

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

Crl.Rev.Pet.No. 610 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 382/2013 of ADDITIONAL
SESSIONS COURT-I, KOTTAYAM DATED 07-01-2015

AGAINST THE JUDGMENT IN CC 263/2012 of J.M.F.C.-I,
KOTTAYAM DATED 19-10-2013

CRIME NO. 20/2012 OF TRAFFIC POLICE STATION, KOTTAYAM.

REVISION PETITIONER/APPELLANT/ACCUSED:

THOMAS @ SANNI,
S/O.VARKEY, CHETTISERIL HOUSE, CHEMMANAMPADY,
MUDIYOOR KARA PO, PERUBAIKADU.

BY ADVS.SRI.P.T.DINESH
SRI.C.N.SAMEER

RESPONDENT/COMPLAINANT & STATE:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
TRAFFIC POLICE STATION, KOTTAYAM,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.

BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 06-07-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.610 of 2015

Dated this the 6th day of July, 2015

ORDER

This revision petition is directed against the judgment passed in Crl. Appeal No.382/2013 on the files of the Additional Sessions Court-I, Kottayam Division, by which the conviction and sentence imposed on the revision petitioner/accused, in C.C.No.263/2012 on the files of the Judicial First Class Magistrate's Court-I, Kottayam, for the offences under Secs.279, 337, 338 and 304A of the Indian Penal Code, stand confirmed.

2. The prosecution case, in brief, is as follows:
On 8/1/2012, the accused drove the car bearing Registration No.KL05 AB-9735 from east to west

through Kottayam - Kumarakom public road in a rash and negligent manner so as to endanger human life and as a result, at about 14.15 hours, when the car reached the road at the place called 'Govindapuram', it dashed against P.Ws.2 to 4 and Fasila who were walking through the northern side of the road from east to west and that Fasila died due to the injuries sustained by her in the accident. P.Ws.2 to 4 sustained simple as well as grievous injuries in the accident. It is also alleged that the accused did not take any steps to secure medical attention to the injured persons and that he did not report the circumstances of the accident at the Police Station within the prescribed period. Hence he was prosecuted for the offences punishable under Secs.279, 337, 338, 304A of the IPC and Sec.134(a) and 134(b) read with Sec.177 of the M.V. Act.

3. After trial, the learned Magistrate found the revision petitioner guilty of the offences for which he

was charge sheeted, but in appeal, the learned Sessions Judge confirmed the conviction and sentenced for the offences under Secs.279, 337, 338 and 304A of the IPC and set aside the conviction and sentence for all the other offences. The legality and correctness of the concurrent findings of conviction and sentence for the aforesaid offences are under challenge in this revision petition.

4. Heard the learned counsel for the petitioner.

5. The learned counsel strenuously contended that the courts below absolutely went wrong in appreciating the entire evidence on record, more particularly, the evidence of the injured witnesses. The learned counsel advanced arguments so as to persuade this Court to re-appreciate the entire evidence on record.

6. Besides this general challenge, the learned counsel for the revision petitioner has mainly canvassed two points. According to the learned

counsel, the evidence of the injured witnesses - P.Ws.2 to 4, cannot be relied on to arrive at a finding that the accident was caused by rash and negligent driving of the accused. The learned counsel points out that they had no opportunity to witness the movement of the car before hit, as the injured witnesses and the vehicle driven by the accused were going on in the same direction and hit was from the back side.

7. Indisputably, P.Ws.2 to 4 are grievously injured and another injured by name 'Fasila' succumbed to her injuries in the accident. Even though they were walking forward, the car came from the back side and hit them and they could not witness the movement of the car before the hit, it is to be remembered that they are not as mere eye witnesses standing on the road and watching the accident; but, they are sensible human beings who are capable to perceive the cause of accident, in which they

