

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE S.SIRI JAGAN

MONDAY, THE 19TH DAY OF NOVEMBER 2012/28TH KARTHIKA 1934

Cr1.Rev.Pet.No. 2277 of 2012 ()

CRA.13/2010 of I ADL.D.C., TRIVANDRUM
CC.1046/2006 of J.M.F.C.-I, TRIVANDRUM

REVISION PETITIONER(S)/REVN.PETITIONER/APPELLANT/ACCUSED :

VIJAYAN.G
V.B.BHAVAN, NEAR PATTARA CHURCH, KALLARA
ANAKUDI MURI, KALLARA VILLAGE
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.K.SIJU
SMT.BINDU GEORGE

COMPLAINANT (S) /RESPONDENTS/COMPLAINANT :

STATE OF KERALA
REPRESENTED BY THE S.I. OF POLICE
CITY TRAFFIC POLICE STATION, THIRUVANANTHAPURAM
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.BIJU MEENATOOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 19-11-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

S.SIRI JAGAN, J.

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Crl.R.P.No. 2277 of 2012

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Dated this the 19th day of November, 2012

ORDER

The petitioner is the accused in C.C.No.1046/2006 before the Judicial First Class Magistrate's Court-I, Thiruvananthapuram. He was prosecuted for offences punishable under Sections 279 and 304 A of the Indian Penal Code.

2. The prosecution charge as available in the judgment of the Magistrate is as follows:

“On 2.12.2004 at 10.15 p.m, the accused drove the bus bearing registration No.KL01.C.5410 owned by the Titanium Company, in rash or negligent manner as to endanger human life along Chacka - All saints' stretch of the road and when it reached in front of the Chacka Fire Force Station it collided with the motorcycle bearing registration No.KL01.W.1811 ridden by the deceased Babu from Chacka to All Saints' side, with its front right side and thereby he fell off the bike and sustained serious injuries and he was declared dead at the Medical College Hospital, Thiruvananthapuram. Thus the accused is alleged to have committed the above mentioned offences.

3. The prosecution examined PWs 1 to 17 and marked Exts.P1 to P7 documents. The defence did not adduce any evidence. After considering the evidence adduced by the prosecution, the Magistrate found the petitioner guilty of the offences charged against him and imposed on him the sentence of simple imprisonment for three months each for the offences

under Sections 279 and 304A of the IPC and to pay a fine of ₹ 10,000/- under Section 304A of the IPC, with a default sentence of simple imprisonment for a further period of one month. The substantive sentences were directed to be undergone concurrently. The petitioner filed Crl.Appeal No.13/2010 before the Additional Sessions Judge-I, Thiruvananthapuram, who dismissed the appeal confirming the conviction and the sentences. The petitioner is challenging the judgments of the courts below.

4. According to the petitioner, the lower courts have not appreciated the evidence available in the right perspective. He would submit that there is no evidence to show culpable negligence on the part of the petitioner. The petitioner's case is that the fact that the bike hit the bus from the rear of the bus has not been properly considered, although there was a damage to the bus on the back side. It is further submitted that the prosecution has not chosen to prove that there was no mechanical defect for the petitioner's vehicle. Therefore, the lower courts ought to have applied Section 114 of the Evidence Act. According to the petitioner, the charge is vague insofar as there is no definite allegation in respect of the culpable

negligence on the part of the petitioner. It is submitted that there is no clear evidence regarding the directions, in which, the vehicles were travelling.

5. I have heard the learned Public Prosecutor also, who would support the judgments of the courts below.

6. I do not find any merit in any of the contentions of the petitioner. PW3 has given evidence to the effect that the petitioner was driving the vehicle from west to east. The petitioner had no suggestion to any of the witnesses otherwise. The deceased was travelling from east to west. As such, the petitioner cannot now take a contention that the petitioner was actually driving the vehicle from east to west. The scene mahazar specifically says that at the scene of accident, the road was 13.55 mtrs. in width and the spot of the accident is at a distance of 5.95 meters towards the north from the southern tar end. The petitioner did not challenge the scene mahazar also. When the petitioner was coming from west to east and the accident occurred 5.95 mtrs. from the southern road end towards north in a road having 13.55 mtrs. width, clearly the accident happened on the wrong side of the petitioner. That itself would speak volumes regarding the negligence of the

petitioner. The investigating officer had clarified that the damage on the rear side of the body of the bus was not the result of the accident and that was an old damage. Of course, the learned counsel for the petitioner points out that he did not specifically state so from his knowledge but he only stated that CW10 told him so and CW10 has not been examined also. But I am of opinion that insofar as the scene mahazar proves the fact that the petitioner was driving on the wrong side would go to show that the damage on the rear side of the bus, even if it was new, could not have been the result of the accident. PWs 2 and 3 had given categoric evidence to the effect that the petitioner drove the vehicle on the wrong side hitting the bike head on, which resulted in the accident. I am not satisfied that there is any vagueness in the charge as such. The charge is that the petitioner drove the vehicle in a rash and negligent manner so as to endanger human life as is clear from the prosecution case extracted at the beginning of this judgment. As such, there is no vagueness in the charge as well. The fact that the prosecution did not prove the report of the Motor Vehicles Inspector regarding mechanical defect of the vehicle has of no importance, since at no point of time the petitioner had a case that his vehicle

had mechanical defect.

For all the above reasons, I do not find any merit in the contentions of the petitioner against the judgments of the courts below.

7. The learned counsel for the petitioner makes a fervent plea for reducing the sentence to fine. I am not satisfied that the sentence imposed on the petitioner by the courts below are excessive or arbitrary. Therefore, I am not inclined to interfere with the punishment imposed on the petitioner as well. Accordingly, this Criminal Revision Petition is dismissed.

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Sd/-
S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge