

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. 1131 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 317/2000 of ADDITIONAL SESSIONS COURT (SPL. COURT), KOTTAYAM

AGAINST THE JUDGMENT IN CC 696/1996 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, CHANGANACHERRY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MANGALAN, S/O.MADHAVAN,
CHARIVUPURAYIDATHIL VEEDU
KUNNAMTHANAM KARA, KUNNAMTHANAM VILLAGE

BY ADV. SRI.ANTONY C. ETTUKETTIL

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY ADV. SMT.V.H.JASMINE, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
20-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.AV

K.RAMAKRISHNAN, J

CRL.R.P.NO.1131 OF 2003

Dated this the 20th day of March, 2015

O R D E R

Accused in CC.No.696/1996 on the file of the Judicial First Class Magistrate Court, Changanasserry, is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Circle Inspector of Police, Changanasserry in Crime No.360/1995 of Changanasserry police station alleging offence under section 279, 337, 338 and 304A of the Indian Penal Code.

3. The case of the prosecution in nutshell was that on 15.06.1995, at about 12.30 pm, the revision petitioner as driver of the vehicle KLO-4718 drove the lorry in a rash and negligent manner so as to endanger a human life through AC road from east to west with a rubbles loaded and when it reached Paippadu hit against the acacia tree and fell on the house with No.1/415 of Paippad panchayat and on account of that one Sushamma died and others sustained simple and grievous injuries and thereby he had committed the offence punishable under section 279, 337, 338 and 304A of the Indian Penal Code. After investigation, final report was filed and the case was taken on file as CC.No.696/1996 on the file of the Judicial First Class Magistrate Court, Changanasserry.

4. 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 15 were examined and Exts.P1 to P18 were marked on their side. After closure of the prosecution's 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's evidence. He had further stated that he was not driving the vehicle at the relevant time, and the vehicle was driven by one Manoj, who was the cleaner of the vehicle. He had examined DW1 to prove his case. After considering the evidence on record, the court below found the revision petitioner guilty under section 279, 337, 338 and 304A of the Indian Penal Code and convicted him thereunder and sentenced him to pay a fine of Rs.1000/- each for the offence under section 279, 338 of the Indian Penal Code in default to undergo simple imprisonment 45 days each and further sentenced to undergo rigorous imprisonment for one year for the offence under section 304(A) of the Indian Penal Code. Aggrieved by the same, the revision petitioner filed Crl.Appeal No.317/2000 before the Sessions Court, Kottayam, which was made over to Additional Sessions Court(Special) Kottayam for disposal. 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.

5. Heard Adv.Sri.Antony.C.Ettuketil appearing for the revision petitioner and Smt.Jasmine, the learned Public Prosecutor.

6. Adv.Sri.Antony.C.Ettuketil, appearing for the revision petitioner submitted that even the entire prosecution evidence is accepted, it cannot be said that there was any criminal negligence established so as to attract the offence under section 279, 337, 338 and 304A of the Indian Penal Code and at the most, it is only an error of judgment. Further, he could not anticipate such things and in order to avoid a major accident when he swerved the vehicle, that the unfortunate incident happened, thereby courts below were not justified in convicting the revision petitioner for the offence alleged. He had also argued that the evidence of the Motor Vehicle's Inspector coupled with the report will go to show that the tie rod end of the vehicle was broken and that could have been the cause of the accident and if that had happened, he would not get the control of the vehicle as well. Those aspects were not properly

appreciated by the courts below. He had further submitted that the post-mortem certificate has not been marked, the investigating officer has not been examined and the doctor who conducted the post-mortem was not examined to prove the cause of death. So, under the circumstances, it cannot be said that the prosecution had proved the death occurred due to the injuries sustained by the injured in the accident and as such no conviction under section 304A of the Indian Penal Code is attracted. So, he prayed for acquittal of the revision petitioner.

7. On the other hand, Smt.Jasmine, the learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved beyond reasonable doubt that the accident occurred due to the negligent driving of the vehicle by the revision petitioner and non examination of the investigating officer is not fatal in this case as no materials have been brought out to prove that non examination of the investigating officer has caused any prejudice to him. Further, the evidence will go to show that the death caused due to the injuries sustained and the cause of death was not disputed as well. So, according to the learned Public Prosecutor, the courts below were perfectly justified in convicting the revision petitioner for the offence alleged.