sustained injury. To them, the cause of accident is a fact which could be perceived by the senses on a total perception of the sequences of events as victims of the accident. According to the injured, the car hit on them all on a sudden while they were walking through the extreme northern side of the road when the car was expected to be driven through the southern side of the road. They have not lost their consciousness, though, they fell down. When P.W.3 was cross-examined, she categorically deposed that the car went to the extreme opposite side, where they were walking and hit them and that was due to rash and negligent driving of the accused. No further question was put to her challenging her version as regards the cause of accident. That apart, to them, the cause of accident is inferable from the sequences of events consist of abrupt arrival of the car on the extreme opposite side, forcible hit of the car on their body, forward movement of the car after the hit to a long

distance and the magnitude of the impact, the mischief and damages caused to the men and objects like electric post and compound wall after the hit. So, there is no reason to disbelieve the version as regards the cause of accident which the injured perceived from the manner in which the accident occurred. Thus, there is no reason to disbelieve the evidence of P.Ws.2 to 4, the injured. The above view is supported by the decision in Bhajan Singh v. State of Haryana [2011 (3) KLT S.N. 59 (C.No.57) SC].

8. The rashness and negligence of a driver which caused the accident is not a fact that could be proved by the testimony of the eye witnesses who had witnessed the manner in which the driver had driven the vehicle before the accident or at the time of accident alone. No doubt, the ocular evidence in this respect is always well and desirable. But it is a fact that can be perceived from the manner in which the accident occurred and the magnitude of the resultant

mischief and damage caused by the accident and the same are discernible from the mahazar that describes the scene of occurrence. In short, the scene mahazar is also a crucial and reliable evidence which would indicate the manner in which the accident occurred. It follows that the cause of accident is also a fact inferable from the manner in which the accident occurred. If the scene mahazar is perfect and depictive, it would answer the questions whether the vehicle was beyond the control of the driver and whether he was driving the vehicle in observance with the Road Traffic Rules at the time of accident.

9. To sum up, where the scene mahazar is descriptive, credible and gives a clear picture of the scene of occurrence and gross negligence and rashness of the driver of the vehicle are seen apparent on the face of the mahazar itself, the scene mahazar also can be taken as a substantive evidence to arrive at a finding as to the rashness and negligence of the

driver which caused the accident, in the absence of mechanical defect or any other extraneous or supervening reasons which caused the loss of control of the vehicle.

10. In this rationale, in my view, even in the absence of eye witnesses who had witnessed the accident or the manner of driving of the vehicle before the accident or at the time of accident, the cause of accident is a fact perceivable from the scene mahazar that spells the the manner in which the accident occurred and the magnitude of the mischief and damages caused by the accident, if the vehicle is found devoid of mechanical defects and the accident was not caused by any extraneous or supervenient supervisory reasons.

11. P.W.17, the Motor Vehicle Inspector, who examined the vehicle after the accident, reported in Ext.P11 inspection report that there was no mechanical defect to the car. Coming to the scene of

occurrence, evidenced by Ext.P3 scene mahazar, it is seen that the road on which the accident took place lies in east-west direction in straight. It has width of 6.55 Mtrs. and road margin of 85 cms. and 30 cms. on its northern and southern sides respectively. The car was coming from east to west. So, the driver has to keep left side i.e., at the southern side of the road; but here the place of occurrence is at about 70 cms. away from the northern extremity of the road. How the car went to the extreme wrong side when the vehicle had no mechanical defect? There is no evidence to indicate that any other vehicle has come to the place of occurrence either from eastern side or from western side. Thus, there was no supervenient circumstance to sway the car to 70 Mtrs. away from the northern extremity on the road margin.

12. Let us examine the resultant impact of the accident ascertainable from the scene of occurrence. After the hit, the car went forward to a distance of 3

