

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.Rev.Pet.No. 2456 of 2003 (C)

**AGAINST THE JUDGMENT IN CRL.A.NO.166/1999 of ADDL.SESIONS COURT, FAST
TRACK NO-II (ADHOC COURT), THRISSUR, DATED 28-08-2003.**

**AGAINST THE JUDGMENT IN C.C.NO.818/1995 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, THRISSUR DATED 29.03.1999.**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**VARGHESE, S/O.POULOSE,
VELUTHUKARAN HOUSE,
P.O.KODANNUR, THRISSUR DISTRICT.**

**BY ADVS.SRI.P.K.ASHOKAN
SRI.M.R.VENUGOPAL
SRI.P.S.SISHOY**

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07-
04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Bb

K. Ramakrishnan, J.

=====

Crl.R.P.No.2456 of 2003

=====

Dated this, the 07th day of April, 2015.

ORDER

Accused in C.C.No.818/1995 on the file of the Judicial First Class Magistrate Court, No-I, Thrissur is the revision petitioner herein. The revision petitioner was charge sheeted by the Circle Inspector of Police, Viyyur in Crime No.173/1995 of Viyyur police station under Sections 279, 338 and 304(A) of Indian Penal Code.

2. The case of the prosecution in nutshell was that, on 24.11.1995 at about 3.45 p.m., the revision petitioner, being the driver of the bus KL-8-C-7090 drove the vehicle through Chembukkavu - Peringavu public road from south to north in a rash and negligent manner so as to endanger human life and when it reached the southern side of Kattachira bridge, he tried to to overtake an autorickshaw which was preceding in front of the same in a negligent manner knowing that it is not safe to overtake and in that process, happened to hit against a telephone post on the eastern side of the road and caused grievous injuries to PW1 and one Jibin who later succumbed to

the injuries and thereby, he had committed the above said offences. After investigation, final report was filed before the Judicial First Class Magistrate Court - I, Thrissur and the case was taken on file as C.C.No. 818/1995.

3. 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 13 were examined and Exts.P1 to P6 and P2(a) were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that, he was not the driver of the bus at the relevant time. No defence evidence was adduced on his side.

4. After considering the evidence on record, the trial court convicted the revision petitioner for the offence under Sections 279, 338 and 304(A) of Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of

Rs.2,000/- in default to undergo simple imprisonment for three months under Section 304(A) of Indian Penal Code and further sentenced to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month under Section 279 of Indian Penal Code. No separate sentence was awarded for the sentence under Section 338 of Indian Penal Code. Aggrieved by the same, the revision petitioner filed Crl.Appeal No.166/1999 before the Sessions Court, Thrissur which was made over to Additional Sessions Court, Adhoc - II, Thrissur for disposal and the learned Additional Sessions Judge, by the impugned judgment, dismissed the appeal confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner - accused before the court below.

5. Heard the Counsel for the petitioner Shri.M.R.Venugopal and Smt.V.H.Jasmine, Public Prosecutor appearing for the respondent.

6. The Counsel for the revision petitioner submitted that the revision petitioner is no more as notice sent to him by Registered Post was returned with endorsement "addressee expired". The Public Prosecutor also admitted this fact on the

basis of the report received that, on enquiry, it was revealed that he died seven years ago. Since it is a revision, death of the revision petitioner will not end in abatement of the revision and the revision can be disposed of only on merit. The Counsel for the revision petitioner submitted that, none of the witnesses have identified the revision petitioner as the driver of the vehicle and the evidence of PWs 1 and 7 regarding the identity of the revision petitioner as the driver of the vehicle cannot be believed. Further, the lower court relied on Ext.P1 Trip sheet alone to come to the conclusion that it was the revision petitioner who was driving the vehicle at the relevant time and the evidence of PW6 will go to show that the trip sheet was prepared from the police station as directed by the police in order to get the vehicle released. So, under the circumstances, court below should not have relied on Ext.P1 for that purpose. So, under the circumstances, courts below were not justified in convicting the revision petitioner for the offence alleged and he is entitled to get acquittal.

7. On the other hand, the learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved the guilt of the accused beyond reasonable

doubt and the concurrent findings of the court below do not call for any interference.

