

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

Crl.Rev.Pet.No. 1178 of 2005 ()

AGAINST THE JUDGMENT IN CRL.A 57/2000 of ADDL. SESSIONS COURT,
FAST TRACK (ADHOC 2), THRISSUR DATED 01-04-2005

AGAINST THE JUDGMENT IN CC 21/1997 of J.M.F.C., KODUNGALLUR
DATED 29-01-2000

REVISION PETITIONER/APPELLANT/ACCUSED::

NAIR MOHAN SIVARAM, S/O.SIVARAMAN NAIR,
PATHIYARIL HOUSE, S.N. PURAM, SANTHIPURAM
KODUNGALLUR TALUK, THRISSUR DISTRICT.

BY ADVS.SRI.C.C.THOMAS (SR.)
SRI.NIREESH MATHEW

RESPONDENT/RESPONDENT/COMPLAINANT & STATE::

STATE OF KERALA,
REPRESENTED BY S.I. OF POLICE, KODUNGALLUR POLICE
STATION, THRISSUR DISTRICT, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI. RAJESH VIJAYAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
19-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.1178 of 2005
.....

Dated this the 19th day of February, 2015.

O R D E R

The accused in C.C.No.21/1997 on the file of the Judicial First Class Magistrate Court, Kodungallur is the revision petitioner herein. The revision petitioner was charged sheeted by the Circle Inspector of Police, Irinjalakkuda in Crime No.163/1996 of Kodungallur police station under sections 279, 337, 338 and 304 A of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on 7.7.1996 at about 4 p.m the revision petitioner, as the driver of the Jeep KL8 C 5191, drove the same in a rash and negligent manner so as to endanger human life through National Highway at Sringapuram and overtook a tempo van in a negligent manner and hit against a scooter came from the opposite direction driven by the deceased with PW5 as pillion rider of the scooter succumbed to the injuries while PW5 sustained grievous injuries on account of the negligent act of the revision petitioner and thereby he had committed the offences under sections 279, 337, 338 and 304 A of the Indian Penal Code.

3. After investigation, final report was filed and the case was taken on file as C.C.No.21/1997 on the file of the Judicial First Class Magistrate Court, Kodungallur. 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 14 were examined and Exts.P1 to P10 were marked on the side of the prosecution. 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 while he was driving the vehicle along with his wife and child and when he reached the place of occurrence, the van which was going ahead suddenly applied break and in order to avoid collision, he took vehicle to the right side and hit against the scooter and he had not committed any offence. No defence evidence was adduced on his side. After considering the evidence on record, the trial court found the revision petitioner guilty under sections 279, 337, 338 and 304 A of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for six months for the offence under

section 279 of the Indian Penal Code and further sentenced him to undergo simple imprisonment for one year for the offence under section 304 A of the Indian Penal Code and further sentenced to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for six months more. No separate sentence was awarded for the offences under sections 337 and 338 of the Indian Penal Code. Aggrieved by the same, the revision petitioner filed Crl.A.No.57/2000 before the Sessions Court, Thrissur which was made over to the Additional Sessions Court (Adhoc-II), Thrissur for disposal and the learned Additional Sessions 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.

4. Heard Sri.C.C.Thomas, the learned senior counsel appearing for the revision petitioner and Sri. Rajesh Vijayan, the learned Public Prosecutor appearing for the respondent.

5. The counsel for the revision petitioner submitted that though PW13 , the investigating officer, had stated that he had recorded the statement of the Motor Vehicle Inspector, that was not produced before the court and thereby prejudice has been caused to the revision petitioner. He had also argued that

mere speed alone is not sufficient and the evidence of Pws 3, 4 and 5 is not sufficient to attract none of the offences alleged and at the most it may amount to error of judgment and not reckless act and thereby the courts below were not justified in convicting the revision petitioner for the offences alleged. He had relied on the decisions reported in **Jahid Shaikh and Others v. State of Gujarat and another** (2011 (7) SCC 762), **Joseph v. State of Kerala** (2010 (2) KLT 918) and **Nageshwar Sh.Krishna Ghobe v. State of Maharashtra** (AIR 1973 SC 165) in support of his case.

6. On the other hand, the learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved the case against the revision petitioner beyond reasonable doubt. The Motor Vehicle Inspector was examined and the documents prepared by him were also produced and non production of the statement, if any, said to have been recorded of the Motor Vehicle Inspector is not fatal in this case. Further, the fact that the jeep did not stop even after hitting the scooter and went further and hit against a telephone post to stop the vehicle shows the speed of the vehicle and the scene mahazer also shows that it was on the extreme wrong side of the jeep that the accident occurred. So,

according to the learned Public Prosecutor, the concurrent findings of the court below on facts do not call for any interference.