Mtrs. and 89 cms. and hit on the edge of an electric post which was lying on the northern margin of the road and thereafter, hit on a compound wall which stood on the northern boundary of the road. The scene mahazar further shows that there were damages on the right side of the bumper and the front right portion of the car corresponding to the hit on the electric post and wall. So also, the right front tyre got punctured. Indisputably, what is decipherable from the magnitude of the resultant impact of the accident unerringly inferable from the scene of the occurrence is that the car was beyond the control of the driver. It was incumbent upon the accused while driving the car to make sure that the car was under his control. But, in the instant case, the vehicle proceeded further to a long distance, after the hit on the deceased and the injured and stopped, when hit on a wall only, it could be presumed that the driver omitted to apply the brake when a reasonable and prudent man would do

or the vehicle was beyond his control due to over speed and both would amount to rash and negligent driving in total disregard to human life. More importantly, the car hit four persons walking through the northern road margin and one among them succumbed to the injuries and others got grievously injured. Thus, I am of the opinion that besides the ocular evidence of P.Ws.2 to 5 and P.W.10, the manner in which the accident occurred and the magnitude of the resultant impact of the accident, which are inferable from the scene of occurrence eloquently speaks volumes to prove rashness and negligence of the driver, the accused, which caused the accident.

13. The above findings get assurance from the oral evidence of P.Ws.2 to 5 and 10. P.Ws.2 to 4, the injured, categorically deposed that the accident occurred due to the negligent driving of the car, since it went on to the extreme wrong side with over speed.

The identity of the accused, as person who had driven the vehicle, stands proved beyond doubt by the deposition of P.Ws.3, 4, 5 and 10. P.W.5 and P.W.10 are the independent eye witnesses who witnessed the accident. They were standing near the place of occurrence and they are probable and natural witnesses. They have given clinging evidence as to rashness and negligence of the accused, while driving the vehicle, which caused the accident and identity of the accused as the person who had driven the car.

14. Secondly, the learned counsel pointed out that the front right tyre of the car got abruptly punctured before the hit and whereby the driver of the car lost his control over the vehicle and thereby the car went to the extreme wrong side. Thus, the accident occurred for the reason beyond control of the accident. But, I am unable to accept this argument in view of the evidence on record. Ext.P3 scene mahazar would falsify this argument. As has

been noted above, it is decipherable from the scene mahazar that after the hit, the car went forward to a distance of 3.95 Mts. and hit on the edge of the electric concrete post which was lying in east-west direction and thereafter, hit on the compound wall. The sequence of the events after the hit, undoubtedly, shows that the tyre got punctured when the vehicle hit on the edge of the electric post or wall. The scene mahazar specifically states that the front right tyre was seen broken and the body portion of the car above the said tyre was dented towards inside. This again supports the finding that the tyre got broken when it hit on the edge of the electric post or wall after the hit on the injured. The scene mahazar does not show the presence of any other hard object in the place of occurrence. Thus, there is no evidence on record to probabilise the chance of puncture before the hit. No oral evidence is also available on record to arrive at an inference as argued by the learned

counsel for the revision petitioner.

15. The real test is whether the accident would have been avoided if the accused had exercised due care and diligence which ordinarily a driver who drives a car in a similar circumstance would have taken. Evidently, the car was being driven rashly and negligently; resultantly the car was moving beyond his control, particularly when the Vehicle inspection report shows that there was no mechanical defect to the car. As rightly held by the courts below, irresistible conclusion that comes out of the total analysis of the sequences of events, is that the car was being driven rashly and negligently by the accused so as to endanger the human life.

16. The scope and extent of revisional jurisdiction is very limited and confined to the examination of the legality, propriety and correctness of the findings of the courts below only. So, this Court is not inclined to re-appreciate the entire evidence on record unless the

court finds any illegality or perversity in the appreciation of evidence. There is no illegality or impropriety in any of the findings of the courts below, whereby the accused was found guilty for the offence under Sec.304A of the IPC. I do not find any perversity in the appreciation of evidence. Thus, the conviction concurrently entered by the courts below would stand confirmed.

17. As regards sentence, the learned counsel prayed for reducing and converting the substantive sentence of imprisonment to compensation payable to the victim's family under Sec.357(3) of the Cr.P.C. In support of the said argument the learned counsel cited the decision in *Manish Jalan v. State of Karnataka* [2008 (3) KHC 380] ; but I am unable to accept the said arguments as such.

