

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

Crl.Rev.Pet.No. 3219 of 2004 (B)

AGAINST THE JUDGMENT IN CRA 200/2004* of III ADDL.SESIONS COURT,
KOZHIKODE DATED 04-11-2004

AGAINST THE JUDGMENT IN CC 1010/1997 of J.M.F.C.-IV,KOZHIKODE
DATED 08-04-2002

REVISION PETITIONER/APPELLANT/ACCUSED:

PREMA CHANDRAN, S/O.RAGHAVAN,
IYYAPPADI HOUSE, MALAPARAMBA, CALICUT.

BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.K.B.SAJEESH
SRI.P.GOPINATH
SRI.C.S.SUNIL
SRI.P.R.SREEJITH

RESPONDENTS/RESPONDENTS/COMPLAINANT:

*1. THE SUB INSPECTOR OF POLICE,
CITY TRAFFIC STATION, MALAPPURAM. (*NAME OF R1 CORRECTED)

THE NAME OF THE FIRST RESPONDENT IS CORRECTED AS:

S.I.OF POLICE, CITY TRAFFIC POLICE STATION,
KOZHIKODE.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

*THE APPELLATE COURT CASE NUMBER IS CORRECTED AS CRL.A.200/02
AS PER THE ORDER DATED 20.12.2004 IN CRL.M.A.NO.14944/04.

*AS PER ORDER DATED 20.12.2004 IN CRL.M.A.NO.14944/04.
NAME OF R1 CORRECTED AS PER ORDER DATED 20.12.2004 IN
CRL.M.A.NO.14944/04.

BY PUBLIC PROSECUTOR SRI. ROY THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.3219 of 2004
.....

Dated this the 27th day of January, 2015.

O R D E R

The accused in C.C.No.1010/1997 on the file of the Judicial First Class Magistrate Court-IV, Kozhikode is the revision petitioner herein. The revision petitioner was charge sheeted by the Sub Inspector of Police, City Traffic Police Station, Kozhikode in Crime No.643/1997 of that police station under sections 279 and 338 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on 25.5.1997 at about 10.30 a.m, the revision petitioner had driven a bus with No.KLN 8778 in a rash and negligent manner so as to endanger to human life along Kannur National Highway from south to north and when it reached near N.K. bridge at West Hill hit on the back of a lorry with No.KL 5C 203 causing grievous hurt to PW1, a passenger in the bus and thereby he had committed the offences punishable under sections 279 and 338 of the Indian Penal Code.

3. After investigation, final report was filed and the case was taken on file as C.C.No.1010/1997 on the file of the Judicial First Class Magistrate Court-IV, Kozhikode. 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 8 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 he was not negligent and the accident occurred due to the negligence of the lorry driver. No defence evidence was adduced on his side. After considering the evidence on record, the trial court found the appellant guilty under sections 279 and 338 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for three months under section 279 of the Indian Penal Code and further sentenced to undergo simple imprisonment for six months under section 338 of the Indian Penal Code and directed to run the sentences concurrently. The revision petitioner filed Crl.A.No.200/2002 before the Sessions Court, Kozhikode which was made over to the Third Additional Sessions Court, Kozhikode for disposal and the

learned Additional Sessions Judge allowed the appeal in part confirming the order of conviction, but reduced the sentence to one month each under section 279 and 338 of the Indian Penal Code and directed the sentences run concurrently. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

4. Heard the counsel for the revision petitioner and the learned Public Prosecutor .

5. The counsel for the revision petitioner submitted that the evidence of Pws 1 and 2 is not sufficient to come to the conclusion that there was any criminal negligence on the part of the revision petitioner. Further it was admitted by Pws 1 and 2 that the driver of the bus suddenly applied brake and that was the reason for the accident. The reason for applying the sudden brake has not been elicited by them. So under the circumstances, no offences under sections 279 and 338 of the Indian Penal Code can be attracted. The counsel also submitted that, if for any reason this Court found that the revision petitioner is guilty of those offences, he prayed for leniency as except PW1 no other person has sustained injuries in the accident.

6. On the other hand, the learned Public Prosecutor supported the concurrent findings of the court below and also submitted that maximum leniency has been shown by the appellate court in imposing the sentence.

