



2025:KER:15276

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 21<sup>ST</sup> DAY OF FEBRUARY 2025 / 2ND PHALGUNA, 1946

CRL.REV.PET NO. 1073 OF 2018

AGAINST THE JUDGMENT IN Cr1.A NO.81 OF 2014 OF THE  
ADDITIONAL SESSIONS COURT-I, THALASSERY ARISING OUT OF THE  
JUDGMENT IN CC NO.461 OF 2010 OF JUDICIAL MAGISTRATE OF FIRST  
CLASS -I, KANNUR

REVISION PETITIONER/APPELLANT/ACCUSED:

MAHESH V. ,  
AGED 33 YEARS,  
S/O.NARAYANAN, KOKKADAN HOUSE,  
PAVANORE MOTTA, KUTTIATTOOR,  
IRIKKU, KANNUR DISTRICT  
BY ADVS.  
P.U. SHAILAJAN  
P. RAJAN

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA-STATION HOUSE OFFICER  
TRAFFIC POLICE STATION, REPRESENTED BY PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM 682035

ADVOCATE P.M.SHEMEER-PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR HEARING  
ON 5.2.2025, THE COURT ON 21.02.2025 DELIVERED THE FOLLOWING:

**M.B.SNEHALATHA, J**

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**Crl.R.P.No.1073 of 2018**  
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**Dated this the 21<sup>st</sup> February, 2025**

**O R D E R**

In this revision, the revision petitioner assails the concurrent finding of conviction and sentence against him for the offences punishable under Sections 279 and 304A of the Indian Penal Code (hereinafter referred to as IPC).

2. Heard both sides.

3. Prosecution case is that on 22.03.2010 at about 12.15 pm. the accused drove a bus bearing Registration No.KL-13-K/9900 through the Public road near Stadium Complex, Kannur in a rash and negligent manner so as to endanger human life and knocked down a scooterist named Vishnu Namboodiri, causing fatal injuries to him. The victim succumbed to the injuries on the same day. Charge sheet was filed against the accused for the offences punishable under Sections 279 and 304A of IPC and Section 192 of Motor Vehicles Act and Rule 46(1)(a) r/w Section 177 of Motor Vehicles Act.

4. After trial, the learned Magistrate found the accused

guilty for the offences punishable under Sections 279 and 304A IPC and he was convicted and sentenced for the said offences. Accused was acquitted of the offence punishable under Section 192 of Motor Vehicles Act and Rule 46(1) (a) r/w Section 177 of Motor Vehicles Act. Challenging the conviction and sentence though the accused preferred Crl.A.No.81/2014 before the Sessions Court, Thalassery, the said appeal was dismissed confirming the conviction and sentence for the offences under Sections 279 and 304A of IPC.

5. Being aggrieved by the said judgment of conviction and sentence, accused has preferred this revision challenging its legality, propriety and validity.

6. The point for consideration in this revision is whether the conviction and sentence against the accused for the offences under Sections 279 and 304A of IPC needs any interference by this Court.

7. It is a well settled position of law that the scope under the revision against the concurrent finding of fact is very much limited. Ordinarily, revisional court will not interfere with the concurrent findings of fact unless the finding of the court whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable

or where decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously.

8. The evidence on record would show that on 22.03.2010 at about 12.15 p.m the bus bearing Registration No. KL-13-K/9900 hit the Scooter bearing Registration No.KL-7-M/6583 ridden by the victim at the road mentioned in Ext.P3 scene mahazar prepared by the Investigating Officer.

9. It is also not in dispute that in the said accident, the rider of the scooter Vishnu Namboodiri namely the father of PW1 died. Ext.P2 is the inquest report of the victim. Ext.P5 is the wound certificate. Ext.P6 is the postmortem report. Exts.P2, P5 and P6 coupled with the evidence of PW11 doctor who conducted the postmortem of the deceased Vishnu Namboodiri would show that the victim died due to the injuries sustained in a motor vehicle accident on 22.03.2010.

10. PW1 who is the son of the deceased Vishnu Namboothiri, testified that upon receiving information about the accident, he reached at the hospital; that his father died due to the injuries sustained in the accident. Ext.P1 is the First Information Statement given by him.

11. The prosecution case that at the time of accident,

the victim Vishnu Namboodiri was riding a scooter bearing Reg.No.KL-7-M/6583 is not disputed by the accused. Like wise, the fact that the bus bearing Reg.No. KL-13-K/9900 hit the scooter ridden by the victim is also not seriously disputed. The evidence on record would show that the accident occurred on a public road near the stadium complex Kannur, through which buses were not permitted to be plied by the Regional Transport Authority.

