

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Crl.Rev.Pet.No. 662 of 2003 ()

**AGAINST THE JUDGMENT IN CrI. APPEAL 92/2000 of ADDL. SESSIONS COURT
(SPL. COURT), KOTTAYAM, DATED 02-12-2002**

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**AGAINST THE JUDGMENT IN ST 1497/1996 of J.M.F.C. - I,
ETTUMANUR, DATED 03-03-2000**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**JOSEKUTTY, S/O. ABRAHAM,
MANNARATHU HOUSE, VELLIKKULAM KARA, THEEKROY VILLAGE,
KOTTAYAM.**

BY ADV. SRI. M.SREEKUMAR

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

**THE 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
20-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.662 of 2003

.....
Dated this the 20th day of March, 2015

ORDER

Accused in S.T.1497/1996 on the file of the Judicial First Class Magistrate Court, Ettumanoor, is the revision petitioner herein. The revision petitioner was charge-sheeted by the Sub Inspector of Police, Kidangoor, in Crime No.27/1996 of Kidangoor police station for the offence under Section 279, 337 and 338 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 26.08.1996 at about 12.00 noon, the revision petitioner was driving the jeep with Reg.No.KL-10A/4896 in a rash and negligent manner, so as to endanger human life from west to east through Ettumanoor-Pala public road and hit against the motor cycle with Reg.No.KL-5B/8137 driven by CW2, which came from the opposite direction, in front of the house of John, Mangalathu house, near India Rubber

Factory at Thekkummuri kara, in Puliyanloor Village and caused grievous injuries to him and thereby he had committed the offence punishable under Section 279, 337 and 338 of the Indian Penal Code.

3. After investigation, final report was filed and the case was taken on file as S.T.1497/1996. 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 7 were examined and Exts.P1 to P8 were marked on their side.

4. After closure of the prosecution evidence, the revision petitioner was questioned 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, he had not driven the vehicle at the relevant time and he had no connection with that vehicle. He had gone to the police

station on one day along with the broker, for the purpose of taking a vehicle to workshop, which involved in an accident kept in Kidangoor police station and at that time he was made to sign certain papers and later he received a summons from the court, only at that time he came to know about the false implication in the case. In order to prove his case, DWs 1 and 2 were examined on his side. After considering the evidence on record, the court below found the revision petitioner guilty under Section 279, 337 and 338 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for two months under Section 279 of the Indian Penal Code and further sentenced him to undergo simple imprisonment for one year under Section 338 of the Indian Penal Code and directed the sentence to run concurrently and no separate sentence was awarded for the offence under Section 337 of the Indian Penal Code. Aggrieved by the same, he filed Crl.Appeal No.92/2000 before the Sessions Court,

Kottayam, which was made over to Additional Sessions Court(Special), Kottayam, for disposal and the learned Additional Sessions Judge dismissed the appeal, confirming the order of conviction and sentence passed by the court below. Dissatisfied with the same, the present revision has been filed by the revision petitioner/accused before the court below.

5. Heard the counsel for the revision petitioner Sri.M. Sreekumar and the Public Prosecutor Smt. V.H. Jasmine.

6. The counsel for the revision petitioner submitted that, there is no evidence to prove the identity of the accused as the person who drove the vehicle at the relevant time. The evidence of PWs 2 and 3 cannot be believed regarding the identity, as there was no possibility for them to identify the accused as the person who drove the vehicle at the relevant time. Further the evidence of PW3 regarding witnessing the entire incident is also

doubtful. As according to him, the accident occurred at the time when the jeep was overtaking a KSRTC bus and he was standing on the northern side and the accident occurred on the southern side and he could not have seen the actual hit as claimed by him. PWs 2 and 3 have admitted that, they have no prior acquaintance with the accused and they have not shown by the police during the investigation as well. So under the circumstances, the courts below were not justified in convicting the appellant for the offence alleged, is the submission made by the counsel for the revision petitioner.

7. On the other hand, the learned Public Prosecutor has submitted that, there is nothing brought out to discredit the evidence of PWs 2 and 3, regarding the manner in which the accident occurred and also the identity of the accused and the concurrent findings of the court below on this aspect do not call for any interference.

