

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.Rev.Pet.No. 1843 of 2003

CRA 162/1999 of ADDL. SESSIONS COURT (SPL. COURT), KOTTAYAM
CC 27/1995 of J.M.F.C., VAIKOM

REVISION PETITIONER(S):

JAMES @ ACHAYAN,
S/O JOHN, VADAKKETHAMARASSERIL HOUSE,
NEDIYAKUNNUKARA, VADAYAR VILLAGE.

BY ADV. SRI.N.A.MURALEEDHARAN

RESPONDENT(S):

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

PUBLIC PROSECUTOR SMT.M.G. LISHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.1843 of 2003

Dated 7th August, 2015

ORDER

1. The accused in C.C.27 of 1995 on the files of the Judicial First Class Magistrate Court, Vaikom challenges the conviction entered into by the said Court u/s 279 and 304(a) of the IPC as confirmed by the Additional Sessions Judge (Spl), Kottayam in Crl.A.162 of 1999. As per the impugned judgement, he has been sentenced to undergo simple imprisonment of one year and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months u/s 304(A) of the IPC and also to undergo simple imprisonment for three months and to pay a fine of Rs.500/-; in default to undergo simple imprisonment for 20 days u/s 279 of the IPC.

2. The prosecution case is that the accused while acting as driver of a jeep bearing registration No.KRK 9230 drove it rashly and negligently endangering human life along the Thalayolaparambu - Peruva public road from east to west at about 7 am on 9.10.1994 and when the said vehicle reached in front of the house of Koodallil Ulahannan near to Ragam Theatre Thalayolaparambu Kara caused to knock down Joy John son of PW1 causing injuries resulting in the aforesaid Joy John succumbing to the same, while on his way to the hospital.

3. Crime was registered by PW9, the Sub Inspector of police and later PW11 completed the investigation and laid charge against the accused.

4. On the accused pleading not guilty to the charge framed as against him by the trial Court for the aforementioned offences, prosecution was permitted to adduce evidence in support of its case. The prosecution examined PW1 to 11 through whom Exts.P1 to P8(a) were marked. After the close of the prosecution evidence, the accused was questioned u/s 313 (1)(b) of the Cr.P.C with regard to the incriminating circumstances appearing against him in the evidence of the prosecution. He denied those circumstances and asserted that he was innocent. No evidence was adduced on the side of the accused.

5. The learned Magistrate after trial, found the petitioner guilty for the offence punishable under Section 279 and 304 (A) of the IPC and sentenced him as afore stated.

6. Sri.N.A.Muraleedharan, the learned counsel appearing for the petitioner, submitted that the prosecution has miserably failed to prove any culpable rashness or negligence on the part of the petitioner. Inviting the attention of this Court to Ext.P5 scene mahazar, prepared by the investigating Officer it was pointed out that the width of the road in which the accident had taken place was 7.30 metres and lying in the east-west direction and the incident as per the mahazar, had occurred at a point of 2.5 metres towards the southern side from the northern end of the tarred portion of the road. It was argued that this aspect would reveal that the deceased Joy John, who was a paper vendor, had crossed the road towards the south for the purpose of supplying paper and it was in such circumstances

that untoward incident had taken place. According to the learned counsel, it was an inadvertent accident and there was no culpable rashness or negligence on the part of the petitioner. It was submitted that the only evidence let in by the prosecution to bring home the charge was the evidence of PW2, the occurrence witness, who was also a paper vendor and he was pedaling the cycle about 15 feet from behind the deceased. His evidence was attacked contending that he was interested in the prosecution and his evidence was inconsistent rendering it unsafe to place any reliance on his evidence. Pointing to the postmortem certificate which is produced and marked as Ext.P3, it was argued that the wound sustained by the deceased would reveal that the vehicle driven by the petitioner was stopped immediately which obviated any rashness or

negligence on the part of the petitioner. It was finally contended that 20 years have elapsed after the incident and the sentence imposed on the petitioner is very harsh.