18. The learned counsel for the revision petitioner further submits that the petitioner is an agriculturist and the income derived from the

agricultural activity is the sole sources of income for the livelihood of his family, consists of three children and aged parents. His wife has no job or income. So, if he is incarcerated for a long period, the entire family will be put to irreparable injury and hardship. I am not inclined to set aside the substantive sentence as a whole. Misplaced sympathy has no place in the administration of criminal justice. The prison term is inevitable to secure the interest of justice. But deterrence does not necessarily always depend upon the length of the term that the offender spends behind the bars. The very prospect of going the prison irrespective of length of the term is sufficient to secure the interest of deterrence; but at the same time, the sad plight of the victim's family also deserves to be considered. No doubt, the loss sustained by the family of the deceased can be compensated to a certain extent by way of compensation also. By the passage of time, the

victimology has been developed as a principle amicable to criminal administration of justice.

19. On a consideration of the mitigating and aggravating circumstances, I find that the sentence imposed on the revision petitioner by the court below is a little excessive and deserves to be modified considering the petitioner's willingness to pay the compensation to the family of the deceased.

20. The above view is supported by the decision in Manish Jalan v. State of Karnataka [2008 (3) KHC 380]. In that decision, the substantive sentence of imprisonment for the offence under Sec.304A of the IPC was reduced to the period already undergone on condition that the accused shall pay an amount of ₹1,00,000/- to the mother of the deceased by way of compensation under Sec.357(3) of the Cr.P.C. on the reason:

“But it is pertinent to note that there was no allegation against the appellant that at the

time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simplicitor and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment."

(emphasis supplied)

In the instant case also, there is no allegation against the accused that he was under the influence of liquor or any other substance impairing his driving skills and rash and negligent act simplicitor alone was alleged against him; and the accused expressed his willingness to pay the compensation to the victim's family.

21. In the result, the substantive sentence of simple imprisonment for a period of six months will stand reduced and modified to simple imprisonment

for a period of two months and to pay Rs.1,00,000/- (Rupees One lakh only) as compensation under Sec.357(3) of the Cr.P.C. to the legal heirs of the deceased victim by name 'Fasila'. He shall deposit Rs.1 lakh (Rupees one lakh only) in the trial court as compensation under Sec.357(3) of the Cr.P.C. to the legal heirs of the deceased Fasila within a period of three months from today and the same shall be given to them, on proper proof, to the satisfaction of the trial court. In default, the revision petitioner shall undergo simple imprisonment for a further period of two months. The execution of the sentence shall be kept in abeyance for a period of two months.

This revision petition is allowed in part.

(K. HARILAL, JUDGE)

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No doubt, if the vehicle was beyond the control of the driver, it follows that the driver had driven the vehicle rashly and negligently. While driving, the vehicle must always be under the control of the driver. It is true that the speed alone is not a factor which determines the rashness and negligence. But high speed is always a contributing factor that makes the vehicle beyond the control. The real test is whether the vehicle was beyond the control of the driver or not at the time of accident. A driver shall not drive the vehicle beyond his control. Thus, even in the absence of eye witnesses, who had witnessed the manner of driving before the accident or at the time of accident, the rashness and negligence which caused the accident is inferable from the scene mahazar and the magnitude of the mischief caused by the accident. Certainly, if the speed is lesser, the vehicle must always be under the control of the driver, even if the accident occurs and damage and mischief would be lesser. No doubt, the inference that can be gathered as above from the scene mahazar is a rebuttable presumption only. The burden is heavy on the driver that to rebut the presumption by adducing evidence to show that the accident was caused by reasons beyond his control, at the time of accident. It is always incumbent upon the driver to make sure that the vehicle which he drives is under his control.

