

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

Crl.Rev.Pet.No. 1598 of 2004 (D)

**AGAINST THE JUDGMENT IN CRL.A.NO.181/2001 of SESSIONS COURT, KASARAGOD
DATED 02-06-2004**

**AGAINST THE JUDGMENT IN C.C.NO.360/1997 of CHIEF JUDICIAL MAGISTRATE
COURT, KASARAGOD DATED 10.07.2001**

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

**RAMACHADNRAN, S/O.MUTHU CHETTYAR,
RESIDING AT KUNTANGARADUKA LAKSHMI VEEDU,
KOIPADY VILLAGE, POST KUMBLA,
KASARAGOD TALUK AND DISTRICT.**

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANT AND STATE.:

- 1. THE STATION HOUSE OFFICER,
KUMBLA POLICE STATION.**
- 2. THE STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

R1 & R2 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04-
03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.R.P.No.1598 of 2004

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Dated this, the 04th day of March, 2015.

ORDER

Accused in C.C.No.360/1997 on the file of the Chief Judicial Magistrate Court, Kasaragod is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Circle Inspector of Police, Kumbala in Crime No.82/1996 of Kumbala police station for the offences under Sections 279, 338 and 304A of the Indian Penal Code.

3. The case of the prosecution in nutshell was that, on 03.05.1996 at about 2.30 p.m., the revision petitioner was driving the lorry with No.K.A.19-5417 through the Kumbala Badiadka road in a rash and negligent manner so as to endanger human life and when it reached in front of Kumbala Co-operative Hospital, hit against one Soofi and Muhammed who were walking along the side of the road, caused grievous injuries to them and on 23.10.1996 at about 1.50 a.m., Soofi died on account of the injury sustained and thereby, he had committed the offence punishable under Sections 279, 338 and

304A of the Indian Penal Code. After investigation, final report was filed and it was originally taken on file as C.C.No.360/1997 on the file of the Chief Judicial Magistrate Court, Kasaragod for the offence under Sections 279 and 338 of Indian Penal Code. Later, when one of the injured died, further investigation was conducted and further report was filed incorporating Section 304A of Indian Penal Code.

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 15 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 Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. No defence evidence was adduced on his side.

5. After considering the evidence on record, the court below found the revision petitioner guilty under Sections 279, 338 and 304A of the 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 338 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three months under Section 304A of the Indian Penal Code and directed the sentences to run concurrently. Aggrieved by the same, he filed Crl.Appeal No.181/2001 before the Sessions Court, Kasaragod and the learned Session Judge 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. Heard the Counsel for the revision petitioner and the Public Prosecutor.

7. The Counsel for the revision petitioner submitted that, except one of the injured, no other person were examined in this case. PWs 2 and 3 said to be the eye witnesses did not support the case of the prosecution. PW1 also did not say anything about the negligence. Further, it is not clear from the scene mahazar regarding the exact place of

incident and the reason for the accident was also not stated by any of the witnesses. There is no evidence to show that the revision petitioner was driving the vehicle at the relevant time so as to fasten the criminal liability of negligent driving on him. The deceased died after five months of the accident. So, it cannot be said that the death was due to the injuries sustained. So, according to him, the courts below were not justified in convicting the revision petitioner for the offence alleged.

8. The learned Public Prosecutor submitted that PW1 had deposed about the manner in which the accident occurred and that was not challenged. So, the concurrent findings of the court below do not require any interference.

9. The case of the prosecution as seen from the prosecution witnesses was as follows:

On 03.05.1996 at about 2.30 p.m., while PW1 and another by name Soofi were walking along the side of the Kumbala Badiadka road situated in front of Kumbala Co-operative Hospital, the lorry with No.K.A.19-5417 driven by the revision petitioner came and hit against them and due to that, both of them sustained severe injuries. Soofi was taken

to City Hospital, Mangalore while PW1 was taken to a local hospital from where he was treated by PW4 who issued Ext.P2 wound certificate. On getting intimation regarding the admission of PW1 in the hospital, PW8 - Head Constable attached to the police station went to the hospital and recorded Ext.P1 statement of PW1 and registered Ext.P4 First Information Report in Crime No.82/1996 of Kumbala police station against the driver of the lorry under Sections 279 and 338 of Indian Penal Code. He went to the place of occurrence and prepared Ext.P5 scene mahazar in the presence of witnesses. He also prepared Ext.P6 body mahazar of the vehicle. Deceased Soofi was taken to City Hospital Mangalore from where he was seen by PW7 who issued Ext.P3(a) wound certificate relating to him. He was treated there for three months and thereafter, he was referred to a local hospital from where he was seen by PW13 and he died on 23.10.1996. Earlier the vehicle was inspected by PW5 who issued the motor vehicle report in respect of the vehicle where no mechanical defect was noted. PW6 conducted the further investigation. He verified the investigation conducted by his predecessor and originally filed final report for the offence under Sections 279 and 338 of Indian Penal

Code alone. Thereafter, PW11 received the death certificate and also intimation regarding the death of Soofi. So, he gave Ext.P8 report seeking permission for further investigation and further investigation was conducted. He conducted inquest on the body of the deceased and prepared Ext.P7 inquest report in the presence of PW9. The vehicle was released to PW15 on kychit. Postmortem examination was conducted by PW12 who issued Ext.P9 postmortem certificate. PW14 verified the investigation and completed the investigation and submitted final report incorporating the offence under Section 304A of Indian Penal Code as well.