12. The main argument advanced by the learned Counsel for the revision petitioner was that the prosecution has not succeeded in establishing beyond reasonable doubt that it was the accused who drove the offending bus at the time of accident. It was argued that the testimony of PW5 who is said to have witnessed the incident is unreliable.

13. To substantiate the prosecution case that it was the accused who was driving the bus at the time of accident, prosecution would rely on the evidence of PW5 who is an eye witness to the incident and also produced Ext.P8 trip sheet.

14. PW5 has categorically stated before the Court that he witnessed the incident. His version is that on 22.03.2010 at about 12.15 pm, while he was proceeding to the Post Office for posting a letter, he witnessed the incident. He has also testified

that the driver of the offending bus changed its direction from the bus route and the bus driver took the bus through another road situated in front of 'G-sons shop' situated in the Stadium corner, and it was while so, the bus hit the scooter ridden by the victim. He has also testified that after hitting the scooter, the bus dragged the scooter for a short distance; that the rider of the scooter fell down and sustained injuries.

15. There is no reason at all to disbelieve the version of PW5 who has categorically testified that he has witnessed the accident and he had seen the accused who drove the offending bus at the time of the accident.

16. The argument advanced by the learned Counsel for the accused that in the absence of a test identification parade, no reliance can be placed on the version of PW5, is untenable. The Code of Criminal Procedure, 1973 does not oblige the investigating agency to necessarily hold a test identification parade, nor is there any provision under which the accused may claim a right to the holding of a test identification parade. When the ocular witness has identified the accused at the time of the accident and testified before the court that he has seen the incident and has identified the driver of the offending vehicle, there is no reason for the court to disbelieve the same unless

there are any materials to hold that the said witness or investigating officer has any malice or malafide intention to implicate the accused in the said case. Accused failed to establish that either PW5 or the investigating officer has any such malice or oblique motive against him.

17. The argument advanced by the learned Counsel for the accused that PW5 is a witness planted by the prosecution and he is not an eyewitness, is untenable. Though PW5 was cross-examined at length, defence could not make any dent in his version that he witnessed the incident.

18. It is a well-settled position of law that on the basis of a solitary evidence of an eye witness, conviction can be maintained if the evidence is unblemished and witness is wholly reliable.

19. PW5 is a witness who is found to be wholly reliable and his evidence is unblemished, so the learned Magistrate and the learned Sessions Judge were right in relying on the testimony of PW5 that he witnessed the incident and identified that the accused was the driver of the bus at the time of accident.

20. PW5 has categorically testified that the accident occurred due to the rash and negligent driving of the accused who was the driver of the bus. He has also testified that the bus came at an over speed and through the wrong side of the road.

The version given by PW5 that the accident occurred when the bus driver tried to turn the bus towards the road in front of shop named 'G-sons' and while turning the bus it hit on the scooter and after hitting the scooter, the bus dragged the scooter for a short distance stands unchallenged in cross examination. There is no case for the accused that there was any contributory negligence on the part of the victim who was the rider of the scooter in resulting the accident. Ext.P10 certifies that the offending bus had no mechanical defects.

21. The prosecution has succeeded in establishing that accused who was the driver of the bus bearing Registration No. KL-13-K/9900 drove the bus in a rash and negligent manner so as to endanger human life and hit on the scooter ridden by victim Vishnu Namboodiri and caused his death. I find no reason to interfere with the concurrent finding of conviction of the accused for the offences under Sections 279 and 304A of IPC. Accordingly, the conviction of the accused for the offence under Sections 279 and 304A of IPC is confirmed.

22. The question is whether the sentence imposed against the accused needs any interference by this Court. This is not a fit case wherein the provisions of the Probation of Offenders Act can be made applicable. However, I am of the opinion that

substantive sentence of simple imprisonment for 2 years awarded for the offence under Section 304A of IPC can be reduced to simple imprisonment for 6 months.

Accordingly, the revision petition is allowed in part modifying the sentence alone.

a) Conviction of the accused for the offences punishable under Sections 279 & 304A of IPC is confirmed.

b) The sentence imposed for the offence under Section 279 IPC that the accused shall undergo simple imprisonment for three months is confirmed.

c) The sentence for the offence under Section 304A IPC is modified to simple imprisonment for 6 months and to pay a compensation of ₹25,000/- under Section 357(3) Cr.P.C. In default of payment of compensation, the accused shall undergo simple imprisonment for a further period of two months.

d) If the compensation is realised, the entire amount shall be given to the legal heirs of the victim.

The trial court shall take steps to execute the sentence against the accused as modified by this Court.

Sd/-

**M.B. SNEHALATHA**  
**JUDGE**

Mms