

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.Rev.Pet.No. 2493 of 2003 (C)

**AGAINST THE JUDGMENT IN CRA 51/2000 OF ADDITIONAL DISTRICT AND SESSIONS
JUDGE, FAST TRACK (ADHOC-I), KOZHIKODE DATED 02-06-2003**

**AGAINST THE JUDGMENT IN CC 847/1995 OF JUDICIAL 1ST CLASS MAGISTRATE
COURT-I,KOZHIKODE DATED 18-01-2000**

REVISION PETITIONER/APPELLANT/ACCUSED:

**RAMAKRISHNAN
S/O. VELU
THAZHATHAYIL KAKKATTIRIYIL
P.O. KANNIPARAMBA
MAVOOR, KOZHIKODE DISTRICT**

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA THROUGH SUB INSPECTOR OF POLICE
CITY TRAFFIC, KOZHIKODE
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
21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.Rev.Pet.No. 2493 of 2003 (C)

APPENDIX

REVISION PETITIONER'S ANNEXURES:

ANNEXURE -I COPY OF THE ORDER OF THE JUDGMENT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FAST TRACK (ADHOC-I) IN CRL.APPEAL NO.51/2000 DATED 2.6.2003.

ANNEXURE-II COPY OF THE JUDGMENT OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, KOZHIKODE IN C.C.NO.847/1995 DATED 18.1.2000

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A. TO JUDGE

shg/

K.RAMAKRISHNAN, J

Crl.R.P.No.2493 OF 2003

Dated this the 21st day of January, 2015

ORDER

Accused in CC.No.847/1995 on the file of the Judicial First Class Magistrate Court-I, Kozhikode, is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Sub Inspector of Police, City Traffic, Kozhikode, in Crime No.231/95 under section 279 and 304 A of Indian Penal Code.

3. The case of the prosecution in nutshell was that on 05.02.1995, at about 4.15 p.m, the revision petitioner being the driver of the Bus with Registration No.KL-11C-631 drove the same in a rash and negligent manner so as to endanger human life through Kozhikode-Mavoor public road from medical college side to kozhikode side and when it reached the place called Maniyedath Kayattam in Nellikode village it overtook another city bus in a negligent manner went to the wrong side of the road and hit against the motor cycle with Registration No.KL-11-9823, which was driven by one Venugopalan Nair with a pillion rider Narayanan Nair and on account of the same they sustained severe injuries and succumbed to the same and thereby the revision petitioner had committed the offence punishable under section 279 and 304 A of Indian Penal Code.

After investigation, final report was filed and it was taken on file as CC.No.847/1995 on the file of Judicial First Class Magistrate Court-I, Kozhikode.

4. When the revision petitioner appeared before the court below, particulars of 279 and 304 A of Indian Penal Code was framed, and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 9 were examined and Exts.P1 to P12 and P11 (a) were marked on the side of the prosecution. After closure of the prosecution's evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution's evidence. He had further stated that he had not committed any offence and he is innocent of the same. No defence evidence was adduced on his side. After considering the evidence on record, the learned Magistrate found him guilty under sections 279 and 304 A of Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for six months under section 279 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for one year under section 304 A of Indian Penal Code and directed the sentences to run concurrently. The driving licence was also suspended for a

period of one year. Aggrieved by the same, he filed Crl.Appeal No.51/2000 before the Sessions Court, Kozhikode, which was made over to Additional Sessions Court, (Adhoc-I) Kozhikode, for disposal. The learned Additional Sessions Judge, by the impugned judgment dismissed the appeal, confirming the order of conviction and sentence including the suspension of licence imposed 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 revision petitioner and the Public Prosecutor.

6. The counsel for the revision petitioner submitted that PWs 2 and 3 are the alleged independent witnesses examined on the side of the prosecution to prove the case. They are interested and related witnesses and without corroboration from other witnesses, court below should not have relied on their evidence to prove the case of the prosecution. Further, their evidence will also go to show that the accident occurred due to over speed of the vehicle and it is settled law that mere speed alone is not relevant criteria to come to the conclusion that there was negligent driving. So, there is nothing on record to show that he was reckless or criminally negligent in causing the accident. These aspects

were not properly appreciated by the court below and the conviction entered is not proper. He had also submitted that in case, this court is not inclined to interfere with the concurrent findings of the court below on conviction, he prayed for leniency on sentence.

