of Indian Penal Code and Rule 224 of Kerala Motor Vehicles Rules read with Section 177 of the Motor Vehicles Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for two months under Section 304(A) of Indian Penal Code and further sentenced to undergo simple imprisonment for three months and also to pay a fine of Rs.500/- in default to undergo simple imprisonment for 15 days under Section 279 of Indian Penal Code and further sentenced to undergo simple imprisonment for three months and also to pay a fine of Rs.250/- in default to undergo simple imprisonment for one week under Section 337 of Indian penal Code and further sentenced to pay a fine of Rs.100/- under Rule 224 of Kerala Motor Vehicles Rules read with Section 177 of Motor Vehicles Act in default to undergo simple imprisonment for two days and directed the substantive sentences to run concurrently. Though the revision petitioner

filed Crl.Appeal No.277/2001 before the Sessions Court, Kozhikode, the learned 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 Public Prosecutor.

7. The Counsel for the revision petitioner submitted that in Ext.P1 First Information Statement, PW1 had not alleged any negligence against the driver of the jeep. In fact, he had alleged negligence against the driver of the bus which collided with the jeep. Further, the person who had said to have shown the place of occurrence was not examined and the vehicles were not seen at the place of occurrence so as to locate the place of occurrence correctly when the scene mahazar was prepared as well. Further, none of the witnesses had given statement before the investigating officer that the jeep overtook another bus and went to the wrong side and hit against the bus which was driven by PW4. So, it is an improvement made by them before court and these omissions

were brought in the evidence of investigating officer especially when the police has filed A and B charges alleging negligence against both the drivers and the improvement made by the witnesses before court has to be viewed seriously which has not been done by the courts below and without considering these aspects, the finding arrived by the court below that the accident occurred due to the negligence of the revision petitioner is unsustainable in law and the same is liable to be set aside. He had further submitted, if for any reason, this court found that the conviction is proper, prayed for leniency in respect of sentence.

8. On the other hand, the learned Public Prosecutor supported the concurrent findings of the court below.

9. The case of the prosecution in nutshell was that on 09.07.1996, PW1 along with his father and brothers and sisters were travelling in the jeep driven by the revision petitioner from Tanoor to Kozhikode as their father was suffering from high blood pressure and he had to be taken to Baby Memorial Hospital and when it reached the place of occurrence, it collided with a bus which came from the opposite direction which was driven by PW4. Two persons

travelling in the jeep namely., the father and brother of PW1 died in the incident and some persons in the bus sustained injuries. On the basis of the statement given by PW1, a case was registered by PW13 as Crime No.1011/1996 of City Traffic Police Station against the driver of the bus alleging offences under Sections 279, 337 and 304(A) of Indian Penal Code. The inquest on the bodies of the deceased persons were conducted by PW14 - the investigating officer and Ext.P8 and P9 - Inquest reports of the deceased were prepared. PW7 had conducted postmortem examination on the bodies of the deceased and prepared Ext.P2 and P3 postmortem certificates. The vehicles were got examined by Motor Vehicle Inspector and Ext.P4 and P5 reports were obtained which shows that there was no mechanical defect for both vehicles. One of the injured was examined by PW8 and he issued Ext.P6 wound certificate. PW14 prepared Ext.P10 scene mahazar of the place of occurrence in the presence of witnesses and he had prepared Ext.P11 body mahazar of the vehicles. During the investigation, it was revealed that offence under Section 338 of Indian Penal Code was also committed and from the evidence of the owner of the jeep, it was revealed that the jeep was

driven by the present revision petitioner. He filed Ext.P12 report to add Section 338 of Indian Penal Code and Rule 224 of Motor Vehicles Rules read with Section 177 of Motor Vehicles Act for not keeping the trip sheet of the vehicle. He completed the investigation and submitted final report in both the cases.

10. The fact that the jeep was driven by the revision petitioner and the bus was driven by PW4 was not in dispute as both of them had admitted that they were driving the respective vehicles at the relevant time. It was also in a way admitted that both the vehicles were coming from the opposite directions. It is true that in Ext.P10 scene mahazar, the place of occurrence was shown as 2.15 metres west from the eastern tar end and it was brought out in evidence that the bus was coming from North to South while the jeep was going from the opposite direction. But, it will be seen from the scene mahazar that the road was having a width of 7.50 metres. But, the vehicles were not seen at the place of occurrence. But, he had noted that the glass pieces were seen at the place of occurrence. It is seen from the scene mahazar that the place of occurrence was shown by one Sheriff, S/o

Aboobacker, Valappil Veedu, Cheriya Mangav, Valayanad Amsom Desom. But, that person was not examined. The persons who signed the scene mahazar were not the eye witnesses of the incident as well and they have no case that they have seen the incident. So, in the absence of examination of the person who had shown the place of occurrence, relying on the place of occurrence mentioned in the scene mahazar, it is not safe to come to the conclusion that it was the actual place where the accident occurred so as to convict the accused for offence alleged.