8. The case of the prosecution as emerged from

the prosecution witnesses was that, on 26.08.1996, while PW2 was riding on his motor cycle proceeding from east to west along Pala-Ettumanoor road and when it reached the place of occurrence, the jeep involved in the accident came from the opposite direction at high speed, tried to overtake a KSRTC bus, which was going ahead and came to the souther side and hit against the motor cycle driven by PW2 and thereafter proceeded further and hit against the electric post and stopped there. He sustained severe injuries and he was taken to hospital, from where he was seen by PW4/ doctor, who issued Ext.P2 wound certificate and Ext.P3 discharge certificate. PW6, the Sub Inspector of Police, Kidangoor police station got information regarding the admission of PW2 in the hospital and he went to the hospital and since he was not in a position to give statement, recorded Ext.P1 statement of PW1, who is his father and prepared Ext.P1(a) body mahazar of the injured and came back to the police station and registered Ext.P5

first information report as Crime No.27/1996 of Kidangoor police station against the identifiable driver of the jeep with Reg.No.KL-10/A-4896. Thereafter he went to place of occurrence and prepared Ext.P4 scene mahazar in the presence of PW5 and PW6. The vehicles were got examined by PW7, who issued Ext.P7 and P8 vehicle reports in respect of the jeep and the motor cycle respectively. He questioned the witnesses and recorded their statements and during investigation it was revealed that the vehicle was driven by the revision petitioner and so he gave Ext.P6 report showing the name and address of the revision petitioner as the accused in the case. He completed the investigation and submitted final report.

9. The evidence of DW1 is not helpful to prove the date on which he went to the police station along with the revision petitioner so as to take a vehicle which was involved in some accident. Further the evidence of DW2 is also not helpful, as he did not mention the date of accident

as well. So their evidence is not helpful to prove the identity of the accused, who had driven the vehicle. PW1 is not an eye witness to the incident. PW2, though he had deposed about the manner in which the accident occurred and also stated that he had identified the revision petitioner as the driver of the vehicle, he had admitted in his evidence that he had no prior acquaintance with the revision petitioner and he was not shown by the investigating officer during the course of investigation as the person who drove the vehicle as well. He identified the revision petitioner for the first time from court after the incident. So it is not safe to rely on his evidence to prove the identity of the accused as the person who drove the vehicle at the relevant time.

10. Then the remaining evidence is that of PW3. According to him, the accident occurred in front of his house. He was standing in front of his house and at that time, he saw a KSRTC bus coming from west to east and his house is also situated about 25 feet away from the road.

Further according to him, a jeep came at a high speed and overtook the KSRTC bus and at that time it hit against the motor cycle and thereafter hit against the electric post and stopped.

11. It is true that, his evidence will be helpful to prove that the accident occurred due to the negligent driving of the jeep driver. As according to him, the jeep driver tried to overtake the KSRTC bus without getting proper signal and also ascertaining as to whether he could safely overtake the vehicle as well. But it is very difficult to believe his evidence that, he could identify the driver of the vehicle which was driven at high speed and passed through the other side of the bus in the processes of overtaking and hit against the motor cycle. He had also no case that he had prior acquaintance with the revision petitioner and he had admitted that he was not shown the accused by the police and he had not identified the revision petitioner during the course of investigation as well. So under the

circumstances, there is some force in the submission made by the counsel for the revision petitioner that the evidence of PW3 cannot be believed for the purpose of proving the identity of the revision petitioner as the person who drove the vehicle, as he had no prior acquaintance with him and there is no possibility for him to identify the accused and he was not shown to the witnesses by the investigation officer during the course of investigation so as to identify him immediately after the accident as well. He was identifying the accused from the court for the first time after the accident. So under the circumstances, the evidence of PW3 is also not helpful to prove the identity of the accused, as the person who drove the vehicle at the relevant time. The owner of the vehicle was not examined. If he had been examined, it could have been known as to whom the vehicle was entrusted at the relevant time. That was not done in this case.

12. There is no document produced on the side

of the prosecution as to how they came to know about the identity of the accused as the person who had driven the vehicle at the relevant time, except stating that he appeared and he was released on bail. That alone is not sufficient to come to the conclusion that the prosecution has proved beyond reasonable doubt that the revision petitioner was driving the vehicle at the relevant time so as to make him liable for rash and negligent driving of the vehicle which resulted in the accident and causing injury to PW2.

13. So under the circumstances, the courts below were not justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the accused was driving the vehicle at the relevant time and he was responsible for the accident and causing injury to PW2 so as to convict him and the consequential conviction entered by the court below for the offence under Section 279, 337 and 338 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 giving him the benefit of doubt. Since he was found not guilty, the sentence imposed is also not proper and the same is also liable to be set aside.

In the result, the revision is allowed and the order of conviction and sentence passed against him by the trial court and confirmed by the appellate court are set aside and he is acquitted of the charge leveled against him giving him the benefit of doubt. He is set at liberty. The bail bond executed by him will stand cancelled.

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

Sd/-
K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge

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