

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 2413 of 2003 (C)

AGAINST THE ORDER/JUDGMENT IN CRA 349/1995 of ADDITIONAL SESSIONS
JUDGE (FAST TRACK COURT-I, TRIVANDRUM DATED 10-07-2003

AGAINST THE ORDER/JUDGMENT IN CC 116/1992 of J.M.F.C.-I, TRIVANDRUM
DATED 16-12-1995

REVISION PETITIONER(S) /APPELLANT/ACCUSED:

SURESH, S/O. KESAVAN,
KAMALAVILASAM VEEDU,
ULLOOR, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.NAIR AJAY KRISHNAN
SRI.SAIJO HASSAN

RESPONDENT(S) /RESPONDENT/COMPLAINANT:

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

PUBLIC PROSECUTOR -ADV. SMT. MADHUBEN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P. No. 2413 of 2003

Dated this the 25th day of March, 2015

ORDER

The accused in C.C.No.116/1992 of the Judicial First Class Magistrate, Thiruvananthapuram for offence punishable u/s.279 and 304A IPC and under Section 146 r/w 177 of Motor Vehicles Act 1988 is the revision petitioner.

2. The prosecution allegation is that on 24.7.1993 at about 10.30 a.m. the revision petitioner had driven a motor bike KCV 1877 along Ulloor-Sreekariyam public road in a rash and negligent manner from south to north, when he reached at the place of occurrence, the vehicle hit one Bhargavy Amma, who was walking through the western side of the road, as a result, she sustained serious injury. Immediately, she was removed to the hospital, while undergoing treatment, at

10.45 a.m. she succumbed to the injuries. On the basis of information, the City Traffic Police, Thiruvananthapuram registered a crime and after investigation laid charge before the trial Court.

3. In the trial Court, prosecution examined PW1 to 10 and marked Exts.P1 to P10 documents in evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He deposed in the trial Court that the deceased crossed the road at the place of occurrence, when he applied sudden brake, he fell in the road and sustained injuries.

4. The trial Court after analysing the oral and documentary evidence convicted the accused. Against that, he preferred Crl.Appeal No.349/1995 before Sessions Court, where the conviction and sentenced passed

by the trial court was confirmed and dismissed the appeal.

5. The learned counsel appearing for the revision petitioner contended that the trial Court and the First Appellate Court failed to appreciate the real fact that the deceased crossed the road all of a sudden at the place of occurrence and the motorcycle hit on her body which was admitted by the revision petitioner. The evidence of PWs 2, 3 and 7 is not believable because they deposed that the incident took place out side the tar portion of the western side of the road whereas the prosecution case was that the incident took place 1.90 metres east from the western tar end of the road. Therefore, the petitioner is entitled to get the benefit of doubt, which was not given to him by the courts below.

6. The learned Public Prosecutor contended that

the accident was due to the rash and negligent driving of the revision petitioner and he is not entitled to get the benefit of doubt. The death was due to the direct hit of the motorcycle, which is revealed in the postmortem certificate itself.

7. For the purpose of satisfying the correctness and legality and propriety of the finding of the Court below, I have verified the oral evidence of the eye witnesses. Pws2, 4 and 7 have got a case that the motorcycle hit on the right buttocks of deceased Bhargavi Amma, no corresponding injury is noted in that portion of the body either in the wound certificate or in the postmortem certificate. In this context, I have verified the contention put forward by the revision petitioner, which was not considered by the trial Court and

the Appellate Court.

8. In order to attract rash and negligent driving under Section 279 IPC, the prosecution has to prove that the revision petitioner had driven the vehicle on a public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person and similarly, whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide will attract offence u/s.304A of IPC. Identity of the place of occurrence is relevant in road accident, for that, scene mahazar is very relevant. PW10 prepared Ext.P7, in which the place of occurrence is recorded as 1.90 cms east from the western tar end of the road. The tar portion has a total width of 6m and 16cm. Road at the place of occurrence lies in straight line at a

distance of 100 metres towards south and 200 metres towards north. If the story of the prosecution is believed, perhaps the deceased was walking through the side of the road without noticing the traffic on the road ignoring the footpath. While questioning the revision petitioner, he admitted that he was riding the motorcycle at a normal speed, when he reached at the place of occurrence, the deceased crossed the road all of a sudden and then motor bike hit against her and she fell down and sustained injury. This Court in P. Rajappan v. State of Kerala [1986 Crl.L.J 511] held that "simply because an incident happened which resulted in injury or death to somebody, it cannot be taken for granted that the driver of the vehicle involved in the incident is guilty of the crime. There may be exceptional cases where the rule *res ipsa loquitur* applies. In such cases the proved

facts and circumstances may speak for themselves and the Court may be justified in coming to the available conclusions in the absence of evidence otherwise. Ordinary it is for the prosecution to establish the guilt of the accused beyond reasonable doubt."

9. In this case, the specific case of the petitioner is that the deceased crossed the road at the place of occurrence, while he was riding along the road at a speed. Therefore, speed alone is not a criteria for deciding the rashness or negligence on the part of the rider. A motor vehicle is expected to be driving at a speed on a public road. The speed and rashness depends upon the place and time of occurrence. In a straight road, where there was no obstruction from other vehicle or pedestrians, it cannot be said that driving in speed or absence of sounding horn

will amount to rashness or negligence. Therefore, I am of the opinion that if a pedestrian suddenly crosses the road without taking note of the vehicles plying through road, the rider of the motor vehicle may not be in a position to avoid the accident. In such cases, it would not be possible to held that the rider was negligent. When there is no traffic obstruction in the public road, he is expected to ride the vehicle at a speed, which will not peril the safety of the users of the road. But, imposing criminal liability, the prosecution has to prove that due to the rash and negligent act, the accident was occurred. Such evidence is not found in this case.

10. Apex Court had occasion to consider the impact of rash and negligent driving on a public way and the pedestrian crossed the road without taking note of the

approached vehicle, thereby caused accident and the liability of the driver. Apex Court in **Mahadeoharilokrs v. State of Maharashtra** [AIR 1972 SC 221] held that "that would mean that if Ravikant suddenly crossed the road from West to East without taking, note of the approaching bus there was every possibility of his dashing against the bus without the Driver becoming aware of his crossing till it was too late. If a person suddenly crosses the road the Bus Driver, however, slowly he may be driving, may not be in a position to save the accident. Therefore, it will not be possible to hold that the Bus driver was negligent."

11. Apex Court in **Thakur Singh v. State of Punjab** [(2003) 9 SCC 208], had explained the applicability of res ipsa loquitur, when accident is admitted by the accused and serious one, the principle of res ipsa loquitur is applicable and it would be expected from the driver to explain the

circumstances under the accident was occurred.

Therefore, the relationship between the speed and rashness or negligence depend upon the place and a straight jacket formula is not possible to apply in all cases. At the place of occurrence, the road is straight and wide where no obstruction for other vehicle or for pedestrians. Therefore, in my opinion, the petitioner is entitled to get the benefit of doubt. The prosecution evidence is not sufficient to conclude that the revision petitioner was rash and negligent for the accident. But, on the other side, the circumstances highlighted by the revision petitioner shows that the incident happened due to some contribution from the side of the deceased also. That being the position, the revision petitioner is entitled to get the benefit of doubt and therefore, I grant him

such benefit.

In the result the conviction and sentence passed by the Court below u/s.279 and 304A IPC is set aside and the revision petitioner is acquitted thereunder and he is set at liberty.

P.D. RAJAN, JUDGE.

acd