7. The case of the prosecution in nutshell was that on 7.7.1996 at about 4 p.m the revision petitioner was driving the jeep involved in the incident with his wife PW1 and child and when he reached, the place of occurrence, the case of the prosecution was that the jeep overtook a van going ahead of it in a negligent manner at over speed and hit against the scooter driven by the deceased with PW5 as pillion rider and due to that, both of them sustained severe injuries and rider of the scooter died and PW5 sustained fracture. On the basis of Ext.P1 statement given by PW2, a crime was registered and investigation was undertaken by PW13 and he had conducted inquest on the body of the deceased and prepared Ext.P6 inquest report. Ext.P7 First Information Report was registered, on the basis of Ext.P1 statement given by PW2, by PW12, the Head Constable attached to Kodugallur police station, who went to the hospital on getting intimation regarding admission of the injured in the hospital. Postmortem examination on the body of the deceased was conducted by PW9, who issued Ext.P4 postmortem certificate. PW1 was examined by PW8 who issued

Ext.P2 wound certificate and also wound certificate of one Nandan. The vehicle was got examined by PW14 who issued Ext.P9 and P10 reports regarding condition of the vehicles. Investigation was completed and final report was filed.

8. PW1 is the wife of the revision petitioner, who was travelling in the jeep at the relevant time. The fact that the jeep was driven by the revision petitioner was admitted. But she had stated that she did not know the reason for the accident and she was declared hostile by the prosecution.

9. PW2 was not an eye witness to the incident. But he gave Ext.P1 statement on the basis of which the crime was registered. So the fact that the vehicle was driven by the revision petitioner was not in dispute. It will be seen from the evidence of PW3 and PW4, the eye witnesses, that the injured, PW5, was travelling in the scooter as a pillion rider and the scooter was driven by the deceased and at that time the jeep was proceeding from south to north and it reached the place of occurrence, it overtook the van which was going ahead of it at a high speed and went to the wrong side and hit against the scooter driven by the deceased with PW5 as pillion rider. It is true that both of them have stated that the jeep was driven at a high speed and it was due to the negligence of the

jeep driver that the accident occurred. They have given the approximate speed of the jeep as well as the scooter. They have denied the suggestion that the scooter went to the wrong side and hit against the jeep. PW5, the injured also deposed that the accident occurred due to the negligent driving of the jeep and it came at over speed overtook a van and hit against the scooter which was proceeding through its proper side at slow speed.

10. The scene mahazer Ext.P5 will go to show that the place of occurrence was located as 1.14 meters west from the eastern tar end and the road was having a width of 7.08 meters at the place of occurrence. It is true that speed alone is not the criteria for coming to the conclusion regarding the culpable negligence on the part of the driver of the vehicle to convict him for the offence of criminal negligence. But, at the same time, even in some places going in slow speed showing recklessness and carelessness on the part of the driver in driving the vehicle will be sufficient for the purpose of convicting the driver of the vehicle for the negligent driving. It is seen from the scene mahazer that the vehicles were seen at the place of occurrence itself and it was removed from that place itself. There is no dispute regarding the place of

occurrence. So it is clear from the scene mahazer that it was on the extreme wrong side of the jeep that the accident occurred. Though the driver of the jeep had a case that the van which was going ahead had applied sudden break which made him to swerve the vehicle, no independent evidence has been adduced to prove this aspect. The jeep driver is expected to keep a safe distance from the ongoing vehicle and if this act had followed, the accident would have been averted by him.

11. It is true that the Motor Vehicle Inspector who was examined as PW14 had stated that from the nature of damages caused, it can be inferred that the scooter had hit the left side of the jeep but it may be mentioned here that scooter was proceeding through its proper side. The jeep had gone to its wrong side and hit against the scooter and considering the distance shown from the tar end, the case of the defence that scooter came to the wrong side could not probable as well. Further PW3 had stated that he had questioned the Motor Vehicle Inspector and recorded the statement but that was not produced in court. But it may be mentioned here that the statement given by the Motor Vehicle Inspector will be only in respect of the report prepared by him regarding the condition of the vehicle and as to whether there was any mechanical

defect for the vehicle and that was nothing to do with the cause of the accident. So non production of the statement of the witnesses is not fatal in such cases.

12. It is true that in the decision reported in **Joseph v. State of Kerala** (2010 (2) KLT 918) and **Jahid Shaikh and others v. State of Gujarath and another** (2011 (7) SCC 762), this Court as well as the Hon'ble Supreme Court has held that materials relied on by the prosecution have to be produced along with the final report and copy of the same must be given to the accused. In all those cases, the statement of material witnesses, who supported the case of the prosecution were not produced and copies of that statement were not given to the accused and thereby courts have come to the conclusion that that will cause prejudice to the accused. That was not the case in hand. The material witnesses who spoke about the negligence and the statements of those witnesses were supplied to the revision petitioner. Further, the material documents prepared by the Motor Vehicle Inspector have been produced and that witness was made available for cross examination on that aspect as well. So, under the circumstances, the dictum laid down in the above decisions are not applicable to the facts of this case.

