

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

Crl.Rev.Pet.No. 3186 of 2006 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 220/2004 of ADDL. SESSIONS COURT,
MANJERI**

AGAINST THE JUDGMENT IN CC 242/2000 of MUNSIF-MAGISTRATE - I, PONNANI

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SURESH, S/O.KUMARAN,
MACHAGALATH VEEDU,
NANNAMUKKU AMSOM,
THEKKUMURI DESOM
MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/RESPONDENT/STATE:

**THE STATE OF KERALA
THE SUB INSPECTOR OF POLICE
CHANGARAMKULAM POLICE STATION - THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
KOCHI-31.**

BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.3186 of 2006

Dated this the 9th of November, 2015

ORDER

The revision petitioner was charge-sheeted in C.C.242/00 on the file of Judicial First Class Magistrate Court, Ponnani for having committed offence punishable under Section 279, 338 and 304(A) IPC. The prosecution case is that on 10.06.2000 at 12.30 pm, the revision petitioner was driving a jeep bearing registration No.KLM 7665 in rash and negligent manner along the Valiyamkulam-Changaramkulam public road, so as to endanger human life. When he reached in front of shop bearing No.4/580 of Nannamukku Panchayat, vehicle hit against PW1 and his father who were walking through the southern side of the road. As a result, both of them sustained injuries, while undergoing treatment, the injured father died. Changaramkulam Police registered a crime and after completing investigation, laid charge before Judicial First Class Magistrate, Ponnani.

2. To prove the offence, prosecution examined PW1 to PW10 and marked Ext.P1 to P7 in evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any defence evidence. The trial court convicted him and sentenced to rigorous imprisonment for 6 months and fine of Rs.1000/- under Section 279 IPC, in default, simple imprisonment for one month, rigorous imprisonment for one year and fine of Rs.1000/- under Section 338 IPC, in default, simple imprisonment for one month and rigorous imprisonment for one year and fine of Rs.2000/- under Section 304(A) IPC, in default, simple imprisonment for 2 months. Against that, he preferred Criminal Appeal.220/04 before Addl. Sessions Judge, Adhoc-III, Manjeri, which was dismissed by the appellate court. Being aggrieved by that, he preferred this revision petition.

3. Heard both sides. The learned counsel appearing for the revision petitioner contended that there is no evidence to prove the rash and negligent driving by the

revision petitioner. The evidence of PW1 to PW4 is shabby to prove the identity and the revision petitioner is entitled to get the benefit of doubt. He relied the decisions of **Anil Kumar V. State Crl.R.P.76/09 dated 30.04.12 of High Court of Delhi, Krishnankutty V. State of Kerala 1988(1) KLT 401.**

4. The learned Public Prosecutor strongly opposed the above contention and contended that the oral testimony of occurrence witnesses is sufficient to prove the identity and it is not a shabby identity and not to interfere in the findings recorded by the trial court.

5. Rash driving or riding on a public way has been explained under Section 279 IPC. It says that, whoever drives any vehicle or rides on a public way in a manner so rash or negligent so as to endanger the human life or to be likely to cause hurt or injury to another person, is punishable under Section 279 IPC. In negligence, there is no intention for a particular consequence and the events happened without any premeditation on the part of the wrong doer. Therefore, the prosecution has to prove that

the accused was driving the vehicle on a public way, secondly, such driving was done in a rash and negligent manner endangering human life or likely to cause hurt or injury to another person. For ascertaining the criminal liability of rash and negligent driving and the identity of the accused, I have gone through the oral testimony of PW1, who is the injured in this case. His evidence shows that on 10.05.2000 between 12 to 12.30 p.m., he was proceeding through the side of the road towards the bus stand with his father, at that time, the offending vehicle came there in a rash and negligent manner from behind and knocked down them. As a result, both of them thrown away and sustained injuries. He was removed to a Hospital at Perinthalmanna. His father was removed to Amala Hospital, Thrissur and on the third day he died. He deposed that the accident was solely due to the rash and negligent driving by the driver of the vehicle and he gave Ext.P1 statement. PW1 in his cross-examination stated that, on hearing the sound of the jeep he turned back and saw the accused, in the meantime, the vehicle hit.

