

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

Crl.Rev.Pet.No. 3123 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 453/2002 of ADDL.SESIONS COURT, NORTH
PARAVUR DATED 10-10-2003

AGAINST THE JUDGMENT IN CC 1014/1996 of J.M.F.C.-II, ALUVA
DATED 17-06-2002

REVISION PETITIONER/APPELLANT/ACCUSED:

MANNUEL, S/O.JOSEPH,
KALARIKKAL HOUSE, H/NO.XLVIII/1162,
SRRRREENARAYANA ROAD, ELAMAKKARA P.O,
COCHIN-26.

BY ADV. SRI.T.S.RAJAN

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERAAP REP.BY THE S.I. OF POLICE,
CITY POLICE TRAFFIC POLICE, COCHIN CITY
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY P.P.SRI.MADHU BEN M.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.3123 of 2003
.....

Dated this the 9th day of January, 2015.

O R D E R

The accused in C.C.No.1014/1996 on the file of the Judicial First Class Magistrate Court-II, Aluva is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Circle Inspector of Police, City Traffic Police Station, Kochi city in Crime No.1638/1996 of that police station alleging offences under Sections 279, 337, 338, 304(A) and Section 134 (a) and (b) read with Section 187 and section 3(1) read with section 181 and section 128 read with section 177 of the Motor vehicles Act (hereinafter referred to as 'the Act' for short).

3. The case of the prosecution in nutshell was that, on 1.9.1996 at about 12.10 p.m, the revision petitioner had driven the motor cycle with No.KBE 8390 with Pws 1 and 2 as pillion riders and while proceeding through BTS road from east to west, when they reached the place of occurrence, on account of the reckless and negligent driving of the revision petitioner, the motor cycle hit against a pedestrian by name

Bhuvanachandran, and on account of the hit, he fell down and sustained grievous injury and the motor cycle also fell down and PW1 also sustained grievous injury and PW2 sustained simple injury and later on 3.9.1996, Bhuvanachandran died due to head injury sustained by him in the accident and the revision petitioner did not produce the driving licence immediately after the incident and he did not inform the police about the accident and did not take any steps to take the injured to the hospital and the vehicle was driven without any insurance and thereby he had committed the above said offences.

4. After investigation, final report was filed for the offences under Sections 279, 337, 338 and 304 (A) of the Indian Penal Code and section 134 (a) and (b) read with section 187 and section 128 read with Section 177 of the Act.

5. When the revision petitioner appeared before the court below, particulars of the 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 12 were examined and Exts.P1 to P11 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure (hereinafter referred to

as 'the Code' for short) and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence and he has been falsely implicated in the case. Except marking Ext.D1, his driving licence, no other evidence was adduced on the side of the revision petitioner in defence. After considering the evidence on record, the courts below found the revision petitioner guilty under Sections 279, 337, 338 and 304(A) of the Indian Penal Code and Section 134 (a) and (b) read with Section 187 of the Act and section 128 read with Section 177 of the Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for three months for the offence under sections 279 and 337 of the Indian Penal Code and further sentenced to undergo imprisonment for six months under section 338 of the Indian Penal Code and further sentenced to undergo imprisonment for one year under Section 304 (A) of the Indian Penal Code and further sentenced to pay a fine of Rs.500/- each under Section 134 (a) and (b) read with Section 187 of the Act and also to pay fine of Rs.100/- under section 128 read with Section 177 of the Act and in default of payment of fine, to undergo imprisonment for one month. Driving license was suspended

for a period of three years and sentence was directed to run consecutively.

6. Aggrieved by the same, the revision petitioner filed Crl.A.No.453/2002 before the Sessions Court, Ernakulam, which was made over to Additional Sessions Court, North Paravur for disposal. The learned Additional Sessions Judge by the impugned judgment, confirmed the order of conviction and sentence including suspension of driving licence, but directed the sentences to run concurrently instead of consecutively as ordered by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

7. Heard the counsel for the revision petitioner and the learned Public Prosecutor.

8. The learned counsel for the revision petitioner submitted that the case of the prosecution that the revision petitioner was driving the motor cycle at the relevant time is highly suspicious. Admittedly the motor cycle was with PW1 as entrusted to him by his uncle and the case of the prosecution that the revision petitioner had borrowed the vehicle on the fateful day to go to Pachalam. If that be the case, there is no necessity for PW1 to accompany him. Further, the evidence

of Pws 5 and 9 is not believable as there is no possibility for them to identify the revision petitioner as the person, who drove the vehicle at the relevant time. No test identification parade was conducted. PW2 is the friend of PW1 and his evidence is also suspicious. So, under the circumstances, the case of the revision petitioner that the vehicle was not driven by him is more probable and the courts below should have given that benefit to him and ought to have acquitted him. Further, he had also argued that the sentence imposed is harsh.