13. Similarly there is no dispute regarding the dictum laid down in the decision reported in **Nageshwar Sh. Krushna Ghobe v. State of Maharashtra** (AIR 1973 SC 165) relied on by the counsel for the revision petitioner. That was a case where the prosecution case itself was that one person had suddenly crossed the road and in order to stop, the driver of the bus swerved the vehicle and in that process it happened to hit against another person, who was standing in the foot path and in such circumstances, the Hon'ble Supreme Court has come to the conclusion that he may have to anticipate such things. But that alone is not sufficient to come to the conclusion that was reckless driving on the part of the driver. Further, the injured, who suddenly crossed the road was not made available for cross examination as well. So under the circumstances that benefit was given to the accused and he was acquitted.

14. In this case it will be seen from the evidence that jeep was going behind a van and when it reached the place of occurrence, the revision petitioner overtook the van without reducing the speed and it had gone to the extreme right side of the jeep, i.e., wrong side of the jeep and hit against the scooter, which was coming through its proper side. Further, the driver of the jeep is expected to see that whether it was safe

to overtake ongoing vehicle and only if he was sure that he could able to overtake the vehicle safely, he should attempt to overtake the ongoing vehicle. But that was not done in this case. So under the circumstances there is nothing wrong for the courts below in relying on the evidence of Pws 3,4 and 5 and also relying on the scene mahazer and coming to the conclusion that the accident occurred due to the reckless driving of the jeep by its driver, who is none other than the revision petitioner herein and rightly convicted him for the offence for rash and negligent driving under section 279 of the Indian Penal Code. Further, the fact that PW1 and her child sustained injury and PW5 had sustained fracture and rider of the scooter died in the accident are not in dispute and these things happened due to the negligence on the part of the driver of the jeep and thereby the courts below were perfectly justified in convicting the revision petitioner under sections 337, 338 and 304 A of the Indian Penal Code and the concurrent findings of the court below on this aspect do not call for any interference.

15. As regards the sentence is concerned, the lower court had sentenced the revision petitioner to undergo simple imprisonment for six months under section 279 of the Indian Penal Code and further sentenced to undergo simple

imprisonment for one year and also to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months for the offence under section 304 A of the Indian Penal Code and directed the sentences run concurrently and this was confirmed by the appellate court.

16. The counsel for the revision petitioner prayed for leniency on the ground that revision petitioner was aged 32 years at the time of the accident and now he is 50 years and he has three children and wife. It is true that this will have to be taken into consideration while considering the sentence to be imposed. But at the same time the court should not shut its eyes regarding the fate caused to the family of the deceased who died on account of the reckless driving of the jeep. But, at the same time, the court can also consider the question of compensating the injured and the legal heirs of the deceased as part of principles of victimology while reducing the substantive sentence. Showing too much of leniency and sympathy for the accused in a criminal case will give a wrong message to the society and that will in fact cause loss confidence of the society in the criminal justice delivery system. So considering these aspects and the submission of the counsel for the revision petitioner, this Court feels that sentencing the revision petitioner

to undergo simple imprisonment for one month under section 279 of the Indian Penal Code and sentencing the revision petitioner to undergo simple imprisonment for three months and also to pay a compensation of Rs.50,000/- in default to undergo simple imprisonment for three months under section 304 A of the Indian Penal Code read with section 357(3) of the Code will be sufficient and that will meet the ends of justice. If the compensation amount is realized, paying Rs.40,000/- to the legal heirs of the deceased and Rs.10,000/- to PW5, the injured, will meet the ends of justice as far as the victims concerned as well. So considering the circumstances, the sentence imposed by the court below and confirmed by the appellate court are set aside and the same is modified as follows:

The revision petitioner is sentenced to undergo simple imprisonment for one month under section 279 of the Indian Penal Code and further sentenced to undergo simple imprisonment for three months and also to pay a compensation of Rs.50,000/- in default to undergo simple imprisonment for three months under section 304 A of the Indian Penal Code read with section 357(3) of the Code. If compensation is recovered, the court below is directed to pay Rs.40,000/- to the legal heirs

of the deceased Shaji, the rider of the scooter, on production of proper legal heir certificate by the legal heirs of the deceased Shaji and Rs.10,000/- to PW5, the other injured in the accident. The substantive sentences are directed to run concurrently.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly.

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

