

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. 23 of 2015 ()

**AGAINST THE JUDGMENT IN Crl.APPEAL 42/2010 of ADDL. SESSIONS COURT-I,
THALASSERY, DATED 14-11-2014**

&

**AGAINST THE JUDGMENT IN STC 952/2007 of J.M.F.C.- I,
KANNUR, DATED 16.01.2010 IN
CRIME NO. 10/2007 OF TRAFFIC POLICE STATION, KANNUR**

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

**NASEER.P, AGED 32 YEARS,
S/O.MOIDU, PALAYATTIL HOUSE, MUNDERI P.O.,
KANNUR DISTRICT.**

**BY ADVS.SRI.K.C.SANTHOSH KUMAR
SMT.K.K.CHANDRALEKHA**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:-:

**1. STATION HOUSE OFFICER,
KANNUR TRAFFIC POLICE, KANNUR DISTRICT - 670 001.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN.

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
19-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

Crl.R.P.No.23 of 2015

Dated this the 19th day of February, 2015

ORDER

Accused in S.T.C.952/2007 on the file of the Judicial First Class Magistrate Court-I, Kannur, is the revision petitioner herein. The revision petitioner was charge-sheeted by the Sub Inspector of Police, Kannur City Traffic police station, in Crime No.10/2007 of that police station under Section 279, 337 and 338 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 08.01.2007 at about 03.50 P.M., the revision petitioner drove the car with Reg.No.KL-13/E-8155 in a rash and negligent manner through the road which is passing in front of the Beverages Corporation, Thavakkara, in a rash and negligent manner so as to endanger human life and when it reached the place of occurrence, it hit against the

auto-rickshaw with Reg. No.KL-13/F-7584, which was coming from the opposite direction and caused simple hurt and grievous hurt to the driver of the auto-rickshaw and passengers in the auto-rickshaw and thereby he had committed the offence punishable under Section 279, 337 and 338 of the Indian Penal Code.

3. After investigation, final report was filed and the case was taken on file as S.T.C.No.952/2007 on the file of the Judicial First Class Magistrate Court-I, Kannur. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 12 were examined and Exts.P1 to P8 were marked on their side. 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 had not committed any offence and he has been falsely implicated in the case. No defence evidence was adduced on his side. After considering the evidence on record, the court below found the revision petitioner guilty under Section 279, 337 and 338 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for two months each for the offences under Section 279, 337 and 338 of the Indian Penal Code and directed the sentences to run concurrently. Aggrieved by the same, he filed Crl.Appeal No.42/2010 before the Sessions Court, Thalassery, which was made over to the Additional Sessions Court-I, Thalassery, for disposal and the learned Additional Sessions Judge by the impugned judgment, allowed the appeal in part, confirming the order of conviction, but reduced the sentence to one month for each offence and directed the sentences to run concurrently. Dissatisfied with the same, the present revision has been filed by the revision petitioner /accused

before the court below.

4. Since State is the only party and the counsel for the revision petitioner was having all the records, this court felt that the revision can be admitted, heard and disposed of on merit today itself, as the counsel for the revision petitioner submitted that the revision petitioner is expecting a government employment and he wants a speedy disposal of the case. So the revision petition is admitted, heard and disposed of today itself after hearing both sides.

5. The counsel for the revision petitioner submitted that, the court below had simply relied on the evidence of PWs 1 to 3 and the scene mahazar and came to the conclusion that the accident occurred due to the negligent driving of the car by the revision petitioner. In fact the evidence of PW1 will go to show that the accident occurred at the time when he was trying to overtake the vehicle, but PWs 2 and 3 had a different case. Further the person who had shown the place of occurrence has not been

examined as well. The prosecution had no case that the place of occurrence was shown by the injured persons and the vehicles were not seen at the place of occurrence. So no importance can be given to the place of occurrence noted in the scene mahazar to locate the actual place of occurrence to convict the revision petitioner. The evidence of PWs 1 to 3 is contradictory and the driver had no badge and there was no municipality licence for the auto rickshaw to drive and in order to get the compensation, the bigger vehicle has been falsely implicated in the case. So he prayed for acquittal. He has further submitted that, if this court has not inclined to interfere with the conviction, he prayed for leniency in imposing the sentence.

6. Learned Public Prosecutor on the other hand submitted that, the scene mahazar will go to show that the accident occurred on the extreme wrong side of the car and there was no explanation forthcoming from the side of the car driver as to why his vehicle had gone to that side to hit

the auto-rickshaw which was coming from the opposite direction. Further the evidence of PWs 1 to 3 will go to show that there was no negligence on the part of the auto-rickshaw driver and it was due to the over speed and negligence on the part of the car driver that the accident occurred. The concurrent findings on facts do not call for any interference.

7. The case of the prosecution as emerged from the prosecution witnesses was that, on the fateful day PWs 2 and 3 were travelling in the auto-rickshaw driven by PW1, while going towards railway station side and passing through the under bridge, the car driven by the revision petitioner came from the opposite direction and hit against the auto-rickshaw and due to that PW2 was thrown away and PW1 and PW3 also sustained injuries and the auto-rickshaw hit against the wall. They were originally taken to AKG Hospital and from there PW2 was taken to Manipal Hospital for better treatment. On getting information

regarding the incident, PW10 went to the hospital and recorded Ext.P1 statement of PW1 and registered Ext.P7 first information report as Crime No.10/2007 of City Traffic police station, Kannur, against the driver of the car under Section 279, 337 and 338 of the Indian Penal Code. Thereafter, the investigation was conducted by PW11. He went to the place of occurrence and prepared Ext.P6 scene mahazar. He had prepared Ext.P3 body mahazar of the vehicle and PW6 examined PW1 and issued Ext.P2 wound certificate and Ext.P8 wound certificate was issued by PW12. PW8 examined the vehicles and issued Exts.P4 and P5 vehicle reports. He questioned the witnesses and recorded their statements and he completed the investigation and submitted final report in the case.

