

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

Crl.Rev.Pet.No. 1273 of 2003 ()

**AGAINST THE JUDGMENT IN CrI. APPEAL No. 316/2000 of ADDL. SESSIONS COURT,
ALAPPUZHA. DATED 23-11-2001**

&

**AGAINST THE JUDGMENT IN CC 704/1997 of J.M.F.C.-I,
CHERTHALA, DATED 24-11-2000**

REVISION PETITIONER(S):

**RAJENDRAN, AGED 30 YEARS,
S/o. NARAYANAN,
KOOMBEKARIYIL HOUSE, WARD No.V,
PALLIPPURAM PANCHAYATH,
CHERTHALA.**

BY ADV. SRI.B.RAJEEV KOYICKAL

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SMT. V.A. JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
23-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

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Crl. R. P. No.1273 of 2003
.....

Dated this the 23rd day of January, 2015

ORDER

Accused in C.C.No.704/1997 on the file of the Judicial First Class Magistrate Court-I, Cherthala, is the revision petitioner herein. The revision petitioner was charge-sheeted by the Sub Inspector of Police, Cherthala, in Crime No.71/1997 of Cherthala police station under Section 279 and 338 of the Indian Penal Code(hereinafter called 'the Code').

2. The case of the prosecution in nut shell was that, on 01.03.1997 at about 10.15 a.m, the revision petitioner as driver of the bus with Reg.No.KBF-5703, drove the vehicle in a rash and negligent manner so as to endanger human life along Cherthala Arookutty road from north to south and when it reached near Thirunalloor L.P.School, it hit against a lady by name, Ponnamma and caused greivous injuries to her and thereby he had committed the offence punishable under Section 279 and

338 of the Indian Penal Code. After investigation, final report was filed and the case was taken on file as C.C.No.704/1997 on the file of the Judicial First Class Magistrate Court-I, Cherthala. 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 8 were examined and Exts.P1 to P6 and P1(a) were marked on the side of the prosecution. 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 has been falsely implicated in the case. No defence evidence was adduced on his side to prove his case. After considering the evidence on record, the court below found the revision petitioner guilty under Section 279 and 338 of the Indian Penal Code

and convicted him thereunder and sentenced him to undergo simple imprisonment for one year under Section 338 of the Indian Penal Code and further sentenced to undergo simple imprisonment for six months under Section 279 of the Indian Penal Code and directed the sentences to run concurrently. The license was suspended for a period of six months under Section 20 of the Motor Vehicles Act. Aggrieved by the same, he filed Crl. Appeal 316/2000 before the Sessions Court, Alappuzha, which was made over to Additional Sessions Court, Alappuzha, for disposal. The learned Additional Sessions Judge by the impugned judgment dismissed the appeal, confirming the order of conviction and sentence including the suspension of driving license passed by the court below. Dissatisfied with the same, the present revision has been filed by the revision petitioner/ accused before the court below.

3. Heard the Public Prosecutor and perused the records.

4. On going through the records, the defence taken by the accused appears to be that, he was not driving the vehicle at the relevant time and the accident occurred when the injured tried to cross the road in a negligent manner. The learned Public Prosecutor supported the concurrent findings of the court below.

5. The case of the prosecution as emerged from the prosecution witnesses was that, on 01.03.1997 at about 10.15 a.m., PW2 the injured Ponnamma came to the ration shop for purchasing some articles and thereafter while she was proceeding to the shop to purchase some bag and before reaching the tarred portion of the road, on the eastern side of the road, a bus by name, Padma came and stopped in the middle of the road near the bus stop and in order to avoid the bus, he proceeded, (the accused was driving the vehicle involved in the case), overtook the bus along the eastern side of the road in a reckless manner and hit against the injured Ponnamma and on account of the hit

she fell down and she became unconscious and she was taken to hospital by PW1 and others, from where she was seen by PW7, who issued Ext.P4 wound certificate.

6. On getting intimation regarding the admission of PW2 in the hospital, PW8 the Head Constable attached to Cherthala police station went to the hospital and found the injured in an unconscious stage unable to give statement. So he recorded Ext.P1 statement of PW1, who was also an eye witness to the incident and prepared Ext.P1(a) body mahazar of the injured/ PW2 and came back to the police station and handed over the same to PW8, the Sub Inspector of Police. PW8, on receipt of Ext.P1, registered Ext.P5 first information report as Crime No.71/97 of Cherthala Police Station under Section 279 and 338 of the Indian Penal Code against the identifiable driver who drove the bus KBF-5703. He went to the place of occurrence and prepared Ext.P3 scene mahazar in the presence of PW5 and another. He seized the vehicle and

got it examined by PW4, who issued Ext.P2 vehicle inspection report. He gave notice to CW6, the owner of the bus regarding the particulars of the driver and he gave a reply and on that basis he gave Ext.P6 report showing the name and address of the accused. He questioned the witnesses and record the statement and the driving license of the revision petitioner was also seized while preparing the scene mahazar from the vehicle and he completed the investigation and filed final report in the case.

