

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

Crl.Rev.Pet.No. 1031 of 2004 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.557/2002 of III ADDITIONAL SESSIONS COURT
(AD HOC) FAST TRACK COURT NO.I, THRISSUR DATED 10-02-2004**

AGAINST THE JUDGMENT IN C.C.NO.4/2000 of J.M.F.C-I, THRISSUR DATED 04-12-2002

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**RAMACHANDRAN, S/O. KRISHNAN,
KUNNAMPANDATH HOUSE, PERUMBILLISERY DESOM
CHEVOOR VILLAGE, THRISSUR TALUK.**

**BY ADVS.SRI.M.C.JOHN
SRI.C.PRABIN BENNY**

RESPONDENT(S)/RESPONDENT/COMPLAINANT::

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

BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06-08-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Bb

RAJA VIJAYARAGHAVAN V, J.

Crl.R.P.No.1031 of 2004

Dated this the 06th day of August, 2015

O R D E R

The petitioner assails the concurrent finding of guilt arrived at by the courts below in this Criminal Revision Petition preferred under section 397 and section 401 of the Code of Criminal Procedure.

2. The gist of the allegation against the petitioner is that, on 30.09.1999 at 9.10 a.m., drove the bus bearing Reg.No.KL-8-D-907 through Villadam - Kuttumukku road from north to south in a rash and negligent manner so as to endanger human life and hit a boy by name Sajith who was sitting on the back side of bicycle ridden by PW5. The back wheel of the bus ran over the head of minor Sajith and he died on the spot. On these allegations the petitioner was proceeded against for having committed offence punishable

under section 279 and section 304(A) of the Indian Penal Code.

3. In order to prove the case of the prosecution, PWs 1 to 10 were examined and Exts.P1 to P4 were marked. PW4 is an independent occurrence witness and PW5 is the girl who was aged 14 years who was riding the cycle with the deceased sitting on the back side. The learned magistrate, on appreciation of the evidence, adduced by the prosecution came to the conclusion that the accused had driven the bus along the public road at a high speed, rashly and negligently, and that too along the wrong side of the road and hit Sajith leading to his unfortunate death. Holding so, the petitioner was convicted and sentenced to undergo simple imprisonment for 6 months under section 279 of Indian Penal Code and to undergo simple imprisonment for 6 months under section 304(A) of the Indian Penal Code. The sentences were ordered to run

concurrently. In addition, the accused was directed to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for 3 months under section 304(A) of the Indian Penal Code.

4. The above finding was challenged by the petitioner by preferring an appeal before the Court of Sessions, Thrissur as Crl.Appeal No.557/2002. The learned Sessions Judge, as per judgment dated 10.02.2004, confirmed the findings arrived at by the learned magistrate and dismissed the appeal as one without merits. It is against the above concurrent findings that is being challenged by the revision petitioner in this Criminal Revision Petition.

5. I have heard Adv.Shri.Prabin Benny, the learned counsel appearing for the revision petitioner and Smt.Bindu Gopinath, the learned Public Prosecutor.

6. The learned counsel appearing for the petitioner has submitted that the prosecution has thoroughly failed to prove any sort of negligence on the part of the petitioner. It was contented that the prosecution case would reveal that the child who was sitting on the back side of the bicycle with his legs pointed to the west had fallen towards the eastern road which resulted in the unfortunate accident. It was further argued that the prosecution does not have a case that any part of the bus had hit the boy resulting in the incident and this was projected to content that the incident was an inadvertent accident without any negligence on the part of the petitioner. It was further contented that a proper appraisal of the evidence of PWs 4 and 5, the occurrence witnesses, would reveal that the incident had not happened in the manner alleged by the prosecution. Failure of the prosecution to allege and prove the mode in which the accident had taken place was projected by the learned counsel to set aside the findings entered by the

courts below.

7. Per contra, the learned Public Prosecutor has argued that the evidence of PWs 4 and 5 would clinch the case of the prosecution and would reveal in unmistakable terms that the incident had happened solely due to the rash and negligent mode in which the bus was driven by the petitioner. Taking this Court through the nature and lie of the road, the learned Public Prosecutor would submit that there was a curve about 75 meters on the northern side towards the west and the bus was coming towards the southern side in a very rash and negligent manner. The children had stopped the bicycle on the western side of the road seeing the bus which was travelling at a very high speed and the mere fact that the bus had come towards the western margin of the tarred road would itself reveal the negligence of the petitioner. It was finally contented that there was no reason to take a different view as this Court

was sitting in revision and the appraisal of evidence by the court below does not call for any interference.

8. I have anxiously considered the contentions raised by both the sides.

9. The evidence tendered by the prosecution through PW4 and PW5 would reveal that the deceased Sajith was sitting on the back side of the bicycle and the same has been pedaled by PW5. It is also revealed that the bus driven by the petitioner was coming towards south through the Villadam - Kuttumukku road at a very high speed and the children had to stop the vehicle seeing the bus. It has come out in evidence that the right side body of the bus had hit Sajith, as a result of which, he had fallen down and the back wheel of the bus had ran over his head. The records would reveal that the incident had occurred on the western road margin and it is also born out from the evidence that

the bus driven by the petitioner was not stopped. The evidence of PW5 would corroborate the evidence of PW4 as well. It is also come out from the evidence that the road was having a width of around 3.30 meters and the eastern road margin was having a width of 70 cms and the western road margin is at a distance of 105 cms. Though it was argued by the learned counsel appearing for the petitioner that if the children had taken their cycle through the western road margin, an incident of this nature would not have happened, the same cannot be countenanced. All these aspects have been considered by the learned magistrate as well as the Sessions Judge in detail and the findings arrived at by them, according to me, is based on the materials available on record. It is also seen that in the instant case, there is direct evidence to prove the rashness and negligent driving of the bus by the petitioner herein.

10. In **State of Punjab V Saurabh Bhakshi [(2015) 5 SCC 182]**, the Apex Court after considering a

catena of Judgments has deprecated the practice of reducing the sentence on payment of compensation. It was held thus :

In the instant case the factum of rash and negligent driving has been established. This Court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the Court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle.

11. In **State of Madhya Pradesh V Surendra Singh** **[AIR 2015 SC 398]**, the Apex Court has taken a similar view by stating thus:

"We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society."

12. After evaluating the judgments passed by the courts below and in light of the above precedents of the Apex Court, I have no doubt in my mind that the findings entered into are based on evidence and there is no perversity in the appreciation. The concurrent findings passed by the courts below cannot be categorised as illegal or improper. As a general rule, this Court will not interfere with the finding of fact and this is especially so in a case of concurrent findings of fact by the lower courts. It is only in

special and exceptional circumstances that this Court is entitled to go in to questions of fact and do justice though the power should be very rarely exercised. I do not think that this a case in which such interference is warranted.

In the result, the revision petition is dismissed.

Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge