



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024
(ARISING OUT OF SLP (CRIMINAL) NO. 11041 OF 2024)

GEORGE

APPELLANT(S)

VERSUS

STATE OF KERALA

RESPONDENT(S)

O R D E R

1. Leave granted.

2. Heard Mr. P. A. Noor Muhamed, learned counsel appearing for the appellant. The State of Kerala is represented by Mr. Harshad V Hameed, learned counsel.

3. The appellant stands convicted of the offences punishable under Sections 279, 337, 338 and 304(A) of the Indian Penal Code, 1860 (for short, the "IPC") in connection with a road accident which took place at around 9:00 p.m. on 07.08.2007. The allegation against the accused was that he drove the mini *Lorry* in a rash and negligent manner and the mini *Lorry* hit against the motorcycle coming from the opposite direction. The pillion rider Santhosh Kumar fell down from the impact, sustained grievous injuries and died. The *Lorry* also hit a pedestrian walking on the road.

4. The Judicial First Class Magistrate-I, Alappuzha on the basis of evidence adduced before the Court convicted the mini *Lorry* driver and sentenced him in the following way:

"In the result, accused is sentenced to undergo simple imprisonment for 3 months u/s. 279 IPC and to pay fine of Rs 500/-; in default of payment of fine he shall undergo simple imprisonment for 5 days. He is sentenced to undergo simple imprisonment for 3 months u/s. 337 IPC

VERDICTUM.IN

and to pay fine of Rs 500/-, in default of payment of fine he shall undergo simple imprisonment for 5 days. He is sentenced to undergo simple imprisonment for one year u/s. 338 IPC and to pay fine of Rs 1000/-; in default of payment of fine he shall undergo simple imprisonment for 10 days. He is sentenced to undergo simple imprisonment for one year u/s. 304A IPC and to pay fine of Rs 1000/-; in default of payment of fine he shall undergo simple imprisonment for 10 days. Sentences shall run concurrently. He is acquitted of offence u/s. 162 r/w s. 177 of M.V. Act."

5. The judgment of the trial court rendered on 17.03.2015 was sustained by the learned Additional Sessions Judge-II, Alappuzha in the Criminal Appeal No. 99 of 2015. The Criminal Revision filed by the accused was thereafter dismissed by the High Court under the impugned judgment dated 13.06.2024.

6. When this case was taken up on 20.08.2024, it was pointed out by the learned counsel for the appellant that the accused on being found guilty for the charged offences has been in custody for 103 days for the awarded sentence of 6 months. Accordingly, returnable notice was issued by this Court.

7. Today, when the case is taken up, Mr. P. A. Noor Muhamed, learned counsel would point out that PW-1, PW-4 and PW-5, who were at the place of occurrence, turned hostile and their evidence was relevant only for the purpose of proving the accident. The identification of the appellant is made on the basis of testimony of PW-6 Suglal who was riding the motorcycle. PW-6 deposed in his evidence that after the accident, he saw the accused driver coming out from the driver seat of the mini *Lorry* and although the PW-6 was thrown away by the collision, he was in a conscious state at the relevant point of time.

8. The learned counsel for the appellant would then advert to the provisions of section 161 Code of Criminal Procedure (for short Cr.P.C.) statement given by PW-6 (Annexure P/2) where it was mentioned that the mini *Lorry* driver was an elderly person. Adverting to this omission in the statement given by PW-6 before the Police and his improved testimony before the trial court, the appellant's counsel argues that this will amount to contradiction under the explanation given to Section 162(2) of the Cr.P.C.

9. On the above contention, the crucial thing that needs to be noted is that the appellant, at the relevant time of the accident, was aged around 52 years and the statement given by PW-6 before the Police with regard to the mini *Lorry* driver being an elderly person and his subsequent testimony before the trial court therefore is not found to be so significantly different, which might amount to contradiction. Therefore, the benefit of the explanation to Section 162(2) of the Cr.P.C. cannot be granted to the appellant.

10. The main charge against the appellant is about causing death by rash and negligent driving of the mini *Lorry* which resulted in the death of the pillion rider of the motorcycle. For conviction under Section 304(A) and Section 338 of the IPC, there is no minimum sentence prescribed but the term of sentence may extend to 2 years. The sentence can also be limited to fine without any term of imprisonment. For the offence under Sections 279 and 337 of the IPC, the maximum punishment prescribed is 6 months and punishment can also be fine only.

11. The High Court in the impugned judgment after noticing the circumstances and the material evidence upheld the conviction and

sentenced the appellant to suffer simple imprisonment for 6 months. The accused was also asked to pay compensation of Rs.2.5 lakhs on the basis of assurance given by his counsel offering to compensate the victim's family.

12. A three-Judges Bench of this Court, on 30.06.2021, while considering the case of negligent driving by a bus driver in *Surendran v. Sub-Inspector of Police*, 2021 17 SCC 799, ordered for substitution of sentence, for the conviction under Sections 279 and 338 of the IPC, to fine only. The Court took into account that the accident had happened over 26 years ago and the concerned accused was on bail throughout the trial.

13. In the present case, the appellant was arrested on 10.05.2024 and by now, he has been in custody for about 117 days. Considering the circumstances, while upholding the conviction of the appellant, we deem it appropriate to modify the sentence to the period already undergone, in the interest of justice. Ordered accordingly.

14. Insofar as the direction in the impugned judgment, for payment of compensation of Rs.2.5 lakhs, the learned counsel would point out that the appellant is a poor person and is now aged around 69 years. He has several medical issues and therefore the compensation sum be either waived or be reduced.

15. In the peculiar facts of this case, while upholding the conviction, we reduce the compensation payable by the appellant to Rs.50,000/-. This amount should be deposited before the trial court within 60 days of the release of the appellant. The trial court should then arrange for remitting the amount to the victim's family.

16. Following the above, and the modification of sentence to the period undergone, the appellant, who is lodged currently in the Central Prison and Correctional Home, Thiruvananthapuram, is ordered to be released forthwith. The appeal is disposed of with this order.

17. Pending application(s), if any, shall stand closed.

.....J.
(HRISHIKESH ROY)

.....J.
(SATISH CHANDRA SHARMA)

NEW DELHI;
SEPTEMBER 03, 2024.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 11041/2024

(Arising out of impugned judgment and order dated 13-06-2024 in CRRP No. 606/2024 passed by the High Court of Kerala at Ernakulam)

GEORGE

Petitioner(s)

VERSUS

STATE OF KERALA

Respondent(s)

(FOR ADMISSION and I.R. and IA No.180614/2024-EXEMPTION FROM FILING O.T. and IA No.180613/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 03-09-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Petitioner(s) Mr. P. A. Noor Muhamed, AOR
Mrs. Giffara S., Adv.
Mr. M. Shareef Kp, Adv.
Mr. Ck Prasad, Adv.
Mr. A. Shukoor, Adv.
Mr. A. Nowfal, Adv.
Mr. Ka Shereef, Adv.
Mr. Avaneesh Koyikkara, Adv.

For Respondent(s) Mr. Harshad V Hameed, Adv.
Mr. Dileep Poolakkot, Adv.
Mrs. Ashly Harshad, Adv.
Mr. Farhad Tehmu Marolia, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeal stands disposed of in terms of the signed order.

The operative part of the order reads as under:

"16. Following the above, and the modification of sentence to the period undergone, the appellant, who is lodged currently in the Central Prison and Correctional Home, Thiruvananthapuram, is ordered to be released forthwith. The appeal is disposed of with this order."

VERDICTUM.IN

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed order is placed on the file)