

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

Cr1.Rev.Pet.No. 1417 of 2005 ()

AGAINST THE JUDGMENT IN CC 300/2000 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, ALUVA DATED 10-12-2004

REVISION PETITIONER(S)/PROSECUTION WITNESS NO.II::

JELTHREWED MANNUEL
KONNULLY HOUSE, MUNAMPAM, PALLIPURAM P.O.
ERNAKULAM DISTRICT.

BY ADV. SRI.V.P.REGHURAJ

RESPONDENT(S)/STATE AND ACCUSED::

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1. STATE OF KERALA
REP. BY C.I. OF POLICE (CRIME NO.265/CR/98 OF
CBCID), REPRESENTED BY STATE PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. P.U. KUNJAVIRA,
PARAYIL HOUSE, THURUTHUMMEL, MEKKAD KARA
KARIYAD VILLAGE, ERNAKULAM DISTRICT.
 3. ANANDAN,
MADATHIPARAMBIL VEEDU, CHIRAYAM KARA, ALANGAD VILLAGE
ERNAKULAM DISTRICT.

R1, BY PUBLIC PROSECUTOR SRI. N. SURESH
R,R2 & R3 BY ADV. SRI.V.K.VEERAVUNNY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1417 of 2005

Dated this the 2nd day of November, 2015

ORDER

The revision petitioner, the mother of the deceased Joseph Milton, challenges the judgment of acquittal in C.C.No.300/2000 on the file of Judicial First Class Magistrate-II, Aluva, which was charge sheeted under Section 304(A) IPC. The charge is that on 26.1.2003 at about 1.30 p.m., the accused operated a crane for lifting the core in a rash and negligent manner, so that the sling guide fixed to the jig carrying the core was flew off and hit deceased Joseph Milton, as a result, he sustained serious injuries and succumbed to the injuries. In this incident, Angamaly Police registered Crime 372/1993, subsequently,

the investigation was entrusted to Crime Branch, CID, where they registered Crime 265/CR/98 of Crime Branch CID. After completing investigation, they laid charge before Judicial First Class Magistrate-II, Aluva. To prove the offence, prosecution examined PW1 to PW32 and marked Exts.P1 to P8(a). The trial Court, after analysing the evidence, acquitted the accused and set at liberty. Being aggrieved by that, PW11 the mother of the deceased preferred this revision petition.

2. The learned counsel appearing for the revision petitioner contended that the Court below misconstrued the evidence and wrong appreciation was made. The material witnesses were examined by the learned Magistrate himself in the absence of Asst. Public Prosecutor. Hence, revisional jurisdiction may be invoked.

3. The learned counsel appearing for respondents 2 and 3 contended that the witnesses turned as hostile and

the prosecution failed to prove the case beyond reasonable doubt. He produced the Death Certificate issued from Nedumbassery Grama Panchayat, which shows that the 2nd respondent died on 9.4.2011.

4. The revisional jurisdiction can be invoked for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of the inferior Courts. For ascertaining the illegality, I have gone through the oral testimony of prosecution witnesses. PW1 and PW2, who are the occurrence witnesses, did not support the prosecution case. PW3 is the mahazar witness, who attested Ext.P2. PW4, to PW7 and PW8 did not support the prosecution case and they were declared as hostile. It is true that the Asst. Public Prosecutor was not present at the time of examination of these witnesses. In the absence of Asst.Public Prosecutor, the learned

Magistrate examined the witnesses.

5. PW9 is the Crane Supervisor of TELK during the time of accident. He inspected the Crane before operating it. He did not know why the sling guide detached and slipped. PW10 is the General Manager. According to him, the sling guide attached to the jig was flew off while the core was lifted by using two cranes because it was changed from horizontal position to vertical position. If the excess load is carried by the Crane, there is possibility of detaching the slim guide. PW11 is the mother of the deceased. PW12 and PW13 are the uncles of the deceased. PW14, who is the Asst. Manager, attested Ext.P4. PW15 conducted postmortem examination of the deceased on 26.10.1993 and issued Ext.P5 certificate. PW16 to PW22 did not see the incident. PW22 attested Ext.P6. PW23 to PW26 also did not see the incident. PW27 furnished Ext.P7 report. PW28 took photographs. Analysing the

above evidence, it is seen that none of the witnesses had seen the incident and they failed to prove the alleged rash and negligent act of the accused.

6. PW29, while working as Head Constable, registered a crime and Ext.P1 (a) is the F.I.R. PW13 conducted investigation and questioned the witnesses. PW31 and PW32 are other Police officers, who completed the investigation. Analysing the evidence of the witnesses, it is found that there is no evidence to prove the alleged rash and negligent act of respondents 2 and 3. In the circumstances, the trial Court acquitted the accused. While acquitting the accused, the trial Court observed as follows:

".....A reading of Ext.P7 report filed by PW27 would suggest that the accident was caused because of the repeated and long use of the crane without proper maintenance. It stated in the reported that he could find wear and tear on the thread resulting in a play between the male and female portions of the bolt. The report further would go to show that the bolt attached to the jig for fixing the sling guide was found detached from the

jig. This shows that the sling guide was flew off because of the detachment of the 12 bolts connecting the sligh guide with the jig. So I am of the view that it may not be safe at all to put the blame on the Crane Operators. The only inference that can be drawn is that the accident occurred only because of the poor maintenance of the jig, crane etc. So I find that there is no sufficient evidence before the court to show that the accident was caused due to any kind of rashness or negligence on the part of the accused. The point is answered against the prosecution."

10. I do not find any illegality in the above observation made by the trial Court. When there is no direct evidence in support of the alleged rash and negligent act of the accused, there is no meaning in remitting the matter to the trial Court for fresh trial. Therefore, there is no merit in this revision and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

