

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 2037 of 2003 ()

AGAINST THE ORDER/JUDGMENT IN CRA 97/1998 of D.C & SESSIONS
COURT,TRIVANDRUM DATED 20-12-2002

AGAINST THE ORDER/JUDGMENT IN CC 610/1995 of J.M.F.C.-I,ATTINGAL
DATED 13-02-1998

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SAJAN, S/O. VISWANATHAN,
MANGLAVIL VEEDU, K.P. V/938,
NEAR DECENT MUKKU, MUDAPURAM DESOM,
KIZHUVILAM VILLAGE NOW RESIDING AT
P.B.NO,104486, RIYADH,
K.S.A.

BY ADV. SRI.M.R.RAJESH

RESPONDENT/RESPONDENT/COMPLAINANT-STATE:

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

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08-04-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No. 2037 of 2003

Dated this the 8th day of April, 2015

ORDER

The revision petitioner is the accused in C.C.No.610 of 1995 of Judicial First Class Magistrate Court-I, Attingal, which was charge sheeted by Chirayinkeezhu Police for the offence punishable u/s.279, 337 and 338 IPC and Section 134(b) r/w. S.187 of Motor Vehicles Act. The prosecution allegation is that on 3.1.1995 at 6 p.m., the revision petitioner drove a motorcycle bearing Registration No.KRT 4103 through the public road from Yoosufmukku junction to Cheruvallilmukku in a rash and negligent manner to endanger human life. When he reached at Brahmapuri temple, it knocked down PW1 and caused grievous injuries to her. Immediately, she was removed to hospital. On the basis of

information, Chirayinkeezhu Police registered the case and after investigation, laid charge before Court.

2. In the trial Court, prosecution examined PWs 1 to 10 and marked Exts.P1 to P9. Ext.P1 was marked while cross examination of PW2. The incriminating circumstances brought out in evidence were denied by the revision petitioner, while questioning under Section 313 Cr.P.C. The trial Court convicted the revision petitioner under the above sections. Against that, he preferred Crl.Appeal No.97/98 before Sessions Court, Thiruvananthapuram, where the conviction and sentence passed by the Court below was confirmed.

3. The learned counsel for the revision petitioner contended that the accident was occurred while crossing the road by the minor and therefore, the revision petitioner could not avoid the accident. Hence, the illegality committed by the Court below is to be rectified.

4. The learned Public Prosecutor opposed the above contention and contended that the prosecution proved its case beyond any reasonable doubt. Therefore, there is no reason to interfere in the above findings.

5. In the trial Court, the 1st injured was examined as PW1. PW1 is the mother of PW2. According to PW1, while they were returning from temple, a motorcycle driven by the revision petitioner knocked down while PW2 was walking in front of PW1. Immediately, the minor child was removed to hospital and there was nobody to look after the minor child. She gave Ext.P1 statement on 10.1.1995. PW2 deposed that she sustained injuries as a result of the rash and negligent driving of the revision petitioner. The above oral testimony of PWs 1 and 2 is believable and there is no reason to discard that evidence. There was a suggestive question put forward by the revision petitioner that whether PW2 suddenly crossed the road and

thereby, the revision petitioner could not avoid the direct hit. But, this question was denied by PWs 1 and 2. Ext.P2 wound certificate issued by the Doctor, who examined PW2, shows that PW2 had sustained fracture on her foot as a result of the hit of the motorcycle.

6. Considering the facts and circumstances of the case, the injuries noted in Ext.P2 was due to hit of motorcycle and the oral testimony of PWs 1 and 2 shows that the revision petitioner was rash and negligent at the time of accident. PWs 5 and 6 were Doctors, who treated PW2. Therefore, the medical evidence is corroborating the occurrence evidence. No reasons are stated to discard the investigation. Immediately after the accident, the police official arrived at the place of occurrence and prepared Ext.P7 scene mahazar. After completing investigation, final report filed before Court. I do not find any reason to interfere in the conviction passed by

the trial Court. Therefore, I uphold the finding of conviction.

7. The learned counsel appearing for the revision petitioner submitted that the sentence imposed by the Court below is too harsh and some leniency may be shown in sentence. The incident was happened on 3.1.1995 and the revision petitioner was aged 30 years at that time. Twenty years have already been elapsed after the incident, and there is no meaning in sentencing him to in jail.

Apex Court in Madhanlal Ramachandra Daga v. State of Maharashtra [AIR 1968 SC 1267] held that when considering the facts and circumstances of the case, if the court feels that a leniency can be shown, the Court may take a lenient view in sentence. Hence, the conviction u/s.279, 338 IPC and u/s.187 of Motor Vehicles Act is confirmed, but the sentence is modified as follows:

1) The revision petitioner is sentenced to pay fine of;

a) ₹1000/- u/s.279 IPC, in default of payment of fine, simple imprisonment for 15 days;

b) ₹1000/- u/s.338 IPC, in default of payment of fine, simple imprisonment for one month and;

c) ₹500/- u/s.187 of the Motor Vehicles Act, in default of payment of fine, simple imprisonment for 15 days.

2) The fine amounts shall be paid within 15 days from the date of receipt of a copy of this order, failing which the Magistrate is directed to issue warrant for realising the fine amount.

This revision petition is partly allowed.

P.D. RAJAN, JUDGE.

acd