9. On the other hand, the learned Public Prosecutor, supported the concurrent findings of the court below. Further, the learned Public Prosecutor submitted that the evidence of Pws 1, 2, 5 and 9 clinchingly proved the fact that the vehicle was driven by the revision petitioner and there is no necessity for these witnesses to give any false evidence against the revision petitioner. So, according to the learned Public Prosecutor, the courts below were perfectly justified in convicting the revision petitioner. Considering the offences alleged, the sentence imposed also cannot be said to be harsh or excessive.

10. The case of the prosecution as emerged from the prosecution witnesses is as follows:

Admittedly, PW1 was in possession of the motor cycle said to have been involved in the accident as entrusted to him by his uncle Kasim, who is the registered owner of the vehicle. According to PW1, on 1.9.1996 the revision petitioner came and wanted the motor cycle for going to Pachalam to his friend's house and since there was no petrol in the vehicle, he also accompanied him in the vehicle and they filled petrol and while they were coming, they saw PW2 and as requested by him, a lift was given in the vehicle by the revision petitioner and while they were proceeding together and when they reached the place of occurrence, the motor cycle hit against a pedestrian and it fell down and thereafter the vehicle was taken from there and proceeded further and hit against a compound wall and he fell down and sustained injuries. He was taken to hospital by the local people. Pws 1, 2 and deceased Bhuvanachandran were first seen by PW10, who issued Exts.P4, and P5 wound certificates of Pws 2 and 1 respectively. On getting intimation regarding the accident, PW11 went to the hospital and saw the injured Bhuvanachandran in a critical condition and his statement could not be recorded. So he collected Ext.P7 intimation letter from the hospital and came to the police station and registered Ext.P8 First Information Report

as Crime No.1638/1996 under the caption “motor occurrence” and he went to the place of occurrence and prepared Ext.P1 scene mahazer in the presence of the witnesses. Thereafter he got the information that Bhuvanachandran died. So the investigation was undertaken by PW12, the Circle Inspector of Police, City Traffic Police Station, Kochi. He went to the hospital and conducted inquest on the body of the deceased in the presence of Pws 3 and 4 and prepared Ext.P9 inquest report. As instructed by him, PW7 conducted postmortem examination on the body of the deceased and issued Ext.P2 postmortem certificate, in which he had opined that deceased died due to head injury. The vehicle was produced by PW1 and seized as per Ext.P10 seizure mahazer by PW12 and got inspected by PW8, who issued Ext.P3 report regarding the vehicle. During investigation, it was revealed that vehicle was driven by the revision petitioner and the accident occurred due to the negligent driving of the revision petitioner. So he gave Ext.P11 report to delete the caption motor occurrence and to add name of the revision petitioner in the accused column and to add sections 279, 337, 338 and 304 A of the Indian Penal Code and section 134 (a) and (b) read with section 187 and section 128 read with section 177 of the Act. Section

38(1) read with section 177 of the Act was added earlier by PW11 as the driving licence of the rider was not produced at that time. He completed the investigation and submitted the final report.

11. PW1 and 2 were travelling in the motor cycle. According to the prosecution, which was driven by the revision petitioner. PW1 had categorically stated that he was in possession of the motor cycle as entrusted by his uncle for the purpose of selling the same and at the time when it was entrusted, it was having the insurance and later it was not renewed by him. According to him, on 1.9.1996 the revision petitioner came and wanted the vehicle to go to Pachalam and since there was no petrol in the vehicle, he also accompanied him to the petrol pump and after filling the petrol, while they were coming, they saw PW2 coming and as requested by him and permitted by the revision petitioner, PW2 was also taken in the motor cycle. While all the three were travelling in the motor cycle, the motor cycle hit against the deceased Buvanachandran, who was walking along the southern side of the road and proceeding from east to west and hit was from behind and according to them, on account of the hit, the motor cycle also fell down and all of them fell down and sustained

injuries. Thereafter the motor cycle was taken by the revision petitioner and proceeded further and it further hit against a compound wall and they fell down and he became unconscious and he was taken to hospital by somebody who came there. He denied the suggestion that it was he who was driving the motor cycle at the relevant time and it hit against the deceased and fell down and the revision petitioner who came there and swerved the vehicle on seeing him on the road side. Since he did not accompany him to the police station, he has been falsely implicated in the case influencing the police.

12. Further PW2 had corroborated the evidence of PW1 on the aspect that the vehicle was driven by the revision petitioner at the relevant time. Further, it is true that the lower court had observed that since PW1 was also travelling in the vehicle it was not safe to rely on his evidence to prove the identity of the revision petitioner as the person who drove the vehicle as the revision petitioner also having a case that it was driven by PW1, that does not mean that the court below had not believed the evidence of Pw1 on the question of vehicle being driven by the revision petitioner. But court was conscious to search for other evidence also to corroborate with the evidence given by PW1 to prove this aspect. It was correctly

observed so by the appellate court. Further the presence of PW2 was not challenged while he was cross examined as well. Further PW2 had no enmity against the revision petitioner to give any false evidence against him. Pws 5 and 9 were independent witnesses to the incident. PW5 had stated that he was going along with the road in the same direction in which the motor cycle came and he saw the vehicle being driven by the revision petitioner, who identified him from the court and there were two other persons travelling in the motor cycle apart from the revision petitioner. He had only stated that all the three persons fell down when the motor cycle hit the deceased and fell down and thereafter the vehicle was taken from there by the revision petitioner himself. PW9 also deposed in the same manner and he had also corroborated the evidence of PW5 regarding the manner in which the incident occurred and identity of the revision petitioner as rider of the vehicle at the relevant time.