10. PW1 is the injured in this case. Though he had stated that while he was walking along the northern portion of the road, he was hit by a lorry which came from behind. He did not state the reason for the accident. He did not mention the lorry number as well. The cause of accident was not mentioned by him. PWs 2 and 3 are the alleged eye witnesses to the incident. They did not support the case of the prosecution and they denied having seen the incident. So, their evidence is not helpful to prove the cause of incident. Further, the courts below have relied on Ext.P5 scene mahazar. But, in the scene

mahazar, the exact location of the place of occurrence was not specifically mentioned and it is not clear from the descriptions of the location of place of occurrence described in the scene mahazar lead to an inference that the accident occurred in the road margin as claimed by PW1. Further, it is seen from Ext.P5 scene mahazar that, there is a tyre mark seen for a distance of 1.47 meters on the middle of the road and PW1 did not state after hitting him as to whether the vehicle hit Soofi or before hitting him, Soofi was hit by the vehicle. How Soofi sustained injury was not spoken to by PW1 as well. But, the documents produced by the prosecution show that, he was also hit by the lorry and he was immediately taken to City Hospital, Mangalore and treated for head injury which was proved through PW7 and Ext.P3(a) wound certificate and the evidence of PW13 - Doctor who treated him after he was referred from City Hospital also shows that he was semi conscious even after prolonged treatment. The evidence of PW12- the Doctor who conducted postmortem also shows that the death was due to the after effect of the head injury. Though the Doctor has stated that it was not the immediate cause, but, she had deposed that it was the reason for the

Pneumonia caused and that resulted in the death and it is also stated by her that he was under continuous treatment. So, the documentary evidence adduced on the side of the prosecution proved that the deceased died due to the head injury sustained by him in the accident.

11. The evidence of PW15 - the owner of the vehicle shows that the vehicle was driven by the driver at the relevant time. But, he was not cross examined as well.

12. It may be mentioned here that merely because an accident occurred and some person sustained injury and one died in the incident is not sufficient to come to the conclusion that there was negligence or culpable negligence on the part of the driver of the vehicle which resulted in the accident. None of the witnesses examined on the side of the prosecution had deposed about the cause of the accident. There is no explanation coming from the prosecution regarding the tyre mark seen at the middle of the road as well.

13. In the decision reported in **P.Rajappan Vs. State of Kerala [1986 CRI.L.J.511]**, it has been observed that merely because some person died in the accident alone is not sufficient to come to the conclusion that it was due to the

criminal negligence on the part of the driver of the vehicle. Unless it is proved by the prosecution by cogent evidence, he cannot be convicted for offence of negligent driving or the consequence of such driving. Even the manner in which the vehicle came also not deposed by any of the witnesses including the injured. So, under the circumstances, courts below were not justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the accident occurred due to the rash and negligent driving of the vehicle by its driver which is the main ingredient to be proved by the prosecution so as to convict the driver of the vehicle for the offence under Sections 279, 338 and 304A of the Indian Penal Code which has not been discharged in this case by the prosecution. So, the courts below were not justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the accident occurred due to the rash and negligent driving of the lorry by the revision petitioner and consequential conviction entered by the court below for the offences under Sections 279, 338 and 304A of the Indian Penal Code is unsustainable in law and the same is liable to be set aside and the revision petitioner is entitled to get acquittal of

the charge levelled against him giving him the benefit of doubt. Since this court has found that he is not guilty under Sections 279, 338 and 304A, the sentence imposed by the court below is also not proper and the same is also liable to be set aside.

In the result, the revision petitioner succeeds and the revision is allowed. The order of conviction and sentence passed by the court below in C.C.No.360/1997 of Chief Judicial Magistrate Court, Kasaragod and confirmed by the Sessions Court, Kasaragod in Crl.Appeal No.181/2001 against the revision petitioner under Sections 279, 338 and 304A are set aside and the revision petitioner is acquitted of the charge levelled against him giving him the benefit of doubt. He is set at liberty. The bail bond if any executed by him will stand cancelled. The fine amount if any deposited by him is directed to be released to him by the court below.

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