8. The case of the prosecution as emerged from the

prosecution witnesses was as follows:-

On 15.06.1995 at about 12.30 pm, the lorry with No.KLO-4718 loaded with rubbles hit against an acacia tree and fell on the house in which the deceased Sushamma was residing is not in dispute. Further, the fact that PWs 1 to 4 and PW6 sustained injuries in the accident is also not in dispute. It is an admitted fact that PW6 was travelling in the lorry as a cleaner at the relevant time. PWs 1 to 4 have not seen the accident as such as they were in the house along with the deceased Sushamma at the time when the accident occurred and the vehicle fell on the house along with the acacia tree. So they were not aware of the cause of accident. PWs 6 and 7 were the eye witnesses to the incident. PW6 was the person who was travelling in the cabin and he had identified the revision petitioner as the driver of the vehicle who drove the vehicle at the relevant time. PW7 is an eye witness to the incident. These witnesses have stated that before the accident, some ducks suddenly crossed the road and in order to avoid to those ducks, the driver of the vehicle swerved the vehicle to left but thereafter he could not control the vehicle and hit against an acacia tree and along with the tree it capsized on the house situated on the side of the road. It is true that PW6 had stated that if he had slowed down the vehicle, the accident could have been avoided. But it may be

mentioned here that mere speed alone is not sufficient to come to the conclusion that the accident occurred due to the criminal negligence of the driver of the vehicle. If something had happened unexpectedly, then it cannot be said that the driver was negligent in driving the vehicle. In this case admittedly the prosecution witnesses have admitted that some ducks suddenly crossed the road and on seeing the ducks, the driver swerved the vehicle. Being a vehicle heavily loaded applying break might, some times, cause unforeseen incident as well. That may be the reason why he had swerved the vehicle. Further, the witnesses have stated that on account of the rain, the soil was also loose and they were not sure as to whether the vehicle happened to capsize even after hitting the tree due to the loose soil. If that be the case, it cannot be said that the driver was criminally negligent in causing the accident and that benefit must be given to the accused. These aspects were not properly considered by the court below, while coming to the conclusion that the accident occurred due to the criminal negligence of the driver of the vehicle so as to convict the revision petitioner for the offence alleged. Mere negligence is not sufficient to attract the offence under section 279, 337 or 304A of the Indian Penal Code. It must be reckless and careless driving which would not have been expected from a normal person, while driving the

vehicle at the relevant time which has to be established and unless such recklessness is proved, even if there was some speed is not sufficient to attract the offence under section 279 or 304A of the Indian Penal Code. So, considering the circumstances, the finding of the court below that the prosecution has proved beyond reasonable doubt the accident occurred due to the negligent driving of the lorry by the revision petitioner appears to be erroneous without appreciation of the evidence in the right perspective and the possibility of error judgment as submitted by the counsel for the revision petitioner cannot be ruled out and in such circumstances, it cannot be said that the prosecution has proved the guilt of the revision petitioner beyond reasonable doubt and he is entitled to get acquittal of the charge levelled against him giving him the benefit of doubt. So, the finding of the court below that the revision petitioner had committed the offence punishable under section 279, 337, 338 and 304A of the Indian Penal Code is unsustainable in law and the same is liable to be set aside and he is entitled to get acquittal of the charge levelled against him giving him the benefit of doubt. Since the revision petitioner is acquitted of the charge levelled against him, the sentence imposed is also not proper and the same is also liable to be set aside.

In the result, the revision petition is allowed and the order of conviction of sentence passed by the court below against the revision petitioner under section 279, 337, 338 and 304A of the Indian Penal Code and confirmed by the appellate court are set aside and he is acquitted of the charge levelled against him giving him the benefit of doubt. He is set at liberty. The bail bond if any executed by him will stand cancelled. The fine amount if any remitted by the revision petitioner before the court below is directed to be returned to him.

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

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//TRUE COPY//

PATO JUDGE