

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1512 of 2006 ()

AGAINST THE JUDGMENT IN CRL.A 611/2004 of ADDL.SESIONS COURT,FAST
TRACK-II, ALAPPUZHA DATED 27-02-2006

AGAINST THE ORDER/JUDGMENT IN ST 4412/2001 of J.M.F.C.-I, ALAPPUZHA
DATED 02-12-2004

REVISION PETITIONER/APPELLANT/ACCUSED:

STANCILAVOSE,
S/O. JOSEPH, AGED 46,
KALLUVILA PUTHENVEEDU, MANGAD WARD,
KOLLAM CORPORATION,
KOLLAM.

BY ADV. SRI.THYPARAMBIL THOMAS THOMAS

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA REP.BY SUB INSPECTOR
OF POLICE, ALAPPUZHA NORTH POLICE STATION
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY P.P.SRI. RAJESH VIJAYAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
08-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.1512 of 2006
.....

Dated this the 8th day of April, 2015.

O R D E R

The accused in S.T.No.4412/2001 on the file of the Judicial First Class Magistrate Court-I, Alappuzha is the revision petitioner herein. The revision petitioner was charge sheeted by the Sub Inspector of Police, Alappuzha North Police Station in Crime No.430/2011 of that police station under sections 279 and 337 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on 16.8.2001 at about 5 p.m, the revision petitioner being the driver of the KSRTC bus with No.TS.978 drove the same along the Ernakulam - Alappuzha National Highway from north to south in a rash and negligent manner so as to endanger human life and, as a result of which, when the bus reached 100 metres north of Burnad junction and in front of Qualities Coir Mills Building, hit against a cyclist-PW8, the injured, from behind and caused injury to him and thereby the revision petitioner had committed the offences punishable under sections 279 and 337 of the Indian Penal Code.

3. After investigation, final report was filed and the case

was taken on file as S.T.No.4412/2001 on the file of the Judicial First Class Magistrate Court-I, Alappuzha. When the revision petitioner appeared before the court below, particulars of offences 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 P8 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 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 in fact, there was no negligence on his part and the incident occurred due to the negligence of PW8 in riding the cycle as he suddenly crossed the road. DW1, the conductor of the bus was examined on the side of the revision petitioner to prove his case. After considering the evidence on record, the trial court found the revision petitioner guilty under sections 279 and 337 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for three months and also to pay a fine of ₹1,000/-, in default, to undergo simple imprisonment for three months under section 279 of the Indian

Penal Code and further sentenced to pay a fine of ₹500/-, in default, to undergo simple imprisonment for one month under section 337 of the Indian Penal Code. It is further ordered that the revision petitioner was disqualified from driving and his driving licence was suspended for a period of one year under section 20(1) of the Motor Vehicle Act. Aggrieved by the same, the revision petitioner filed Crl.A.No.611/2004 before the Sessions Court, Alappuzha, which was made over to the Additional Sessions Court, Fast Track-II, Alappuzha for disposal and the learned Additional Sessions Judge dismissed the appeal confirming the order of conviction and sentence including suspension of driving licence passed by the trial court. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

4. When the revision petition came up for hearing today, the learned counsel for the revision petitioner submitted that the revision petitioner is no more. Death of the revision petitioner will not make the revision infructuous or abated as in the case of appeal. So, the matter has to be disposed of on merit.

5. Heard Sri.T.T.Thomas, the learned counsel for the revision petitioner and Sri. Rajesh Vijayan, the the learned

Public Prosecutor and perused the records .

6. The counsel for the revision petitioner submitted that the evidence of DW1 has not been properly understood in the right perspective. According to him, criminal negligence has not been proved.

7. The learned Public Prosecutor supported the concurrent findings of the courts below.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

on 16.8.2001 at about 5 p.m, while PW8, the injured was riding his bicycle through Ernakulam-Alappuzha National Highway from north to south through eastern side of the road and when it reached 100 meters north of Burnad junction and in front of Qualities Coir Mills Building, the KSRTC Bus with No.TS.978 driven by the revision petitioner in a negligent manner came from behind and hit against the rear side of the cycle and on account of the impact, PW8 fell down and sustained injuries and he was taken to the hospital and he was seen by PW4, the doctor, who issued Ext.P2 wound certificate. On getting intimation from the hospital, PW11 went to the hospital and since the statement of PW8 could not be recorded,

he recorded Ext.P1 statement of PW2, father of the injured and came back to the police station and registered Ext.P7 First Information Report as Crime No.430/2001 against the driver of the KSRTC bus alleging the offences under sections 279 and 337 of the Indian Penal Code. Investigation in the case was conducted by PW12, the Sub Inspector of Police. He went to the place of occurrence and prepared Ext.P4 scene mahazer in the presence of PW5 and another. He prepared Ext.P3 body mahazer of the KSRTC bus in the presence of PW8 and another. He got the vehicle inspected by PW10, the Motor Vehicle Inspector and obtained Ext.P6 report, which will go to show that there was no mechanical defect for the vehicle. He released the vehicle to PW9, the Inspector of Kollam Depot after getting Ext.P5 kaichit. He questioned the witnesses and recorded their statements. During investigation, it was revealed that the vehicle was driven by the revision petitioner and so he filed Ext.P8 report showing the name of the revision petitioner as the accused in the accused column of the First Information Report and he completed the investigation and submitted final report.

9. PW2 is not an eye witness to the incident. He gave only Ext.P1 statement, on basis of which the crime was registered.

Though PW1 was examined as eye witness, he did not support the case of the prosecution. Pws 3, 8 and 9 were examined to prove the incident and also the identity of the revision petitioner. PW8 also deposed that while he was riding his cycle, the bus came from behind, hit against him from behind and due to that he was thrown away and sustained injury. He denied the suggestion that when he tried to cross the road, the incident occurred. But the evidence of Pws 3 and 9 corroborated the evidence of PW8 regarding the manner in which the incident occurred and the negligence on the part of the driver of the bus. They also identified the revision petitioner as the person who drove the vehicle at the relevant time. The fact that he was driving the vehicle at the relevant time has not been disputed as DW1 the conductor of the bus also deposed that he was driving the vehicle at the relevant time. So, the identity of the revision petitioner as the person who drove the vehicle at the relevant time has been properly established. Further, the evidence of DW1 will go to show that though he was the conductor of the bus at the relevant time, there was no possibility for him to see the incident as claimed. So the courts below were perfectly justified in not relying the evidence of DW1 to hold that there was no

negligence on the part of the revision petitioner as claimed by him. But the evidence of Pws 3, 8 and 9 shows that the incident occurred due to the negligence of the driver of the bus and it was due to the hit from behind as well. So, under the circumstances, the courts below were perfectly justified in convicting the revision petitioner for the offence under sections 279 and 337 of the Indian Penal Code and the concurrent findings of the court below do not call for any interference. The sentence imposed by the courts below appears to be reasonable considering the circumstances of the case. Since the revision petitioner is no more, the substantive sentence cannot be executed against him. But the fine imposed by the courts below can be realized from the estate of the revision petitioner, if any left by him, in the hands of the legal heirs.

With the above observations, the revision petition is dismissed.

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

Sd/-
K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