I am of the opinion that even though they were walking forward and the car came from the back side and hit them, as normal human beings who could perceive everything that happened on their body and surroundings all of a sudden, particularly, a forceful hit, they could have realised the magnitude of the

rashness and negligence from the force of attack and impact on their body and things surrounding to them. It is also decipherable from the abrupt arrival of the car on the extreme opposite side where they were walking, the forceful hit of the car on their body, the forward movement of the car after the hit to a long distance and the magnitude of the mischief caused to the objects like electric post and compound wall, after the hit. It is to be borne in mind that the vehicle inspection report shows that the accident was not caused by mechanical defect. According to Sec.3 of the Indian Evidence Act 'fact' means, includes anything, state of thing or relation of thing, capable of being perceived by the sense. There is no reason to disbelieve the version which the injured perceived from the impact of the hit and magnitude of the mischief caused by the accident in the scene of occurrence. When a vehicle went beyond the control, without any mechanical defect or external supervision, it can be reasonably presumed that the vehicle had been driven rashly and negligently so as to endanger the human life, unless the loss of control was due to mechanical defect or external supervision. Even in the absence of rashness or negligence, accidents may occur; but if the vehicle is under control, the resultant impact of the accident would be lesser. Similarly, where a vehicle has been driven with reasonable speed, there also accidents may occur. But, as stated above, the resultant impact of mischief that may cause by the accident would be much lesser. Therefore, rashness and negligence are facts which can not only be proved by eye witness; but also from the magnitude of the resultant impact of the accident decipherable from the scene of the occurrence.

The speed alone is not a factor which would constitute rashness and negligence; but high speed is a contributing factor which would aggravate the magnitude of the resultant impact, mischief and

damages of the accident. Thus, speed of the vehicle is an inferable fact from the magnitude of the resultant impact and mischief caused by the accident. Similarly, rashness and negligence are facts which could be perceived by the sense on the basis of the magnitude impact of the accident and the manner in which the accident occurred, which could be well ascertained from the scene of occurrence also, apart from the deposition of the eye witnesses.

K. HARILAL, J.

Crl.R.P. No.610 of 2015

Dated this the 6th day of July, 2015

ORDER

The revision petitioner is the accused in C.C.No.263 of 2012 on the files of the Judicial First Class Magistrate's Court-I, Kottayam, as well as the appellant in Crl. Appeal No.382 of 2013 on the files of the Additional Sessions Judge-I, Kottayam Division. In the above Calender Case, he was prosecuted for the offences punishable under Secs.279, 337, 338, 304A of the Indian Penal Code and Sec.134(a) and 134(b) read with Sec.177 of the M.V. Act.

2. The prosecution case, in brief, is as follows:
On 8/1/2012, the accused drove the car bearing Registration No.KL05 AB-9735 from east to west

through Kottayam - Kumarakom public road in a rash and negligent manner so as to endanger human life and as a result, at about 14.15 hours, when the car reached the road at the place called 'Govindapuram', it dashed against P.Ws.2 to 4 and Fasila who were walking through the northern side of the road from east to west and that Fasila died due to the injuries sustained by her in the accident. P.Ws.2 to 4 sustained simple as well as grievous hurt in the accident. It is also alleged that the accused did not take any steps to secure medical attention to the injured persons and that he did not report the circumstances of the accident at the Police Station within the prescribed period.

3. To prove the prosecution case, P.Ws.1 to 20 were examined and Exts.P1 to P16 were marked. No evidence, oral or documentary, had been adduced in defence. The accused pleaded not guilty. After considering the evidence on record, the learned

Magistrate found that the revision petitioner guilty of the offences alleged against him and convicted thereunder. He was sentenced to undergo simple imprisonment for three months for the offences punishable under Secs.279 and 337 of the Indian Penal Code and sentenced to undergo simple imprisonment for six months for the offences punishable under Secs.338 and 304A of the Indian Penal Code and to pay a fine of ₹100/- under Secs.134 (a) and 134(b) read with Sec.177 of the Motor Vehicles Act. In default of payment of fine, to undergo simple imprisonment for a period of fifteen days. The substantial sentence shall run concurrently.

4. Though the revision petitioner had preferred the above Crl. Appeal, after re-appreciating the evidence on record, the learned Sessions Judge confirmed the conviction and sentence passed against the accused by the trial court under Secs.279, 337, 338 and 304A of the IPC; but set aside the conviction

and sentence passed against the accused under Secs.134(a) and 134(b) read with Sec.177 of the M.V. Act, as the accused is not found guilty of the said offences.

5. The legality and propriety of the concurrent findings of conviction and sentence imposed on the revision petitioner for the offences punishable under Secs.279, 337, 338 and 304A of the IPC are under challenge in this revision petition.

6. The learned counsel for the revision petitioner advanced arguments challenging the concurrent findings of conviction on various grounds. The learned counsel strenuously contended that the courts below absolutely went wrong in appreciating the entire evidence on record, more particularly, the evidence of the injured witnesses. The learned counsel advanced arguments so as to persuade this Court the re-appreciation of the entire evidence on record.

7. Besides general attack, the learned counsel

for the revision petitioner has canvassed two points. According to the learned counsel, the evidence of the injured witnesses - P.Ws.2 to 4, cannot be relied on to arrive at a finding that the accident was caused by rash and negligent driving of the accused. The learned counsel points out that they had no opportunity to witness the movement of the car before hit, as the injured witnesses and the vehicle driven by the accused were going on in the same direction and hit was from the back side.

8. Indisputably, P.Ws.2 to 4 are the injured and the injuries were caused by the hit of the car. I am of the opinion that even though they were walking forward and the car came from the back side and hit on them, as normal human beings who can perceive everything that happens on their body, particularly, a forceful hit, they could have realised the magnitude of the rashness and negligence from the force of attack and impact on their body. It is also decipherable from

the abrupt arrival of the car on the extreme side where they were walking, the forceful hit of the car on their body, the forward movement of the car after the hit to a long distance and the magnitude of the mischief caused to the objects like electric post and compound wall, after the hit. It is to be borne in mind that the vehicle inspection report shows that the accident was not caused by mechanical defect. According to Sec.3 of the Indian Evidence Act 'fact' means, includes anything, state of thing or relation of thing, capable of being perceived by the sense. There is no reaction to disbelieve the version which the injured perceived from the impact of the hit and magnitude of the mischief caused by the accident in the scene of occurrence. When a vehicle went beyond the control, without any mechanical defect or external supervision, it can be reasonably presumed that the vehicle had been driven rashly and negligently so as to endanger the human life. Even in the absence of

rashness or negligence, accidents may occur; but if the vehicle is under control, the resultant impact of the accident would be lesser. Similarly, where a vehicle has been driven with reasonable speed, there also accidents may occur. But, as stated above, the resultant impact of mischief that may cause by the accident would be much lesser. Therefore, rashness and negligence are facts which can not only be proved by eye witness; but also from the magnitude of the resultant impact of the accident decipherable from the scene of the occurrence. The speed alone is not a factor which would constitute rashness and negligence; but high speed is a contributing factor which would aggravate the magnitude of the resultant impact of the accident. Thus, speed of the vehicle is an inferable fact from the magnitude of the resultant impact of the accident. Similarly, rashness and negligence are facts which could be perceived by the sense on the basis of the magnitude impact of the

accident which could be well ascertained from the scene of occurrence also, apart from the deposition of the eye witnesses.

9. P.W.17, the Motor Vehicle Inspector, who examined the vehicle after the accident, reported in Ext.P11 inspection report that there was no mechanical defect to the car. Here coming to the scene of occurrence, evidence by Ext.P3 scene mahazar, it is seen that the road on which the occurrence took place lies in east- west direction and the road lies in straight. It has a width of 6.55 Mtrs. and road margin of 85 cms. and 30 cms. on its northern southern sides respectively. The car was coming from east to west. So, it has to keep left side i.e., on the southern side of the road. The occurrence took place at about 70 cms. away from the northern extremity of the road. How the car went on to the extreme wrong side when the vehicle had no mechanical defect? There is no evidence to indicate

that any other vehicle came to the place of occurrence either from eastern side or from western side. There was no circumstance to swear the car to 70 Mtrs. away from the northern extremity on the road margin.

10. Let us examine the resultant impact of the accident ascertainable from the scene of occurrence. After the hit, the car went forward to a distance of 3 Mtrs. and 89 cms. and hit on the edge of an electric post which was lying on the northern margin of the road and thereafter, hit on a compound wall which stood on the northern boundary of the road. The scene mahazar further shows that there was damages on the right side of the bumper and the front right portion of the car corresponding to the hit on the electric post and wall. So also, the right front tyre got punctured. Indisputably, what is decipherable from the magnitude of the resultant impact of the accident unerringly inferable from the scene of the occurrence is that the car was beyond the control of the driver.

