

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 6TH APRIL 2005 / 16TH CHAITHRAM 1927

Crl.Rev.Pet.No. 1188 of 1996(C)

CC.4/1987 of I ADDL. SESSIONS COURT, PALAKKAD
CRA.75/1990 of THE IST ADDL. SESSIONS JUDGE, PALAKKAD
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REVN. PETITIONER:

N.VEERAPPAN, S/O.V.NALLAPPA KOUNDAR,
METTUPPADI THERUVU, IMMACHAMPATTY, OTTAN SATHRAM,
ANNA DISTRICT, TAMIL NADU.

BY ADV. SRI.P.B.ASOKAN
SRI.GEO PAUL

RESPONDENTS:

THE STATE OF KERALA,
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,
MANNARGHAT (CRIME NO.225/96).

BY PUBLIC PROSECUTOR SRI.K.THAVAMONY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06/04/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HEMA, J.

CRI.R.P.No.1188 OF 1996

Dated this the 6th day of April, 2005

O R D E R

The petitioner challenges conviction and sentence passed against him under Sections 279 and 304 IPC. The petitioner was sentenced to undergo imprisonment for one year for offence under Section 304 IPC. No separate sentence was awarded for offence under Section 279 IPC. The driving licence of the petitioner was suspended for a period from the date on which the judgment will become final. Conviction and sentence were challenged in appeal and the First Additional Sessions Judge, Palakkad confirmed the conviction and sentence as per judgment dated 27.9.1996.

2. According to prosecution case, on 29.8.1986 at about 4.20p.m. the accused drove lorry bearing registration No.KLG 7800 along Mannarghat-Palghat public road from west to east in a rash and negligent manner so as to endanger human life and because of such act, hit a student aged 13 years who was about to cross the road, after getting down from bus and the boy sustained severe injuries and succumbed to the injuries on the same day while under treatment at the District Hospital, Palakkad. The incident occurred on the wrong side of the vehicle. The tar road at the place of occurrence is having width of six meters and the incident occurred at a distance of 1.10 meters to the north from the

southern tar road margin. The lorry is having only a width of 2.28 meters as revealed from the body-mahazar.

3. PWs 1 to 15 were examined and Exhibits P1 to P9 were marked on the side of the prosecution. Statement of PW1 was marked as Exhibit P1 on the side of the accused.

4. On an analysis of the evidence of the eye witnesses PWs 1, 2, 5 and 10, both courts below concurrently found that petitioner was rash and negligent in his driving and the death of the boy was caused due to such act. The evidence of these witnesses was analysed and appreciated in the right perspective by both the courts below. The petitioner has not given any explanation for going to the wrong side of the road and hit the boy. As per the evidence, the incident occurred on a busy road on which petitioner was expected to drive in a more cautious manner. On going through the evidence of the eye witnesses and the judgments of the courts below, I do not find any reason to interfere with the findings. It cannot be said that the findings are perverse or that no prudent man can enter such findings. This Court cannot re-appreciate the evidence and come to a different finding on analysis of the evidence and interfere with the order passed. In the above circumstances, I find that the courts below exercised the jurisdiction correctly to convict the petitioner under Sections 279 and 304 IPC.

5. The sentence awarded is to undergo rigorous imprisonment for a period of one year under Section 304 IPC. Considering the nature of the offence committed and the circumstances, the trial court found it not fit to take a lenient view in the matter.

According to the court below, circumstances did not attract the provisions of the Probation of Offenders Act. On an analysis of the facts and circumstances of the case, I find that the requirements under the provisions of the Probation of Offenders Act are not attracted in this case. The trial court imposed the sentence which is proportionate with the gravity of the offence and I do not find any reason to interfere in the findings.

6. The learned counsel appearing for the petitioner relied upon a decision reported in ***P.K.Suariah v. State of Kerala (2002(2) KLJ 100)*** to argue that the imprisonment is not a must under Sections 279 and 304 IPC and requested the court to convert the imprisonment to one of fine. The petitioner is stated to be 48 years at present and no circumstances are pointed out to interfere in the sentence except that imprisonment is not a must. Leniency cannot be shown, unless there are strong circumstances. In the decision cited above by the learned counsel for petitioner the accused was aged 73 years who is in a bad state of health. His medical history as revealed from the records show that if he is sent to prison, there is every likelihood of his meeting with his end in the prison itself. Those circumstances were taken into consideration to interfere the sentence. But on considering circumstances of the accused and the facts of this case, I do not find any ground to interfere with the sentence. The petitioner had no explanation for the occurrence except stating that the boy suddenly crossed the road while questioned under Section 313

Cr.P.C. He had no explanation why and how the vehicle driven by him came to the wrong side of the road and hit the boy.

Petition is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.1188 OF 1996

O R D E R

6.04.2005