7. PW1 is the informant and PW2 is the injured and PW3 is an eye witness to the incident. PW1 had categorically stated that, he was also standing on the side of the varantha of the ration shop and at that time he saw the Padma bus and the bus driven by the accused coming chasing each other at high speed and the Padma Bus stopped in the middle of the road to alight passengers and at that time the bus driven by the revision petitioner, over took that bus in a negligent manner through the eastern

side of that bus/ namely through the left side of the bus which was stopped there and came to the road margin and hit against the injured PW2 and due to the hit she fell down and she was taken to the hospital by them and she became unconscious also. He had identified the revision petitioner as the driver, who drove the vehicle at the relevant time. He had further stated that, the bus stopped at a distance after hitting the injured and the passengers and the accused came there. He had also stated that, he was known as Lalan and he had seen the revision petitioner driving the particular bus even on earlier occasions and he had personal acquaintance with the driver. It is true that, there was some discrepancy regarding the manner in which the injured was taken to the hospital and also that the name of the driver was not mentioned in the first information statement, though he was claiming having acquaintance with him, but he had stated that, he had mentioned those facts, and he had also stated that he knew the driver. So

under the circumstances, those things are not sufficient to disbelieve the case of the prosecution.

8. PW2 is the injured. She had also deposed that, while she was going through the eastern portion of the road, the bus came through the mud portion and hit against her. It is true that, at the time of cross examination, she had stated that, he wanted to go to the stop on the western side, but he had categorically stated that, she did not cross the road and she did not even reach the tarred portion of the road. She also identified the revision petitioner/accused who drive the bus at the relevant time. She had also deposed that, she knew him and she had seen him driving the particular bus on the earlier occasions also. PW3 is another eye witness to the incident, also corroborated the evidence of PWs 1 and 2 regarding the manner in which the accident occurred. He had also identified the revision petitioner as the driver of the bus at the relevant time. Though PWs 1 to 3 were cross examined at length, nothing

was brought out to discredit their evidence on this aspect. The fact that, the bus came through eastern road margin and hit against the lady who was proceeding through that portion has been clearly established by the evidence of PWs 1 to 3. Further the scene mahazar also fortified this fact as the place of occurrence was shown as the mud portion of the road margin and not the tarred portion of the road. The revision petitioner had no explanation for the same. The only explanation given was that, it is a bus stop and the bus is stopped after getting into the road margin. If people were standing on the side of the road, even if he has to stop the vehicle there, he is expected to take more care, while stopping the bus in the bus stop. But it is seen from the evidence of PWs 1 to 3 that, the bus could not stop at that place, but it proceeded further and overtaking the bus stopped in the middle of the road and in that process happened to hit the injured/PW2, who was standing on the side of the road. So under the circumstances, the defence

case that, the prosecution has failed to prove that, he was driving the vehicle at the relevant time and the accident occurred due to his negligence has no substance. So the courts below were perfectly justified in coming to the conclusion that, the revision petitioner was driving the vehicle at the relevant time and it was due to his criminal negligence and reckless driving that the accident occurred and PW2 sustained injuries.

9. The evidence of PW2 will go to show that, she had lost one teeth and some tooth were broken. She had further stated that, she was pregnant by three months at that time and on account of the incident, the pregnancy was aborted. She had sustained nasal bone fracture as well. These aspects were not cross examined as well. Further Ext.P4 wound certificate shows that, there was damage to one of the tooth and she was referred to Medical College Hospital for better treatment and the nasal bone fracture was also noted in the wound certificate. So it is

clear from this that, she sustained grievous injury and thereby courts below were perfectly justified in convicting the revision petitioner for the offence under Section 279 and 338 of the Indian Penal Code and the concurrent findings of the court below on this aspect do not call for any interference.

10. As regards the sentence is concerned, the trial court had sentenced him to undergo simple imprisonment for one year under Section 338 of the Indian Penal Code and further sentenced to undergo simple imprisonment for six months under Section 279 of the Indian Penal Code and directed the sentences to run concurrently and disqualified him to hold the driving licence to drive heavy vehicles for a period of six months under Section 20 of the Motor Vehicles Act and that was confirmed by the appellate court.

11. Accidents are nowadays increasing and on account of the reckless driving of the vehicles, innocent

persons who are using the road are being injured and sometimes lives of such innocent persons also having been taken away. Court must always be practical when imposing sentence. Awarding simple and less sentence will normally give a wrong signal to the society. Court must always sentence the person taking into the gravity of the offence and its impact on the injured as well. So considering the circumstances and the nature of injuries sustained, this court feels that, having sentenced him to undergo simple imprisonment for six months under Section 279 of the Indian Penal Code, the same sentence can be awarded for the offence under Section 338 of the Indian Penal Code as well and that will meet the ends of justice. So the sentence is modified as follows:

The revision petitioner is sentenced to undergo simple imprisonment for six months under Section 338 of the Indian Penal Code and further sentenced to undergo simple

imprisonment for six months under Section 279 of the Indian Penal Code and directed to run the sentence concurrently. The disqualification to hold driving licence for a period of six months to drive heavy vehicles under Section 20 of the Motor Vehicles Act imposed by the court below and confirmed by the appellate court is hereby confirmed.

With the above modification of the sentence alone, the revision petition 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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P.A. to Judge