Nothing was asked to PW1 to challenge the above identity.

6. PW2 was declared as hostile, but he admitted that the accident was due to the negligence of the driver. He saw the driver standing there after the accident. Immediately after the accident, driver stopped the vehicle and found him sitting in the driver seat. He subsequently added, while PW1 and the deceased were proceeding through the road, the revision petitioner driven the vehicle and hit against them. This direct oral testimony is admissible. PW3 also gave similar version.

7. A close scrutiny of the oral testimony of PW2 and PW3, even though they are declared hostile, it is admissible to prove the identity. PW3 in his examination admitted that the accident was due to the rash and negligent driving of the revision petitioner. PW4 deposed that, the accident was due to the rash and negligent driving of the revision petitioner, who is familiar to him and he identified the revision petitioner. When analysing the oral testimony of PW1 to PW4, it is clear that the

accident was due to the rash and negligent driving of the revision petitioner. The victims were proceeding through the southern side of the road towards west keeping their side through the road margin. There was no carelessness from their side while proceeding through the road. A close scrutiny of the evidence, it is clear that the accused was driving the vehicle in a rash and negligent manner endangering human life which cause hurt.

8. The medical evidence is corroborating the prosecution case. Ext.P3 is the wound certificate of PW1. PW7 examined PW1 on 10.06.2000 at 2.45 pm and issued Ext.P3 certificate in which he noticed the following four injuries: 1. (L) Lower lib - multiple abrasions, laterated wound 1.5x 0.5 x 0.5 cm over shim middle third - evidence of facture 2. (R) Lower limb - hemmar throsin 3. Compound fracture both bones middle lower third (L) leg 4. Candylar fracture tibia (R). He was discharged as per the request. The medical evidence is corroborating to the story of PW1.

9. The Ext.P7 is the post mortem certificate issued

by Dr. Alby Elias, Lecturer (Forensic Medicine), Medical College Hospital, Thrissur, which shows that the death was due to head injury. The doctor who issued Ext.P7 was not examined in the trial court. Analysing the medical evidence in Ext.P3 and Ext.P7, it is clear that PW1 sustained injury and the deceased Moidu sustained serious head injury and he died due to the injuries sustained in a motor accident.

10. Whoever causes death of any person by doing any rash or negligent act, not amounting to culpable homicide is punishable under Section 304(A) IPC. For fastening the Criminal liability under the above Section, prosecution has to establish that the death is the direct result of the rash and negligent act of the accused. In the instant case, there is no dispute with regard to any defect in the investigation. It is proved that revision petitioner was driving jeep and no circumstances are brought before me to show that he was not driving the vehicle. Generally while driving a vehicle on a public road, he is expected to drive with due care and caution without making any

accident. He has to take a control over the jeep, enable to prevent any type of accident to the pedestrians or the vehicle plying on the road. Therefore, such care was not seen taken in this case and trial court convicted him. I find no illegality in the conviction of the trial court. Considering the nature of the offence and the character of the offender, I modify the sentence as follows.

The sentence imposed by the trial court under Section 279 IPC is confirmed. The sentence under Section 338 IPC is modified as the sentence to imprisonment for 6 months and pay a fine of Rs.1000/-. He also sentenced to imprisonment for 6 months under Section 304(A) IPC and to pay Rs.50,000/- under Section 357(3) Cr.P.C., (relied the decision of Apex Court in **Suresh V. State of Haryana 2015(2) SCC 227**) in default of payment of compensation, simple imprisonment for 6 months. The sentence shall run concurrently. If the compensation amount is deposited, it shall be disbursed to PW1. The revision petitioner is directed to surrender in the trial court to undergo the modified sentence, failing which, the

trial Magistrate shall issue non-bailable warrant forthwith.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE