

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

Crl.Rev.Pet.No. 669 of 2006

CRA 205/2003 of ADDL. SESSIONS COURT (ADHOC)-I, KALPETTA

CC 89/2001 of J.M.F.C.-II, MANANTHAVADY

REVISION PETITIONER/APPELLANT/ACCUSED:

BIJU T.K., S/O.KARUNAKARAN,
RESIDING AT KOYILERI, PAYYAMBALLY VILLAGE
POST PAYYAMBALLY, MANANTHAVADY TALUK.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, S.I. OF POLICE,
MANANTHAVADY, REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SMT. M.G. LISHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Crl.Rev.Pet.No. 669 of 2006

APPENDIX

ANNEXURE

A- TRUE COPY OF THE MEDICAL CERTIFICATE DATED 11.2.2006 ISSUED BY DR.V.P.RAVEENDRANATHAN, M.O, GAD, MANANTHAVADY TO THE REVISION PETITION.

TRUE COPY

P.S TO JUDGE

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.669 of 2006

Dated 11th August, 2015

ORDER

1. In this revision filed u/s 397 r/w 401 of the Code of Criminal Procedure, the petitioner, who is the sole accused in C.C.No.89 of 2001 on the files of the Judicial Magistrate of First Class-II, Manathavadi, for offences punishable u/s 279 and 338 of the IPC, challenges the conviction and sentence passed against him for the aforementioned offences.

2. The gist of the prosecution case is that the petitioner was the driver of an autorikshaw bearing registration No.KL-12/9375. He drove the autorikshaw in a rash and negligent manner so as to endanger human life through Mananthavadi -

Koyilery public road carrying CW1, CW3 and CW4 and the said auto capsized at Arattuthara near the post office building at about 7.30 pm on 5.6.1999 and caused grievous hurt to PW1. On these allegations, it is alleged that the petitioner has committed the offence.

3. In order to prove the case of the prosecution, PW1 to 9 and Exts.P1 to P6 were marked. When the incriminating materials were put to the accused u/s 313 of the Cr.P.C, he denied the same and maintained that he is innocent. The learned Magistrate on an evaluation of the evidence found the petitioner guilty and sentenced him u/s 279, 338 of the IPC and convicted and sentenced him to pay a fine of Rs.1,000/- u/s 279 IPC and to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- u/s 318 of the IPC and in default of

payment of fine, to undergo simple imprisonment for one month each. Against the above finding, the petitioner preferred Crl.A.205 of 2003 before the Sessions Court, Wayanad and the Additional Sessions Judge (Ad hoc)-I, Kalpetta, as per judgment dated 10.8.2005 dismissed the appeal confirming the conviction and sentence passed by the learned Magistrate. It is against the above concurrent findings that the petitioner is before this Court by filing this revision petition.

4. I have heard Sri.Grashious Kuriakose, the learned Senior counsel appearing for the petitioner as well as the learned Public Prosecutor.

5. Even though the learned Senior counsel appearing for the revision petitioner assailed the conviction on various grounds, in as much as the

conviction has been recorded by the Courts below concurrently, after proper and careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will not be justified in interfering with the said findings. Therefore, I confirm the findings of the courts below.

6. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the petitioner. The petitioner is an auto driver and it is submitted that the injured was granted due compensation in the petition filed before the Motor Accident Claims Tribunal. The incident was of the year 1999 and more than 15 years have elapsed from the date of incident. The contention taken by the petitioner was that a dog had abruptly crossed which resulted in the accident. Taking all these facts into consideration and the long

pendency of the matter, I am of the considered view that the interest of justice will be adequately met by imposing the sentence to be passed hereinafter.

7. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to undergo imprisonment till the rising of the Court and to pay a fine of Rs.3,000/- u/s 279 of the IPC. In respect of the offence u/s 338, instead of the sentence imposed by the learned Magistrate and confirmed by the appellate Court, he is sentenced to undergo imprisonment till the rising of the Court and to pay compensation of Rs.5000/- to PW1, the injured, to be shared by PW1 and 3, husband and wife respectively. The petitioner is granted two months' time to deposit the amount before the trial Court failing which he shall undergo simple imprisonment for three months each by way of

default sentence.

8. In the result, revision petition is disposed of confirming the conviction entered but modifying the sentence imposed as above.

Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge

MrCS

//True Copy//

P.S.ToJudge