

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.Rev.Pet.No. 695 of 2009 ()

AGAINST THE JUDGMENT IN CRL.A. 685/2007 of ADDL.DISTRICT
COURT (ADHOC), KOTTAYAM DATED 19-6-2008

AGAINST THE JUDGMENT IN CC 79/2006 of J.M.F.C., ERATTUPETTA
DATED 29-09-2007

REVISION PETITIONER(S)/PETITIONER - APPELLANT/ACCUSED:

GEORGE, S/O.CHERIYAN, AGED 49,
PUTHENPURACKAL HOUSE, POONJAR BHAGAM, VENGOLA VILLAGE
ERNAKULAM (DIST).

BY ADV. SRI.ANIL K.MOHAMMED

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

PUBLIC PROSECUTOR SRI. V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 04-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 695 of 2009
.....

Dated this the 4th day of November, 2015.

ORDER

The revision petitioner is the accused in C.C. No. 79 of 2006 on the files of the Court of the Judicial Magistrate of First Class, Erattupetta.

2. The trial Court convicted the revision petitioner under Sections 279, 337, 338 and Sec. 304 A of IPC and Sec. 146 read with Sec. 196 of the Motor Vehicles Act, and sentenced him thereunder to simple imprisonment for four months and a fine of Rs. 1000/- under Section 304 A IPC, a fine of Rs. 1000/- under Sec. 279 IPC, a fine of Rs. 500/- under Sec. 337 IPC, a fine of Rs. 1000/- under Section 338 IPC and a fine of Rs. 1000/- under Section 146 read with Sec. 196 of MV Act.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that at about 10.30 a.m. on 8-11-2005, the revision petitioner drove the motor cycle bearing Reg. No. KL7-AA/7604, in a rash and negligent manner, endangering human life along Erattupetta-Kunnonny public road

and when it reached at Poonjar town, it hit against deceased Valsamma, and as a consequence, she sustained serious injuries. PW2, who was the pillion rider of the motorcycle driven by the accused also sustained grievous injuries. The above said Valsamma succumbed to the injuries on 10-11-2005, while undergoing treatment at Kottayam Medical College Hospital.

5. Before the trial Court, PW1 to PW13 were examined and Exts. P1 to P9 were marked for the prosecution. The accused himself got examined as DW1.

6. PW1 is a relative of the deceased who had given Ext.P1 F.I. statement before the police in connection with the incident in this case. PW2 was the pillion rider of the Motor Cycle driven by the revision petitioner. PW2 admitted that PW2 was the pillion rider of the motor cycle during the relevant time. PW3 and PW4 are independent occurrence witnesses who supported the prosecution case with regard to the occurrence. The accused himself got examined as DW1. DW1 stated that he was driving the vehicle at the relevant time. According to him, the accident occurred on the reason that the deceased crossed the road suddenly in a negligent manner.

7. The courts below, relied on the oral and documentary evidence adduced by the parties and came to the conclusion that the revision petitioner committed the offence under Sections 279, 337, 338 and 304A of IPC and Section 146 read with Sec. 196 of

M.V. Act. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offences under Sections 279, 337, 338 and 304 A IPC and Sec. 146 read with Sec. 196 of M.V Act does not warrant any interference by this Court.

8. The learned counsel for the revision petitioner prayed for leniency in the matter of sentence. The revision petitioner is presently aged 55 years. The revision petitioner is a first time offender. The accident occurred while the revision petitioner was driving a motor cycle. Considering the facts and circumstances of the case, including the fact that the revision petitioner is a first time offender, I am of the view that the sentence awarded by the courts below under Sec. 304 A of IPC can be modified and reduced to simple imprisonment for one month and a compensation of Rs. 10,000/-, to meet the ends of justice and accordingly, I order so.

In the result, this Revision Petition stands allowed in part;

- i) confirming the verdict of guilty and conviction passed by the courts below under Sections 279, 337, 338 and 304 A of IPC and

Section 146 read with 196 of M.V. Act,

ii) the sentence awarded by the courts below under Sec. 304 A stands modified and reduced to simple imprisonment for one month and a compensation of Rs. 10,000/- (Rupees ten thousand only) and in default, to simple imprisonment for one month;

iii) the sentence awarded by the courts below including default sentence under other counts stands confirmed;

iv) if the fine/compensation is realised, the entire amount shall be given to the children of the deceased in equal proportion.

Dated this the 4th day of November, 2015.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/ 9/11/2015

/truecopy/

P.S. To Judge