

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

Cr1.Rev.Pet.No. 4228 of 2006 ()

AGAINST THE JUDGMENT IN CRA 47/2006 of III ADDL.SESSIONS JUDGE,
KOLLAM

AGAINST THE JUDGMENT IN CC 952/2003 of JUDICIAL FIRST CLASS
MAGISTRATE-I, PUNALUR

REVISION PETITIONER:

KAMARAJAN, S/O.THANKAVEL,
9/3 COTTAGE, BLOCK NO.7, RPL ESTATE
AYIRANELLORE VILLAGE.

BY ADVS.SRI.RAJA VIJAYARAGHAVAN
SRI.M.T.SURESHKUMAR

RESPONDENT/RESPONDENT::

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

BY PUBLIC PROSECUTOR SMT SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 29-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

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Crl.R.P.No.4228 of 2006

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Dated 29th July, 2015

ORDER

The revisional power on the High Court is conferred with an object of general supervision and superintendence in order to correct the grave failure of justice arising from the erroneous orders. The error may arise from the misconception of law, irregularity of procedure, misreading of evidence or misconception about law or facts, mere perversity or undue hardship or leniency. The revision petitioner, who was the appellant in Crl.A.47 of 2006 of Additional Sessions Judge-III, Kollam challenges the conviction under Section 279 and 304A IPC. He was convicted in C.C.No.952 of 2003 of Judicial First Class Magistrate-I, Punalur and convicted under Section 279, 304A IPC and 134(a) of Motor Vehicle Act 1994 and sentenced to undergo simple imprisonment for one year under Section 279 IPC and one year under Section 304A IPC.

2. The facts necessary for the indictment were that

on 28.9.2003 at 8 am, the revision petitioner drove a vehicle bearing No.KL-4-F 5844 in a rash and negligent manner endangering human life through Pallamvetty RPL road towards east west, at that time the vehicle went out of the road, entered into the courtyard of PW1, thereby hit the daughter of PW1, Sasikala while she was sweeping in the courtyard, as a result, she sustained serious injuries and on the way to hospital, she succumbed to the injuries. The accident was due to the rash and negligent driving by the revision petitioner. Kulathupuzha police registered a crime and after investigation laid charge before Judicial First Class Magistrate-I, Punalur. The prosecution examined PW1 to PW13 and marked Exts.P1 to P11. The trial court after analysing the evidence, convicted the revision petitioner.

3. The learned counsel appearing for the revision petitioner contended that there was no rash and negligent driving by the revision petitioner since the vehicle was driven with due care and caution through the road. The occurrence witnesses are interested witnesses and their

testimony is not reliable for a conviction. The revision petitioner is more than 50 years of age and since there was no rash and negligent driving, he is entitled to get the benefit of doubt.

4. While exercising revisional jurisdiction, the power conferred is only of a supervisory nature to examine the legality, correctness and propriety of the findings of the court below. The object of the revisional power is to rectify a patent defect or an error committed by the court below. The above revisional power is discretionary one and there is no vested right of revision in the sense, when there is vested right mentioned in appeal. In an appeal, the appellant is given a statutory right to demand adjudication upon a question of law or question of fact or of both. But in a revisional jurisdiction, the appellant has no such right, what so ever right beyond the right bringing in a case to the notice of the court, it is for the court to interfere in exceptional cases whether it seems to have some real and substantial injustice has been done. The revision petitioner contended that a wrong

appreciation of evidence was made by the court below. In this context, I perused the oral testimony of PW1, who is the father of the deceased and occurrence witness. His evidence shows that while he was standing in the courtyard, the revision petitioner drove the vehicle in a rash and negligent manner, the vehicle went out of the road and entered into the courtyard, knocked down the daughter of PW1 while she was sweeping. This evidence was supported by PW2 and PW4, who are the neighbours of PW1. PW12 is also an occurrence witness who saw the accident. No circumstances are brought before me to discard the direct oral testimony of the witnesses who saw the rash and negligent driving of the revision petitioner. PW3 turned hostile. In this context, I have considered whether there was any mechanical defect to the vehicle. PW13, Motor Vehicle Inspector inspected the vehicle and issued Ext.P11 certificate. No mechanical defect was noticed to the vehicle. It was returned to PW9 as per Ext.P6 kaicheet. Moreover, PW4 to PW9 deposed that the revision petitioner was driving the vehicle at the

time of the accident. Revision petitioner has also no dispute with regard to the identity of the driver at the time of accident. Analysing the evidence of PW1, PW2, PW4 and PW12, it was found that rash and negligent driving on the public road attracting the offence was proved and deceased Sasikala sustained injuries in the accident, and the revision petitioner was rash and negligent for the accident.

5. Now the question is, what is the cause of death. PW6, the Doctor who conducted Post Mortem examination deposed that the death was due to the injuries sustained to liver and lungs. For attracting the offence under Section 304A IPC, the conditions necessary for satisfying a conviction are that there must be death of a person and accused must have caused such death and the act of the accused was rash and negligent and it did not amount to culpable homicide. Analysing the oral testimony of PW1, PW2, PW4 and PW12, and the medical evidence of PW6, it is seen that the death was due to direct impact of the injuries sustained in the accident. Therefore, the offence

under Section 304A IPC was also proved in this case.

6. Immediately after the incident, the injured was removed to Hospital. On the basis of information, PW10 recorded Ext.P1 statement, accordingly a crime was registered and Ext.P8 is the FIR. PW10 arrived at the place of occurrence and prepared Ext.P2 mahazar. He also prepared Ext.P4 inquest report. PW7, who was present there, attested Ext.P4 inquest report. PW11 conducted the investigation in this case. There is no illegality or irregularity in the investigation. Courts below, after considering all the relevant evidence, convicted the revision petitioner. I find no illegality in the above finding. Therefore the conviction passed by the trial court is confirmed.

7. Learned counsel appearing for the revision petitioner submitted that the revision petitioner has attained 50 years of age and leniency may be shown in sentence. The policy of sentence is purely the discretion of the trial court, which was modified by the appellate court. Considering the nature of the accident and other

mitigating circumstances, it is better to show some leniency in this matter. Hence I modify the sentence imposed on the revision petitioner as follows:-

1)Revision petitioner is sentenced to imprisonment for three months under section 304A IPC and to pay compensation of Rs.2 lakhs under section 357(3) Cr.P.C in the interest of justice. In default of payment of compensation, he shall undergo imprisonment for six months.

2) He is also sentenced to imprisonment for one month under section 279 IPC.

3) The sentence shall run concurrently.

4) If compensation amount is realised, it shall be disbursed to PW1, who is the father of the deceased.

This revision petition is disposed of as above.

P.D.RAJAN, JUDGE

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