More importantly, the car hit four persons walking through the northern margin and one among them succumbed to the injuries and others got injured. Thus, I am of the opinion that besides the ocular evidence of P.Ws.2 to 5 and 10, the magnitude of the resultant impact of the accident decipherable from the scene of occurrence speaks volumes to prove rashness and negligence of the driver which caused the accident.

11. The above finding is supported by the oral evidence of P.Ws.2 to 5 and 10. P.Ws.2 to 4, the injured, categorically deposed that the accident occurred due to the negligent driving of the car since it went on to the extreme wrong side with over speed. The identity of the accused, as person who had driven the vehicle, stands proved beyond doubt by the deposition of P.Ws.3, 4, 5 and 10. P.Ws.5 and 10 are the independent eye witnesses who witnessed the accident. They were standing near the place of

occurrence and they are probable and natural witnesses. They have given clinging evidence as to rashness and negligence of the accused, while driving the vehicle, which caused the accident and his identity as the person who had driven the car.

12. Secondly, the learned counsel pointed out that the front right tyre of the car got punctured after abruptly before the hit and whereby the driver of the car lost his control over the vehicle and thereby the car went on the extreme wrong side. Thus, the accident occurred for the reason beyond his control. But, I am unable to accept this argument in view of the evidence on record. Ext.P3 scene mahazar would falsify this argument. As has been noted above, it is decipherable from the scene mahazar that after the hit, the car went forward to a distance of 3.95 Mts. and hit on the edge of the electric concrete post which was lying in east-west direction and thereafter, hit against the compound wall. The sequence of the

events after the hit, undoubtedly, shows that the tyre got punctured when the vehicle hit on the edge of the electric post or wall. The scene mahazar specifically states that the front right tyre was seen broken and the body portion of the car above the said tyre was dented towards inside. This again supports the finding that the tyre got broken when it hit on the edge of the electric post. The scene mahazar does not show the presence of any other hard object in the place of occurrence. Thus, there is no evidence on record to probabalise the chance of puncture before the hit. No oral evidence is also available on record to arrive at an inference as argued by the learned counsel for the revision petitioner.

13. The real test is whether the accident would have been avoided if the accused had exercised due care and diligence which ordinarily a driver who drives a car in a similar circumstance would have taken. The fact that the car hit on the four injured persons

walking through the extreme wrong side of the car proves that the car was not being driven with due care and caution; but was being driven rashly and negligently and resultantly the car was beyond his control, where the Vehicle inspection report shows that there was no mechanical defect to the car. As rightly held by the courts below, irresistible conclusion comes out is that the car was being driven rashly and negligently so as to endanger the human life by the accused.

14. The scope and extent of revisional jurisdiction is very limited and confined to the examination of the legality, propriety and correctness of the findings only.

15. So, this Court is not inclined to re-appreciate the entire evidence on record unless the court finds any illegality or perversity in the appreciation of evidence.

16. There is no illegality or impropriety in any of the findings of the courts below, whereby the accused

was found guilty for the offence under Sec.304A of the IPC. I do not find any perversity in the appreciation of evidence. Thus, the conviction concurrently entered by the courts below would stand confirmed.

17. Coming to the sentence, the learned counsel prayed for reducing the substantive sentence of imprisonment by citing the decisions in Mahadev v. State of M.P. [2006 KHC 2898]; Manish Jalan v. State of Karnataka [2008 (3) KHC 380] and Palliyalil Sidique v. State of Kerala [2013 (3) KHC 302] .