7. Per contra, the learned Public Prosecutor appearing for the State has contended that both the Courts below have analyzed and appreciated the evidence tendered by the prosecution in a very elaborate manner and there was absolutely no reason for this Court to interfere in revision. It was pointed out that revisional jurisdiction is very limited and if no perversity or grave mis-appreciation of evidence is borne out from the judgment rendered by the Courts below, this Court will not be justified in interfering with the judgment conviction and sentence.

8. I have anxiously considered the rival contentions raised by both the sides.

9. PW2 is the occurrence witness and he is a colleague of the deceased and it was come out in evidence that he along with the deceased were engaged in the distribution of newspapers. Both the deceased as well as PW2 were pedaling their respective bicycle carrying the newspapers and were proceeding to Thalayolaparambu in connection with their work of distributing newspapers. PW2 has emphatically stated in his evidence that the jeep was driven by the petitioner in a rash manner from east to west and he had knocked down Joy John. It has also come out that Joy was thrown down on the road consequent to the hit and though he was taken to

the hospital with the help of the petitioner as well as the bye-standers where he had breathed his last. In his evidence he has attributed culpable negligence on the part of the accused and he has identified the petitioner as the offending driver. The only other witness who was examined by the prosecution to prove the case was PW3, who is another cyclist, and who was following the jeep driven by the petitioner at a distance of about 100 metres. He did not fully support the prosecution and was declared hostile. But he identified the petitioner as the driver of the Jeep.

10. Ext.P5 , the scene mahazar, reveals the lie and location of the road at the place of occurrence. It is revealed that the road lies in east west direction providing direct vision for a distance of 300 metres

towards west and 250 metres towards east. It is also borne out that the road lies in a down gradient from east to west and the tarred portion of the road possessed a width of 7.30 metres with road margin of 1.55 metres at the northern side and 4.55 metres on the southern side. The jeep apparently was coming down the gradient from east to west and it was while so that it had hit down the cycle at a point of 2.5 metres towards south from the northern fringe of the tarred road.

11. On an analysis of the evidence, both the Courts below have rejected the contention of the petitioner that the accident had occurred when the victim had crossed the road abruptly. The fact of the matter remains that the incident had occurred just towards the northern side from the mid line of the road. It

has also come out from evidence that the jeep was stopped immediately by the petitioner and the petitioner had also accompanied the injured to the hospital. On a perusal of the evidence it is also evident that there were no other vehicles on the road at the time of occurrence and a prudent driver in the like circumstances would have been able to avoid the accident either by stopping the vehicle or by remaining on the proper side just on the extreme southern side of the road lying east-west.

12. After an anxious appraisal of the evidence I am of the considered view that the prosecution has succeeded in proving the guilt of the accused for the offence alleged. It has also to be held that the petitioner while acting as driver of the offending vehicle, drove it in a rash and negligent manner and

it has resulted in his car hitting Joy John who was pedaling the bicycle.

13. At this point, the learned counsel appearing for the petitioner submitted that taking into consideration the fact that the incident had occurred in the year 1994 and since more than 21 years have elapsed a lenient view be taken in the matter of sentence. It was also pointed out that though both the courts have concurrently found that the latches was on the part of the petitioner , the evidence would reveal that he alone is not to be blamed while considering the attendant facts .

14. It is the submission of the learned counsel that in view of peculiar circumstances of this case, the prison term may be avoided and some other

punishments allowable under law may be substituted in its place.

15. The learned Counsel placed reliance on **Scariah V State of Kerala (2002 (2) KLJ 100)** to bring home the point that in a case involving a motor accident resulting in death, prison term is not a must and the courts have wide discretion in the matter . In the said case this court had held that the application of the principles of probation or even imposition of a fine instead of a prison term is not altogether ruled out.

