

# VERDICTUM.IN

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. \_\_\_\_\_/2023  
(@ SLP (CrI.) No.9921/2022)

MARTIN @ JINU SEBASTIAN & ANR.

APPELLANT(S)

VERSUS

STATE OF KERALA

RESPONDENT(S)

## O R D E R

Leave granted.

The present appeal has been filed by the accused against the conviction and sentence under Section 304-II read with Section 34 of the Indian Penal Code (For short "IPC"), awarded by the learned Additional Sessions Judge, Thodupuzha ('Trial Court,' for short) on 28.08.2007 in Crime No. 387/2002. Crime No. 387/2002 came to be registered at Adimali Police Station in respect of an accident of the bus driven by the accused-appellant No. 1, with the knowledge of his brother and owner of the bus, accused-appellant No.2. The said accident had caused the death of five passengers and injured sixty-three other passengers. Both the accused were found to have knowingly caused the bus to be driven by accused-appellant No. 1, who had a deformity in his left wrist and who did not possess a valid driving license. The Trial Court had awarded a sentence of rigorous imprisonment for a period of five years to each accused as it concluded that while the accused-appellants did not possess *mens rea* to cause the death of the passengers, they had the knowledge that if Appellant No. 1 drove the bus, he was likely to cause death of or injuries to passengers.

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Aggrieved by the judgement of the Trial Court dated 20.08.2007, the accused-appellants preferred Criminal Appeal No. 1557 of 2007 before the High Court of Kerala. By the impugned judgement dated 26.09.2022, the learned High Court relied upon judgements of this court relating to conviction under Section 304-II in Dalbir Singh v. State of Haryana (2000) 5 SCC 82; Prabhakaran v. State of Kerala (2007) 14 SCC 269 and Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648, and sustained the conviction and sentence awarded to the accused-appellants by the Trial Court. The High Court whilst dismissing the criminal appeal emphasized that one of the most effective ways of keeping drivers of automobiles under mental vigil is to maintain a deterrent element in the sentencing sphere. As such, a sentence of five years of rigorous imprisonment imposed by the trial court cannot be unreasonable and disproportionate in a case where five persons died and sixty-three persons were injured. Accordingly, the suspension of the sentence, as well as relief of bail, was cancelled by the High Court.

Learned counsel for the appellants submitted that the accused-appellants are brothers and that the accused-appellant No.1 is a person with a deformity in his left wrist. Although he may not have a valid driving licence to drive the passenger bus, nevertheless, the accident did not occur due to his rash and negligent driving. Therefore, the trial court as well as the High Court ought not to have convicted the appellants. Alternatively, it was submitted that even if the conviction of the appellants is to be affirmed, the sentence imposed on them could be modified. In that regard, it was

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submitted that Section 304-II categorically states that if culpable homicide not amounting to murder is committed with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death, then the punishment could be imprisonment of either description for a term which may extend to ten years or with fine or both. That in the instant case, no fine has been imposed but rigorous punishment to an extent of five years has been imposed which is disproportionate. It was submitted that the imprisonment could have been for a lesser period and a fine could have been imposed, or alternately, only a fine could have been imposed. Therefore, learned counsel for the appellants sought modification of the sentence as an alternative prayer.

*Per contra*, learned counsel appearing for the respondent State supported the impugned judgements and emphasised that as many as five passengers were killed and sixty-three passengers were injured on account of the accident caused by accused-appellant No.1, the driver of the bus and accused-appellant No.2 being his brother and owner of the bus. Therefore, there can be no interference either in the order of conviction or in the sentence imposed on the accused-appellants.

Having heard learned counsel for both sides, we find that in the instant case, the accident may have occurred due to rash and negligent driving or due to any other reason. The accident cannot be attributed solely to the deformity of the left wrist of accused-appellant No.1 as there is no concrete evidence in that regard. However, the fact remains that on account of the accident on the

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fateful day, as many as five passengers died and sixty-three passengers sustained injuries. It has also been established that the bus was being driven by the accused-appellant No.1 and accused-appellant No.2 is the owner of the bus. However, we find that the trial court could have been more circumspect while awarding punishment. We find that imprisonment up to five years in the instant case in the absence of imposition of any fine is disproportionate, having regard to the peculiar facts of this case. Moreover, the same punishment has been imposed on accused-appellant No.2 herein, who is the owner of the bus and did not have any role in causing the accident as such, but remotely by permitting his brother to drive the bus. In the case of accused appellant No. 2 instead of awarding a sentence of five years rigorous imprisonment, fine could have been imposed.

Further, it was also not proper to invoke Section 304-II read with Section 34 of the IPC inasmuch as there was no common intention to cause the death of the passengers by causing a road traffic accident. Therefore, to that extent, there has been non-application of mind by the trial court and the same being affirmed by the High Court is not just and proper.

Therefore, we are of the considered view that while affirming the conviction, the sentence imposed by the Trial Court calls for modification.

Having regard to Section 304-II, read with Section 34 of the IPC, we find that the modification should be in the following terms:

- i. Insofar as the accused-appellant No.1, the driver of the

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vehicle, is concerned, the sentence shall be reduced to one-year imprisonment. It is stated that he has already completed 10 months' imprisonment and therefore, on completion of one year, he shall be released.

ii. Insofar as the accused-appellant No.2 is concerned, he is on bail since 27.02.2023 and was in custody for a period of four months. Therefore, we modify the sentence of accused-appellant No.2 to the period of sentence already undergone and a fine of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) shall be paid by him. The said fine shall be deposited by the accused-appellant No.2 before the concerned Trial Court within a period of eight weeks from today.

iii. On such deposit being made, the Trial Court shall release an amount of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) to each of the families of the deceased after ascertaining their correct addresses by way of compensation in addition to what they may have received from the Motor Accident Claims Tribunal.

The appeal is allowed in-part in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.

.....J.  
( B.V. NAGARATHNA )

.....J.  
( UJJAL BHUYAN )

NEW DELHI;  
AUGUST 8, 2023

**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). 9921/2022**

**(Arising out of impugned final judgment and order dated 07-07-2022 in CRLA No. 1557/2007 passed by the High Court of Kerala at Ernakulam)**

**MARTIN @ JINU SEBASTIAN & ANR.**

**Petitioner(s)**

**VERSUS**

**THE STATE OF KERALA**

**Respondent(s)**

**(FOR ADMISSION and I.R.  
IA No. 84315/2023 - GRANT OF BAIL)**

**Date : 08-08-2023 This matter was called on for hearing today.**

**CORAM :**

**HON'BLE MRS. JUSTICE B.V. NAGARATHNA  
HON'BLE MR. JUSTICE UJJAL BHUYAN**

**For Petitioner(s) Mr. Sriram Parakkat, Adv.  
Mr. Alim Anvar, Adv.  
Mr. Mohammed Sadique T.a., AOR  
Mr. Vedhagiri Chalka, Adv.  
Mr. Babu Karukapadath, Adv.  
Mr. Shaji J Kodankandath, Adv.**

**For Respondent(s) Mr. C. K. Sasi, AOR  
Ms. Meena K Poullose, Adv.**

**UPON hearing the counsel the Court made the following  
O R D E R**

**Leave granted.**

**The appeal is allowed in-part in terms of the signed order.**

**Pending application(s), if any, shall stand disposed of.**

**(RADHA SHARMA)  
COURT MASTER (SH)**

**(MALEKAR NAGARAJ)  
COURT MASTER (NSH)**

**(Signed order is placed on the file)**