13. It is true that no test identification parade was conducted. It may be mentioned here that the incident occurred at day time and Pws 5 and 9 were also proceeding in the same direction in which the motor cycle was also proceeding and both of them have stated that the motor cycle hit the deceased

and he fell down and the motor cycle also fell down at that place and by the time they rushed there, the persons in the vehicle took the vehicle and left the place is the statement given by the witnesses. So there is possibility for these witnesses seeing the persons who were travelling in the vehicle at the relevant time. Merely because test identification parade was not conducted is not a ground to disbelieve the identification made by them at the time of occurrence and spoke about the same in court and identify the revision petitioner as the person who drove the vehicle at the relevant time. Further it may be mentioned here that both Pws 5 and 9 had stated that they could identify the rider of the vehicle later. Any irregularity by the investigating officer in conducting investigation of not identifying the accused later is not a ground to disbelieve their evidence when they identified him from the court especially when the incident occurred in the day light and there is possibility for them to recollect the identity of the person, who drove the vehicle at the relevant time as the motor cycle hit against a person and that person died in the accident later.

14. Further, While the revision petitioner was questioned under section 313 of the Code, the revision petitioner had no

specific case as to how the incident occurred or the reason for being falsely implicated in the case as well except stating that he had not committed any offence. There is no enmity brought out for PWs 1, 2 5 and 9 to force them to falsely implicate him in a case of this nature. If really the incident occurred as suggested by the revision petitioner to PW1, then he would have informed the matter to the police as well. But that was not done by him. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that the revision petitioner was driving the vehicle at the relevant time.

15. Further, the evidence will go to show that the vehicle was driven at a high speed and it hit a pedestrian and further, a compound wall as well. There is no suggestion given to PWs1, 2, 5 and 9 that there was any negligence on the part of the deceased in causing the accident as well. So under the circumstances, the courts below were perfectly justified in coming to the conclusion that the vehicle was driven by the revision petitioner in a negligent manner and caused the death of deceased Bhuvanedaran and also caused grievous injuries to Pw1 and simple injury to Pw2 and thereby he had committed the offence punishable under Sections 279, 337,

338 and 304 A of the Indian Penal Code. Since he had not informed the police about the incident, did not take the injured to the hospital and he had carried more than one person in the vehicle over and above the capacity of the vehicle, the courts below were perfectly justified in convicting him for the offences under Section 134 (a) and (b) read with Section 187 of the Act and section 128 read with section 177 of the Act. So the concurrent findings of the courts below on this aspect do not call for any interference.

16. As regards the sentence is concerned, the courts below had sentenced him to undergo simple imprisonment for three months each for the offences under sections 279, 337 of the Indian Penal Code and one year under Section 304 A of the Indian Penal Code and sentenced to pay a fine of Rs.500/- each under sections 134 (a) and (b) read with Section 187 of the Act and further sentenced to pay a fine of Rs.100/- under section 128 read with section 177 of the Act and in default to undergo simple imprisonment for one month. Driving licence of the accused was also suspended for a period of three years. The trial court had directed the sentences to run consecutively but the appellate court had directed the sentences to run concurrently but confirmed the sentence

imposed by the court below.

17. It is true that accidents are increasing now a days due to reckless and negligent driving of the vehicles by the riders. However considering the circumstances, while confirming the sentence imposed under Sections 279, 337, 338 and fine imposed under Section 134 (a) and (b) read with section 187 of the Act and section 128 read with section 177 of the Act, this Court feels that the sentence imposed for the offence under section 304 A of the Indian Penal Code can be reduced to six months and the rigorous imprisonment can be converted to simple imprisonment and suspension of period of driving licence can be reduced to one year. So the sentence is modified as follows:

The revision petitioner is sentenced to undergo simple imprisonment for three months each for the offences under sections 279 and 337 of the Indian Penal Code and six months each for the offences under sections 338 and 304 A of the Indian Penal Code and further sentenced to pay fine of Rs.500/- each under sections 134 (a) and (b) read with section 187 of the Act and further sentenced to undergo fine of Rs.100/- under section 128 read with section 177 of the Act and in default of payment of fine the revision petitioner was

sentenced to undergo simple imprisonment for one month each.
Suspension of driving licence is reduced to one year.

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 and the court below is directed to communicate the same to the licencing authority for making necessary endorsements in the licence.

Sd/-
K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