7. The concurrent findings of the courts below were supported by the Public Prosecutor.

8. The case of the prosecution was that on the fateful day, the bus involved in the accident was driven by the revision petitioner in a rash and negligent manner and when it reached the place of occurrence, it over took a city bus going ahead of it and hit against the motor cycle, which was coming from the opposite direction driven by one Venugopalan Nair with one Narayanan Nair as a pillion rider and both of them died in the accident. The fact that both these persons died on account of the injuries sustained in the accident is not disputed. Further, it was fortified by the evidence of PW6, doctor coupled with Ext.P3 post-mortem certificate as well. Further, the evidence of PW7 along with Ext.P4 will go to show that there was no mechanical defect for the vehicle. Further, Ext.P11 trip sheet of the vehicle, which was seized from the bus will go to show that the revision petitioner was driving the vehicle at the relevant time, which is the best evidence which has been maintained in

the vehicle to show as to who was driving the vehicle at the relevant time. It will be seen from Ext.P2 scene manazar that the bus was coming from east to west and the motor cycle was coming from the opposite direction and the accident occurred on the extreme wrong side of the bus. Further, the evidence of PWs 2 and 3 will go to show that this bus was driven by the revision petitioner at a high speed in a negligent manner and he was in a haste to overtake a city bus, which was going ahead it and in that process that the accident occurred. When a driver of the bus intended to overtake another bus going ahead it, he was expected to ascertain as to whether he could safely overtake the vehicle without causing any danger to the persons who were coming from the opposite direction or persons walking along the road. If he was not sure that he could not able to overtake than he was not expected to overtake the vehicle. He was expected to take a reasonable cause while overtaking which ought to have been exercised by a prudent driver in circumstances and failure to exercise the same and resulting an accident will amount to reckless and negligent driving. Here the accident occurred on the extreme wrong side of the bus and it was also come out in the evidence of PWs 2 and 3 that he was trying to overtake the vehicle in a hasty manner, which resulted in the accident. I don't find any reasons

to disbelieve the evidence of PWs 2 and 3 merely because they were known to the deceased persons. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that the accident occurred due to the rash and negligent driving of the bus by the revision petitioner and death occurred due to his negligent act and thereby rightly convicted the revision petitioner for the offence under section 279 and 304 A of the Indian Penal Code and the concurrent findings of the courts below on this aspect do not call for any interference.

9. As regards the sentence is concerned, the trial court had sentenced him to undergo rigorous imprisonment for six months for the offence under section 279 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for one year for the offence under section 304 A of the Indian Penal Code and directed the sentences to run concurrently. The driving licence of the revision petitioner was also suspended for a period of one year. Accidents are increasing nowadays on account of the reckless driving of the persons who are driving the vehicle. Showing too much of leniency in sentence also will give a wrong signal in such cases. Providing sufficient sentence for causing injury or death on account of negligent driving will not only a lesson to the person who committed the offence but

give a warning to the persons who are driving the vehicle also so that they may be careful in driving the vehicle. But at the same time, considering the fact that long time has lapsed after the incident and the revision petitioner was aged 45 years at that time and he would be much more older, now this court feels that some leniency can be shown in the sentence though not too much of leniency as claimed. Mere awarding of fine or compensation alone will not be sufficient punishment in such cases as two innocent persons died in the accident due to reckless driving of the bus by the revision petitioner. Reducing the substantive sentence for 304 A of Indian Penal Code and directing to pay compensation to the legal heirs of the victims will render justice not only to the revision petitioner but also to the legal heirs of persons whose life has been taken away on account of the negligent act on the principle of victimology. So, considering these facts this court feels that the sentence can be modified as follows:-

The revision petitioner is sentenced to undergo simple imprisonment for six months for the offence under section 279 of Indian Penal Code and further sentenced to undergo simple imprisonment for six months for the offence 304 A of Indian penal Code and further sentenced to pay a compensation of Rs.15,000/- each to the legal heirs of the deceased

Venugopalan Nair and Narayanan Nair in default to undergo simple imprisonment for three months more under section 357 (3) of the Code of Criminal Procedure. The driving licence is directed to be suspended for a period of six months instead of one year directed by the court below and directed the substantive sentences to run concurrently. Three months time is granted to the revision petitioner to deposit the compensation amount and to serve the sentence. Till then the execution of the sentence is directed to be kept in abeyance.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//True Copy//

PA to Judge