7. The case of the prosecution as emerged from the prosecution witnesses is as follows:

On 25.5.1997, PW1 the injured/defacto complainant was travelling in a bus with No.KLN 8778 which was driven by the revision petitioner and when it reached West Hill near N.K. bridge, it hit against a lorry with No.KL5C 203, which was going ahead of it and CW1 sustained injuries and he was taken to Fathima Hospital, Kozhikode and the doctor attached to that hospital had treated him and issued Ext.P10 wound certificate. This was proved through PW8 doctor as the doctor, who issued the wound certificate, was not available and he had proved the handwriting of the doctor who issued the same. PW1 was discharged on the same day and thereafter he went to the City Traffic Police Station, Kozhikode and gave Ext.P1 statement which was recorded by PW5, who registered Ext.P1(a) First Information Report as Crime No.643/1997 under sections 279 and 338 of the Indian Penal Code against

the driver of the bus KLN 8778. The investigation was conducted by PW6 as instructed by the higher officials. He went to the place of occurrence and prepared Ext.P4 scene mahazer in the presence of PW4 and another. He seized the vehicles and prepared Ext.P5 body mahazer and the same were examined by PW3 the Assistant Motor Vehicle Inspector who issued Exts.P2 and P3 reports regarding the bus and the lorry respectively and he had noted that there was no mechanical defect for both the vehicles. The trip sheet of both the vehicles were seized by PW6 which were marked as Exts.P6 and P7 relating to the bus and the lorry respectively. The driver of the bus was shown as the revision petitioner in Ext.P6 trip sheet. Accordingly, he gave Ext.P9 report showing the name and address of the revision petitioner as driver of the bus in the accused column. Vehicles were released to the respective registered owners as per Ext.P8 series kychits. Further investigation was conducted by PW7, who verified the investigation conducted by PW6 and completed investigation and submitted final report.

8. PW1 was the injured in the case and PW2 was the eye witness to the incident. Both Pws 1 and 2 had categorically

stated that they were travelling in the bus and when it reached near N.K. bridge at West Hill, it hit against a lorry which was going ahead. The bus was going at a high speed in a negligent manner and it was the reason for the accident. Further, identity of the revision petitioner was not disputed when he was questioned under section 313 of the Code of Criminal Procedure and according to him, he was not negligent and the accident occurred due to the negligence of the lorry driver. There is no reason given as to why the vehicle hit against the lorry which was going ahead of it. Further, if the revision petitioner had kept a safe distance, there was no possibility of the bus hitting against the lorry from behind arose. So under the circumstances, the courts below were perfectly justified in coming to the conclusion that the accident occurred due to the rash and negligent driving by the revision petitioner, who was the driver of the bus at the relevant time.

9. The wound certificate issued from the Fathima Hospital namely Ext.P10 coupled with the evidence of PW8 will go to show that he sustained collar fracture on his left hand radius apart from swelling on the lower end of the radius which is a grievous injury. There is no other injury sustained by him.

So the court below was perfectly justified in convicting the revision petitioner for the offences under sections 279 and 338 of the Indian Penal Code and the concurrent findings of the court below do not call for any interference.

10. As regards the sentence is concerned, the trial court sentenced him to undergo simple imprisonment for three months under section 279 of the Indian Penal Code and further sentenced to undergo simple imprisonment for six months under section 338 of the Indian Penal Code and directed the sentences run concurrently. But the appellate court has reduced the sentence of imprisonment to one month each for the said offences. The incident occurred in the year 1997. Except PW1, none sustained any injury in the accident. It is true that there was negligence on the part of the bus driver. But it is not known under what circumstances the bus happened to hit against the lorry as well. So considering these facts, this Court feels that reducing imprisonment and awarding compensation will be adequate and that will meet the ends of justice. So the sentence imposed by the court below as modified by the appellate court is set aside and the same is modified as follows:

The revision petitioner is sentenced to pay a fine of

Rs.500/- under section 279 of the Indian Penal Code in default to undergo simple imprisonment for one month and further sentenced to undergo imprisonment till the rising of court and also to pay a compensation of ₹ 10,000/- to PW1, in default to undergo simple imprisonment for three months under section 357(3) of the Code. Two months time is granted to the revision petitioner to pay the fine and compensation and serve the sentence. Till then execution of the sentence is directed to be kept in abeyance. The compensation amount if recovered, then the lower court is directed to pay the same to PW1.

With the above modification of the sentence alone, the revision 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

