

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

Cr1.Rev.Pet.No. 2394 of 2003 ()

AGAINST THE JUDGMENT IN CRA 22/2002 of SESSIONS COURT, MANJERI DATED
04-08-2003

AGAINST THE JUDGMENT IN ST 1107/1993 of MUNI-MAGI.COURT, PONNANI DATED
31-12-2001

REVISION PETITIONER/APPELLANT/ACCUSED:

KUNNATHUPARAMBAN JOHNSON, S/O. ANTONY,
PEECHI AMSOM DESOM, TRICHUR DISTRICT.

BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.C.S.SUNIL

RESPONDENT/RESPONDENT/COMPLAINANT :

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

BY PP SMT SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 15-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

.....
Crl.R.P.No. 2394 of 2003
.....

Dated 15th July, 2015

ORDER

The revision petitioner who is the appellant in Crl.A. 22 of 2002 of Sessions Judge, Manjeri challenges the judgment of conviction and sentence under Section 279 and 337 IPC confirmed by the appellate court. The revision petitioner was the accused in S.T.1107 of 1993 of the Magistrate Court, Ponnani for offence punishable under Section 279, 337 and 338 IPC and he was convicted by the trial court under Section 279 and 337 IPC and sentenced thereunder and acquitted under section 338 IPC.

2. The facts necessary for indictment were that on 1.2.1993, at 8.15 am, the revision petitioner was driving a bus bearing No.KL-8B 4994 along Thrissur - Kozhikode National Highway road in a rash and negligent manner endangering human life. When the vehicle reached at Anakkampadam while overtaking a KSRTC bus bearing No.TR 436, the vehicle hit against a culvert and capzised, as a result, passengers in the vehicle sustained serious injuries. On the basis of information, Changaramkulam police registered Crime No.10 of 1993 and after investigation, S.I

of Police, Changaramkulam laid charge before Judicial First Class Magistrate, Ponnani.

3. Prosecution examined PW1 to PW15 and marked documentary evidence as Exts.P1 to P15. After analysing the oral and documentary evidence, trial court acquitted the revision petitioner under Section 338 IPC and convicted him under Section 279 and 337 IPC.

4. The learned counsel appearing for the revision petitioner contended that the accident was due to mechanical defect of the vehicle, the central axil of the bus was broken and revision petitioner lost control of the vehicle and over turned it. There was no rash and negligent driving from his side.

5. But learned Public Prosecutor strongly opposed the above argument and contended that the accident was due to the rash and negligent driving of the revision petitioner.

6. The rash and negligent driving has been explained under Section 279 IPC, whoever drivers any vehicle on any public way in a manner so rash or negligent manner endangering human life or likely to cause hurt or injury to any person, is an offence and shall be punishable. In this context,

I have considered whether there is any rash or negligent driving on the part of the revision petitioner. The prosecution examined PW1 to PW11 as the occurrence witnesses. The oral evidence of PW1 shows that on the date of the incident he was travelling in the offending vehicle with other passengers. The revision petitioner was driving the vehicle in a rash and negligent manner and when the vehicle reached at Anakkampadam while overtaking a KSRTC bus, the driver lost control of the vehicle and as a result, he sustained serious injuries on the forehead, right shoulder, nose and right elbow. Immediately, he was removed to Edappal Hospital and received treatment from there.

7. The oral evidence of PW1 was supported by Pws 4, 5, 6,7 and 9. They categorically stated that accident was due to rash and negligent driving of the revision petitioner. Two witnesses Pws 10 and 11 turned hostile. In order to avoid repetition of the oral evidence I am not re-iterating the evidence of other occurrence witness. Analysis of their oral testimony show that the accident was due to rash and negligent driving of the revision petitioner.

8. The defence counsel contended that the accident was

due to mechanical defect . PW15, the Assistant Motor Vehicle Inspector (AMVI), who inspected the vehicle deposed that there was no mechanical defect to the vehicle. Ext.P15 is the Inspection Report. The Investigating Officer PW14 also stated that there was no mechanical defect to the vehicle. Analysing the evidence of AMVI and the Investigating Officer, trial court rightly convicted the revision petitioner which was upheld by the learned Sessions Judge. I find no illegality in the conviction passed by the trial court. Therefore the conviction passed by the trial court under Section 279 and 337 IPC is only to be confirmed.

9. While confirming the sentence of the revision petitioner, trial court imposed a sentence of three months imprisonment under Section 279 IPC and a fine of Rs.500/- under Section 337 IPC. The question of punishment is a complex problem which requires working compromise between the competing views based on reformatory theory. **Apex Court in Shailesh Jasvantbhai & another V State of Gujarat and others (2006(2) SCC 359)** held that "Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong

influence in the determination of sentences". The victims in the accident sustained only minor injuries. Considering the nature of injury, the sentence imposed by the trial court is modified as follows.

10. The revision petitioner is sentenced to pay a fine of Rs.1000/- under Section 279 IPC and in default, simple imprisonment for three months. He is also sentenced to pay a fine of Rs.500/- under Section 337 IPC and in default, simple imprisonment for 15 days.

P.D.RAJAN, JUDGE

lgk