8. It is an admitted fact that PW1, the injured and deceased Jibin were travelling in the bus KL-8-C-7090 on the fateful day and it hit against a telephone post and PW1 and deceased Jibin sustained grievous injuries and later, Jibin died on account of the injuries sustained and these facts are not in dispute. The prosecution evidence will go to show while they were travelling in the bus including PWs 2 to 5 and 7, when the bus reached the place of occurrence, the driver of the bus tried to overtake an autorickshaw which was going ahead of it knowing that there was no sufficient space and in that process, the rear side of the bus hit against the telephone post and PW1 and deceased Jibin sustained head injuries. On the basis of Ext.P2 statement given by PW7 - one of the passenger in the bus, PW12 - the Assistant Sub Inspector of police registered Ext.P2(a) First Information Report as Crime No.173/1995 of Viyyur police station under Sections 279, 338 and 304(A) of Indian Penal Code against the driver of the Suma bus with No:KL-8-C-7090. The injured were taken to hospital and PW8 - Doctor had seen PW1 and issued Ext.P3 wound certificate

which will go to show that he sustained fracture skull and frontal bone. It is also seen from the evidence that Jibin was declared dead on account of the head injury sustained. As per the request of the investigating officer, PW9 - Doctor conducted postmortem examination on the body of the deceased and issued Ext.P4 postmortem certificate which will go to show that the deceased died on account of the head injury sustained. The investigation in this case was conducted by PW12 himself as PW13 was on leave and as instructed by him, the investigation was conducted by PW12. He prepared Ext.P6 scene mahazar in the presence of PW11 and another. The vehicle was got examined by PW10 - the Motor Vehicle Inspector who gave Ext.P5 Motor Vehicle Report and will go to show that there was no mechanical defect for the vehicle. PW13 verified the investigation and submitted final report.

9. It is true that though PW1 had stated in the chief examination that the revision petitioner was driving the vehicle at the relevant time, in the cross examination, he had admitted that, after the incident, he became unconscious and on account of the covering of the driver's seat, it is not possible to see the driver. So, his evidence regarding identity

of the revision petitioner - accused is not helpful. But, PW7 had deposed that he had identified the revision petitioner as the driver driving the vehicle at the relevant time. There is nothing brought out to disbelieve his evidence on this aspect. Further, the evidence of PW6 - the conductor will go to show that Ex.P1 trip sheet was prepared by him and he was the conductor of the vehicle at the relevant time and the name of the revision petitioner was shown as driver of the vehicle at the relevant time. But, in the cross examination, he had stated that the revision petitioner was not the driver who was driving the vehicle at the relevant time and in the cross examination of the revision petitioner, he had stated that the trip sheet was produced two days after the incident in the police station and the entries in the trip sheet were made as directed by the police officials so as to get the vehicle released. But, to the court question, he had stated that whatever written in Ext.P1 is true and correct. There was no further cross examination of this witness on this aspect. The fact that he is the conductor of the bus and he is a co-worker of the revision petitioner is sufficient to come to the conclusion that he is not now supporting the case of the prosecution in order to help the

revision petitioner from the consequence of his negligent act which resulted in the death of an innocent boy of thirteen years and causing grievous head injury to a boy - PW1. Further, trip sheet is a document which has to be maintained by the conductor of the bus as per the provisions of the Motor Vehicles Act and it is a document which can be relied on by the court for proving the fact mentioned therein namely., who is the driver of the vehicle and conductor of the vehicle at the relevant time. So, under the circumstances, courts below were perfectly justified in relying on the evidence of PW7 and Ext.P1 trip sheet to come to the conclusion that the vehicle was driven by the revision petitioner at the relevant time. The fact that the incident occurred at the time when he was trying to overtake an autorickshaw at a high speed through a narrow road knowing that it is not safe to overtake and on account of that, hit against the telephone post etc., were proved through the evidence of PWs 1 and 7. That shows the reckless way in which he drove the vehicle unmindful of the consequences of his act which is likely to cause danger to the persons travelling in the bus. So, under the circumstances, courts below were perfectly justified in coming to the conclusion that the bus was

driven by the revision petitioner at the relevant time in a negligent manner and rightly convicted him for the offence under Section 279 of Indian Penal Code.

10. The fact that deceased Jibin died on account of the head injury sustained by him in the incident is not seriously disputed. So, that shows that the death was caused on account of the negligent act of the driver of the bus who is the revision petitioner and thereby, courts below were perfectly justified in convicting him for the offence under Section 304(A) of Indian Penal Code as well. Since PW1 had sustained fracture to skull and frontal bone which is grievous injury, courts below were perfectly justified in convicting the revision petitioner for the offence under Section 338 of Indian Penal Code as well. So, the courts below were perfectly justified in convicting the revision petitioner for the offence under Sections 304(A), 279 and 338 of Indian Penal Code.

11. As regards the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months for the offence under Section 304(A) of Indian Penal Code and further

sentenced to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month under Section 279 and no separate sentence was awarded for the offence under Section 338 of Indian Penal Code. Considering the nature of offence and the way in which the incident occurred resulting in the death of a person and grievous injury to another person, the sentence cannot be said to be excessive. But, since he is no more, the sentence of imprisonment cannot be executed against him. But, fine can be realised from the estate left by him and in the possession of the legal heirs. So, under the circumstances, the revision lacks merits and the same is liable to be dismissed.

In the result, the revision is dismissed with the above observation.

Office is directed to communicate this order to the court below and send back the records immediately.

Sd/-
K.Ramakrishnan, Judge.

Bb

[True copy]

P.A to Judge