8. PWs 1 to 3 are the injured in this case. Though PWs 4 and 5 were examined as independent witnesses, but they did not support the case of the prosecution. It will be seen from Ext.P6 scene mahazar that

the vehicles were not seen at the time when it was prepared and it was admitted by PW11, the investigating officer also. Further PW1 had no case that he was the person who had shown the place of occurrence. It is seen from the scene mahazar that, the place of occurrence was shown by PW4, but PW4 had no case that he had shown the place of occurrence and he did not support the case of the prosecution. Since the vehicles were not there at the place of occurrence and the scene mahazar was prepared after two days of the incident, the place of occurrence as noted by the investigating officer in the scene mahazar cannot be said to be the exact location of the place of occurrence, unless the eye witness whose name was shown in the scene mahazar as the person shown the place of occurrence to the investigation officer had supported the case of the prosecution and admitted as the person who had shown the place of occurrence to the investigation officer. But on the other hand, PW4 who was said to be the person who had

shown the place of occurrence as noted in the scene mahazar did not support the case of the prosecution and he had no case before the court that it was he who had shown the place of occurrence to the investigating officer as well. So the place of occurrence as noted in the scene mahazar under the circumstances cannot be relied on for the purpose of locating the actual place of occurrence at which the incident had taken place.

9. PW1 is the injured in this case and he is the driver of the auto-rickshaw. According to him, the accident occurred at the time when he was trying to overtake another vehicle and he had no case that the car was trying to overtake another vehicle and it came from the wrong side and hit against his auto-rickshaw. Though PWs 2 and 3 had supported the case of the prosecution, according to them, the auto-rickshaw did not overtake any vehicle and they did not see the car also overtaking the vehicle. Further the investigating officer had deposed that PWs 2 and 3 did not

state that after the car hitting against the auto-rickshaw, the auto-rickshaw happened to hit against the wall and caused any damage. Further the nature of damages as noted in the vehicle reports also will go to show that the incident could not have happened as deposed by the prosecution witnesses. Further it was admitted by PWs 1 to 3 that the car was climbing an upgradient while the auto-rickshaw was descending down gradient, as the place of occurrence was little steep from north to south. Further it was stated by PW3 that the auto-rickshaw driver suddenly swerved the vehicle what was the reason for the auto-rickshaw driver to swerve the vehicle was not spoken by PWs 2 and 3. So it is clear from their evidence that they were also trying to suppress the real reason for the accident.

10. The court below had come to the conclusion that since PWs 1 to 3 has stated that the car came at a high speed was the reason for the accident, the accident

occurred due to the negligence of the car driver. Though it was mentioned in the evidence that, there was a slight curve at the place of occurrence, the witnesses had no case that the car came through the wrong side and hit against the auto-rickshaw while negotiating the curve as well. So under the circumstances, merely because the witnesses have stated that the car came at high speed alone is not sufficient to conclude that the driver of the car was responsible for the accident. Mere speed alone is not sufficient to come to the conclusion that he was rash and culpably negligent in causing the accident, so as to attract the offence under Section 279 of the Indian Penal Code. Merely because some persons sustained injuries or somebody died in the accident alone is not sufficient to come to the conclusion that the driver of the vehicle was negligent. Unless it is proved by the prosecution by cogent evidence that it was due to the reckless and careless driving of the vehicle that the accident occurred and persons

sustained injuries, the offence under Section 279, 337 and 338 of the Indian Penal Code cannot be attracted as against him. In this case, though the prosecution was able to prove that there was collision between auto-rickshaw and car, in view of the contradictory evidence given by PWs 1 to 3 regarding the manner in which the accident occurred and also some improvements made by them at the time of examination, then what they have stated when they were questioned by the police, it is not safe to rely on their evidence alone to come to the conclusion that the accident occurred due to the negligent driving of the car by the revision petitioner, so as to convict him for the offence under section 279, 337 and 338 of the Indian Penal Code.

11. In view of the discussions made above, the finding of the court below that the prosecution has proved beyond reasonable doubt that the accident occurred due to the reckless and negligent driving of the car by the revision petitioner so as to convict him for the offence under Section

297, 337 and 338 of the Indian Penal Code is unsustainable in law and that benefit must be given to the accused/revision petitioner.

12. So the concurrent findings of the court below that the prosecution has proved beyond reasonable doubt that the accident occurred due to the negligent driving of the car driver is unsustainable in law and the same is liable to be set aside and the revision petitioner is entitled to get acquittal of the charge levelled against him giving the benefit of doubt. Since this court has found that the prosecution has not proved the case against the revision petitioner beyond reasonable doubt and has acquitted the revision petitioner of the offence alleged, the sentence imposed is also illegal and the same is also set aside.

So the revision petitioner succeeds and the revision is allowed. The order of conviction and sentence passed by the court below and confirmed and modified by the appellate court are set aside and the revision petitioner

is acquitted of the charge levelled against him giving him the benefit of doubt. He is set at liberty and the bail bond if any executed by him will stand cancelled.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge

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