18. The learned counsel for the revision petitioner submits that the petitioner is an agriculturist and the income derived from the agricultural activity is the sole sources of income for the livelihood of his family, consisting of three children and aged parents. His wife has no job or income. So, if he is incarcerated for a long period, the entire family will be put to irreparable injury and hardship. The

learned counsel further sought for setting aside the substantive sentence. But I am not inclined to set aside the substantive sentence as a whole. The prison term is inevitable to secure the interest of justice. But deterrence does not necessarily depend upon the length of the term that the offender spends behind the bar. The very prospect of going the prison irrespective of length of the term is sufficient to secure the interest of deterrence; but at the same time, the sad plight of the victim's family also has to be considered. No doubt, the loss sustained by the family can be compensated to a certain extent by way of compensation also. By the passage of time, the victimology has been developed as a principle amicable to criminal administration of justice. At the same time, misplaced sympathy has no place in the administration of criminal justice.

19. In the above view, I find that the sentence imposed on the revision petitioner by the court below

is a little excessive and deserves to be modified considering the petitioner's willingness to pay the compensation to the family of the deceased. The substantive sentence of simple imprisonment for a period of six months will stand reduced and modified to simple imprisonment for a period of two months, provided that he must pay a compensation of ₹1 lakh (Rupees one lakh only) to the legal heirs of the deceased Fasila within a period of two months from today. In default, the revision petitioner shall undergo simple imprisonment for a further period of two months. The execution of the sentence shall be kept in abeyance for a period of two months.

This revision petition is allowed in part.

(K. HARILAL, JUDGE)

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The rashness and negligence of a driver which

caused the accident is not a fact that could be proved by the testimony of the eye witnesses who had witnessed the manner in which he had driven the vehicle before the accident or at the time of accident alone. No doubt, the ocular evidence in this respect is always desirable and well. But it is a fact that can be inferable from the manner in which the accident occurred and then the magnitude of the resultant mischief and damage caused by the accident which are discernible from the scene of occurrence also. Here, the scene mahazar speaks volumes towards the rashness and negligence of the driver which caused the accident. The magnitude of the mischief and damage and the manner in which the accident occurred inferable from the scene of occurrence answers the question whether the vehicle was beyond the control of the driver. No doubt, if the vehicle was beyond the control of the driver, it follows that the driver had driven the vehicle rashly and negligently.

While driving, the vehicle must always be under the control of the driver. It is true that the speed alone is not a factor which determines the rashness and negligence. But high speed is always a contributing factor that makes the vehicle beyond the control. The real test is whether the vehicle was beyond the control of the driver or not at the time of accident. A driver shall not drive the vehicle beyond his control. Thus, even in the absence of eye witnesses, who had witnessed the manner of driving before the accident or at the time of accident, the rashness and negligence which caused the accident is inferable from the scene mahazar and the magnitude of the mischief caused by the accident. Certainly, if the speed is lesser, the vehicle must always be under the control of the driver, even if the accident occurs and damage and mischief would be lesser. No doubt, the inference that can be gathered as above from the scene mahazar is a rebuttable presumption only.

The burden is heavy on the driver that to rebut the presumption by adducing evidence to show that the accident was caused by reasons beyond his control, at the time of accident. It is always incumbent upon the driver to make sure that the vehicle which he drives is under his control.

Where the magnitude of the impact and resultant mischief and damage caused to the men and objects by the accident are very high, obviously it can be held that the vehicle was beyond the control of the driver at the time of accident. It is always incumbent upon the driver to make sure that the vehicle which he drives is under his control. In the instant case, the vehicle proceeded further to a long distance after the hit on the deceased and the injured and stopped when when it hit against a wall only. So, it could be presumed that the driver omitted to apply the brake when a reasonable and prudent man would do or the

vehicle was beyond his control due to over speed and both would amount to rash and negligent driving in total disregard to the human life.

, from the heavy damages and mischief caused by the accident, it could be reasonably presumed that the accident was caused by rash and negligent driving of the accused. No doubt, the inference that can be gathered as above from the scene mahazar is rebuttable presumption; but the burden is heavy on the driver to rebut the presumption by adducing evidence to show that the accident was caused by reasons beyond his control.

10. The speed alone is not a factor which could constitute the rashness and negligence; but high speed is a contributing factor which would aggravate the magnitude of the resultant impact, mischief and damages to the men and objects in the accident.