16. In **Puttaswamy v. State of Karnataka and Another (2009 (1) SCC 711)**, their lordships of the Apex Court while maintaining the conviction under S.279 and 304A IPC, increased the amount of

fine from Rs.2,000/- to Rs.20,000/- to be paid by the accused to the parents of the deceased and reduced the sentence to the period already undergone, subject to payment of the fine.

17. But a different view has been struck by the Apex Court recently in view of the mounting nature of road traffic incident perpetrated by rash and negligent driving .

18. In **State of Punjab V Saurabh Bhakshi 2015 (5) SCC 182** the Apex Court after considering a catena of Judgments has deprecated the practice of reducing the sentence on payment of compensation .
It was held thus :

In the instant case the factum of rash and negligent driving has been established. This Court has been constantly noticing the

increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the Court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle

19. In **State of M.P. V Surendra Singh AIR 2015**

SC 398, the Apex Court has taken a similar view by stating thus:

"We again reiterate in this case that undue

sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

20. But at the same time in **Shyam Narain v. State (NCT of Delhi), 2013 (7) SCC 77** the Apex Court while dealing with the issue of sentencing it has been stated that primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the

principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the Court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

21. In view of the above , the prayer fervently made by the learned counsel for the petitioner to totally avoid the prison term basing his arguments on **Scariah** (supra) and **Puttaswamy** (Supra) cannot be accepted.

22. In the present case, due to the rash and negligent maneuvering of a Jeep by the petitioner, the life of Joy John was prematurely brought to an unfortunate end. The accident had taken place on place on 9.10.1994, more than 21 years ago , and inexorably, the petitioner has under went the trauma for this long. Having regard to the nature of the accident, the connected documents revealing the nature and lie of the road , the subsequent conduct of the petitioner which are all relevant facts bearing on the question of sentence and bearing in mind the

interests of the victim and the society I pass the following order in modification of sentence passed by the trial court and confirmed by the Appellate Court.

23. I am of the considered view that the sentence of imprisonment imposed by the trial Court and upheld by the Appellate Court of one year rigorous imprisonment u/s 304(A) and the fine of Rs.1000/- can be modified and the prison sentence can be reduced to a period of three months' simple imprisonment and the petitioner shall pay a compensation of Rs.50,000/- u/s 304(A) of the IPC and in default he shall undergo SI for 3 months . The sentence imposed by the trial Court and upheld by the Appellate Court in respect of s.279 of the IPC is hereby modified and the petitioner is sentenced to undergo simple imprisonment for a period of one

month and to pay a compensation of Rs.2000/- and in default , he shall undergo simple imprisonment for 15 days . The sentences shall run concurrently.

24. In the result, the order of conviction imposed on the petitioner under S. 304 (A) and S. 279 of the IPC are confirmed. But the sentence of RI for one year u/s 304(A) and the fine of Rs.1000/- is modified and instead the petitioner shall undergo SI for three months and shall also pay compensation of Rs.50,000/- and in default he shall undergo SI for 3 months. The sentence imposed by the trial Court and upheld by the Appellate Court in respect of s.279 of the IPC is hereby modified and the petitioner is sentenced to undergo simple imprisonment for a period of one month and to pay a compensation of Rs.2000/- and in default, he shall undergo simple

imprisonment for 15 days. The petitioner shall be entitled to set off for the period of detention undergone by him in this case under S. 428 of the Cr.P.C.

25. The compensation is to be deposited by the petitioner in the trial court within three weeks from the date of this Judgment and on such deposit the trial court shall issue notice in the matter of release of the amount to PW1, Sri. John, the father of the deceased Joy John as representative of all the legal heirs of the deceased and the amount shall be released to him. If he is not available, to such other legal heir, as the case may be, as determined by the trial court and the amount shall be made available to such other person as representative of the other legal heirs.

26. The revision petition is dismissed but with the modification of sentence as aforesaid.

Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge

MrCS

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P.S To Judge