11. PW1 in Ext.P1 did not mention that the jeep tried to overtake another bus and in that process, hit against the bus which came from the opposite direction driven by PW4. But, at the time when he was examined before the court, he had a different version about the incident and he had stated that the jeep overtook a bus going through the same direction and hit against the bus which came from the opposite direction driven by PW4. But, he had admitted in his evidence that, he had not stated that the jeep tried to overtake another bus and went to the wrong side and hit against the bus came from the opposite direction when he was questioned by the police. So, it is a

new version given by him before the court.

12. Further, PW2 is an injured who was travelling in the bus. He had also stated that the jeep came from the opposite direction through the wrong side and hit against the bus in which he was travelling in an attempt to overtake the bus going ahead of the jeep. But, he had admitted in the cross examination that, he had stated these aspects before the police and he had nothing to say if it was not recorded by the police. So, it can be seen from his evidence also that he had made an improvement from the statement given by him before the police when he was examined before the court. PW3 and PW4 were conductor and driver of the bus. It was admitted by PW3 that he was giving ticket to the passengers at that time and if that be the case, there was no possibility for him to see the actual hit and he could have seen the incident only after the accident. He had also stated the fact that the jeep came from the opposite direction and hit against the bus and if it is not written in the statement given to the police, he had nothing to say. He had admitted in his evidence that when he was questioned by the police, he had stated that he was giving ticket to the passengers at that time. So, if that be the case,

there is no possibility for him to see the actual incident as claimed by him.

13. PW4 was the driver of the bus against whom B charge was laid in respect of the same incident. He had stated that he had nothing to say, if the police did not noted in his statement that the jeep came from the opposite direction and hit against the bus which he had stated to the police. His case was that on seeing the jeep coming through the wrong side by putting the head light by overtaking another bus, he stopped the bus and in spite of that, the jeep hit against his bus. But, even PW3 - his own conductor had no such case. PWs 1 and 2 also had no such case. So, under the circumstances, when PW14 - the investigating officer had stated that none of the witnesses questioned had stated that the jeep overtook another bus and gone to the wrong side and hit against the bus driven by PW4, when the witnesses have deviated from the statement given by them before the police and put up a new case before the court, then, it is not safe to rely on their evidence to come to the conclusion that the prosecution has proved beyond reasonable doubt that the accident occurred due to the rash and negligent driving of the jeep by the

revision petitioner so as to convict him for the offence under Sections 279, 337 and 304(A) of Indian Penal Code and the reasonings given by the court below for coming to such a conclusion without proper explanation from the investigating officer for these aspects is unsustainable in law and the same is liable to be set aside and the revision petitioner is entitled to get acquittal of the charge levelled against him under Sections 279, 337 and 304(A) of Indian Penal Code giving him the benefit of doubt. But, since it was admitted that he was driving the vehicle at the relevant time and no trip sheet was maintained, the conviction entered by the courts below for the offence under Rule 224 of Kerala Motor Vehicles Rules read with Section 177 of the Motor Vehicles Act is perfectly justifiable and that sentence imposed do not call for any interference. Since this court has found that the conviction under Sections 279, 337 and 304(A) of Indian Penal Code is not justifiable, the sentence imposed for those offences is also not proper and the same is also liable to be set aside.

In the result, the revision petition is allowed in part. The order of conviction and sentence passed by the court below against the revision petitioner for the offences under Sections

279, 337 and 304(A) of Indian Penal Code are hereby set aside and he is acquitted of that charge giving him the benefit of doubt. He is set at liberty for those offences. But, the order of conviction and sentence passed by the court below for the offence under Rule 224 of Motor Vehicles Rules read with Section 177 of the Motor Vehicles Act is hereby confirmed. The fine amount if any deposited for the offences under Sections 279, 337 and 304(A) of Indian Penal Code by the revision petitioner is directed to be returned to him after adjusting the fine imposed under other heads if that was not paid. If that fine also paid, then, the excess fine amount be given to the accused on making necessary application for that purpose before the court below.

With the above modification of the orders of the court below, the revision petition is allowed in part and disposed of accordingly.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge