

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

Crl.Rev.Pet.No. 919 of 2004 (D)

**AGAINST THE JUDGMENT IN CRL.A.NO.25/1998 of ADDITIONAL DISTRICT AND
SESSIONS COURT (ADHOC) FAST TRACK COURT - I, MANJERI DATED 28-09-2002**

**AGAINST THE JUDGMENT IN C.C.NO.608/1994 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, TIRUR DATED 07-02-1998**

REVISION PETITIONER(S) - APPELLANT - ACCUSED:

**KURUKKANKUNNUMMAL RAVEENDRAN,
KIZHAKKU MURI AMSOM, KAKKODI DESOM, KOZHIKODE.**

BY ADV. SRI.N.GOVINDAN NAIR

RESPONDENT(S) - COMPLAINANT:

**STATE,
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 20-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.R.P.No.919 of 2004

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Dated this, the 20th day of February, 2015.

O R D E R

Accused in C.C.No.608/1994 on the file of the Judicial First Class Magistrate Court, Tirur is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Circle Inspector of Police, Valanchery in Crime No.75/1994 of Velanchery police station under Sections 279, 337 and 304(A) of Indian Penal Code.

3. The case of the prosecution in nutshell was that on 06.06.1994, at about 10.a.m., while the revision petitioner was driving the bus with Registration No.KL-11-6199 through N.H. 17 from Calicut to Guruvayoor in a rash and negligent manner and when reached near Karippol, it ran over four children walking on the eastern road margin and thereafter it overturned and caused death of four children and also injury to others who were travelling in the bus and thereby, he had committed the offence punishable under Sections 279, 337 and 304(A) of Indian Penal Code. After investigation, final report was filed and it was taken on file as C.C.No.608/1994 on the file of the Judicial First Class Magistrate Court, Tirur.

4. 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 30 were examined and Exts.P1 to P21 were marked on their side. After closure of the prosecution evidence, 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 evidence. He had admitted that he was driving the bus at the relevant time, but, he did not remember as to what happened while he was driving the vehicle. The revision petitioner filed application for recalling certain witnesses under Section 311 of Code of Criminal Procedure and that was dismissed by the court below.

5. After considering the evidence on record, the court below found the revision petitioner guilty under Sections 279, 337 and 304(A) of Indian Penal Code and convicted him thereunder and sentenced to undergo rigorous imprisonment for one and half years and also to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months for the offence under Section 304(A) of Indian Penal Code and

further sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month for the offence under Section 279 of Indian Penal Code and directed the sentences to run concurrently and no separate sentence was awarded for the offence under Section 337 of Indian Penal Code. His driving licence was also cancelled. Aggrieved by the same, he filed Crl.Appeal No.25/1998 before the Sessions Court, Manjeri which was made over to Additional Sessions Court, (Adhoc) - I Manjeri 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.

6. On 18.02.2015, the case was posted in the hearing list. But, there was no representation. So, it was posted in the disposal list today. Even today, when the case was called, there was no representation.

7. Heard the Public Prosecutor and perused the records.

8. The defence taken by the revision petitioner in the court below appears to be that, he was having some health problem and he developed some illness, on account of which, he could not control the vehicle and there was no negligence on his part. Further, the application filed by him to recall certain witnesses was dismissed by the court below and thereby, opportunity has been denied to him to cross examine the witnesses. So, the findings of the court below is not proper and the same is liable to set aside and opportunity has been given to him to cross examine the witnesses and have a fair trial.

9. The learned Public Prosecutor supported the concurrent findings of the court below.

10. The fact that the revision petitioner was driving the bus at the relevant time and hit against four children was not in dispute. It is also not in dispute that, after hitting the children, the bus capsized and some persons in the bus also sustained injuries and the unfortunate four children lost their life on account of the injuries sustained by them in the incident and these facts were also not in dispute. The defence taken by the revision petitioner was that, he was having some illness

which resulted in black out and he could not understand what was happening and that was the reason for the accident. PW29 is the investigating officer and he had seized Ext.P21 the trip sheet of the bus which shows that the revision petitioner was driving the vehicle at the relevant time. Further, PWs 1 to 5, 11, 12 and 14 are the witnesses to the incident and they have stated that the vehicle was driven by the revision petitioner and it was driven at a high speed. The fact that it was a school region was also known to the revision petitioner who was driving the vehicle and being the driver of the vehicle, he was expected to drive carefully and slowly when it reaches the school region. Even assuming that he was having hyper tension and he is undergoing treatment for the same and if he felt that he was not fit to drive vehicle, he should not have taken the vehicle and driven the vehicle. That itself shows the carelessness and reckless attitude of the driver who is the revision petitioner herein. Further, PWs 15 and 16 - the conductor and cleaner of the bus also deposed that the bus was driven by the revision petitioner. PWs 21 and 17 are the Doctors who examined CWs 3, 18, 4, 19 and CWs 14 and 10 and issued Ext.P9 to 12 wound certificates. PW18 is the

Doctor who conducted postmortem examination on the body of one Muhammedkutty and issued Ext.P7 postmortem certificate. PW23 is the other Doctor who conducted postmortem examination on the body of Zeenath, Shameera, Subaibath and Nisha and Exts P14 to P17 are the postmortem certificates relating to those deceased and they have stated that the deceased died on account of the injuries sustained in the accident. PW24 is the joint R.T.O who inspected the bus and issued Ext.P18 report regarding the vehicle and he had deposed that there was no mechanical defect for the vehicle also. So, it cannot be said that the accident occurred due to any mechanical defect suddenly developed for the vehicle at the relevant time. It is also seen from the evidence of PWs 1 to 5 that they were travelling in the bus on the relevant date and when it reached the place of occurrence, he tried to overtake a pick up van and in that process gone to the road margin and ran over the innocent children who were passing along that portion of the road and thereafter, it hit against the wall and tree and then overturned. PWs 11 to 14 were also eye witnesses to the incident. They also deposed in the same manner in which PWs 1 to 5 have deposed. PWs 15 and 16

have deposed that it is a school region and the vehicle was driven at high speed without reducing the speed and if sufficient care was taken by the driver of the bus, the accident would have been avoided. The evidence of PWs 15 and 16 - who are the conductor and cleaner of the bus also shows that, it was a school region and the vehicle was driven without reducing the speed by the driver and if the driver was careful, the accident would have been avoided. Further, it was seen from the scene mahazar that the road was straight and having direct vision for about 15 meters towards south and 300 meters towards north and the accident occurred on the eastern road margin and not on the road. So, there is no possibility of the innocent children crossing the road at the time of the accident occurred also. It is true that the witnesses were not cross examined and the Counsel for the revision petitioner filed an application under Section 311 to recall witnesses later. But, it is seen from the judgment of the trial court that the defence Counsel was present all along and he did not cross examine the witnesses though they were available for cross examination. No reason was stated as to why these witnesses were not cross examined at that time also. So, under Section

243 of Code of Criminal Procedure, if the court is satisfied that the witnesses were available for cross examination and an opportunity has been given for the defence Counsel to cross examine and that opportunity was not availed and if an application was filed later to recall them and if the court was satisfied that it was only to protract the proceedings, then, court is having liberty to dismiss that application. Further, it is seen from the order of the court below that, though the evidence started in the year 1996, the examination of prosecution witnesses could be completed only in 1998. That shows the difficulty in getting the prosecution witnesses also. So, under the circumstances, there is no merit in the ground taken by the revision petitioner that an opportunity to cross examine the witnesses has been denied to him and thereby, prejudice has been caused. So, from the over all circumstances and also the evidence available on record, it can be safely concluded that the prosecution has proved beyond reasonable doubt that the revision petitioner was driving the vehicle at the relevant time and it was due to his reckless, careless and negligent driving that the accident occurred resulted in death of four young children and also injury to

some of the passengers who were travelling in the bus and thereby, he had committed the offence punishable under Sections 279, 337 and 304(A) of Indian Penal Code and the concurrent findings of the court below on this aspect do not call for any interference.

11. As regards the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for one and half years and also to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months for the offence under Section 304(A) of Indian Penal Code and further sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month for the offence under Section 279 of Indian Penal Code and directed the sentences to run concurrently. No separate sentence was awarded for the offence under Section 337 of Indian penal Code. The driving licence of the revision petitioner was also cancelled. Considering the fact that on account of the reckless attitude of the driver, four lives of the innocent children were taken away and some of the passengers sustained injuries also. The accidents are increasing now a

days due to the reckless driving and unless severe punishments are provided, the safety of the public who are using of the road will be at peril. Sentencing policy in such cases has to be appropriately applied while considering the sentence also. Showing unnecessary leniency will only give a wrong message to the drivers at wheel and it will cause loss of confidence of the public in the criminal justice delivery system as well. So, considering the manner in which the incident occurred and the reasons stated by the revision petitioner for the accident, this court feels that the sentence imposed by the court below cannot be said to be harsh or excessive and I don't find any reason to interfere with the sentence also. So, the revision lacks merits and the same is liable to be dismissed.

In the result, the revision is dismissed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge