(2002) 06 KL CK 0003

High Court Of Kerala

Case No: Criminal R.P. 282/94

P.K. Scariah		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: June 28, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 354(4), 360
- Motor Vehicles Act, 1988 - Section 20
- Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2003) 1 RCR(Criminal) 430

Hon'ble Judges: M.R. Hariharan Nair, J

Bench: Single Bench

Advocate: T.R. Raman Pillai and T.R. Ramachandran Nair, for the Appellant; T.K. Latiff, Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.R. Hariharan Nair, J.
The accused in C.C. 145/89 challenges the conviction entered by the Judicial First Class Magistrate Court, Vaikom for offence under Sections 279 and 304A of the Indian Penal Code, as confirmed by the Court of Session, Kottayam in Crl. A. 45/91 and the sentence of R.I. for three months for the offence u/s 279 of the I.P.C. and the R.I. for one year for the other offence.

2. The prosecution case was that the accused drove his car bearing Registration No. K.L-5 4206 from South to North along the Vaikom-Ernakulam public road on 19th October 1988 and at about 8.15 am it hit against the act of a bicycle in which one Narayana Pillai was proceeding in the same direction. Though the said cyclist was rushed to the Medical College Hospital, Kottayam on the same day at about 9.45 am., he succumbed to the injuries at about 6.30 p.m. on the same day.

3. Sri T.R. Raman Pillai who appraised for the Appellant submitted that the conviction as such is not challenged at this stage and that taking into account the peculiar circumstances of this case a prison term might be avoided and some other punishment allowable under law might be substituted.

4. In view of the above submission the only point for consideration is whether the accused can be given an alternative punishment avoiding the prison term.

5. The point.--On the date of occurrence in this case the accused was aged 59 years. 14 years have passed by and he must be 73 years old now. The medical certificate produced along with Crl. M.P. 3927/01 on 23rd July 2001 shows that the accused underwent treatment for cerebra-vascular complications with Right Hemiplegia during the period from 29th January 2001 to 12th February 2001 as an inpatient in the S.H. Medical Centre, Kottayam with I.P. No. 7580/99 and that he was still continuing treatment at his residence as outpatient and advised to avoid excessive physical and mental strain which might precipitate a major stroke. During hearing today Sri Raman Pillai submitted further that the accused had Anr. similar episode requiring hospitalisation and that he was actually discharged with advise of bed rest only on 20th June 2002. His days are said to be numbered.

6. The question that arises is whether in a motor accident case resulting in death of a person it is feasible to avoid a prison term and give a lighter punishment. In this regard Sri Raman Pillai has placed before me the decision in Balachandra Waman Pathe v. The State of Maharashtra 1968 A.C.J. 38. That case resulted in death of a girl while she was crossing the road in consequence of rash and negligent driving by the accused. The apex court held therein as follows:

The High Court appears to have been influenced by the fact that a human life had been lost. If that is so it had clearly lost sight of the fact that causing death is a necessary ingredient of an offence u/s 304A Indian Penal Code. Yet the legislature in its wisdom has left it to the discretion of the Courts to punish an offence under that section either with imprisonment or with fine or both. From that it is clear that the legislature did not consider that for an offence u/s 304A Indian Penal Code, a term of imprisonment is a must. On the other hand it did visualise the possibility of an offence falling under that provision being penalised by mere fine.

7. 1995 Supp. (2) SCC 385 , dealt with a case where a motor vehicle driven by the accused dashed against a boy who was standing on the Kutcha portion of a road which resulted in his eventual death. In the matter of punishment the apex court considered the fact that the incident therein took place 15 years before the matter came up before the apex court. For about 8 years preceding the consideration of the case by the apex court the accused was on bail. Taking into account these two factors the court observed that the interests of justice would be met if instead of sentencing the Appellant to serve a term of imprisonment and sending him to prison again, he could be released u/s 360 of the

Code of Criminal Procedure on his entering into a bond with a surety to keep good conduct and to be of good behaviour and keep peace for a period of one year.

8. It would appear from the above decisions that though motor accidents causing death of Ors. have to be viewed seriously as laid down in. Kuriakose v. State 1993 (2) KLT 292 and adequate deterrent punishment should normally be meted out to the offenders, the application of principles of probation or even imposition of fine instead of a prison term is not altogether ruled out. Even Section 354(4) of the Code of Criminal Procedure leaves adequate discretion in the matter to the court provided adequate reasons exist and they are recorded in the Judgment. It is clear from a perusal of Sections 279 and 304A of the I.P.C. that for both of these offences prison term is not a must. Both the sections provide for imposition of fine as an alternative or even along with a prison term. Thus the parliament has given a vide discretion to the court in the matter of punishment to be imposed even for offences under Sections 279 and 304A of the I.P.C. It cannot therefore be said that a prison term is a must. The courts will always have discretion to avoid a prison term in an appropriate case if facts and circumstances justify such an action and reasons are recorded.

9. In the present case the fact that the accused at present is in a very bad stage of health and is aged 73 years now has to be taken note of. His medical history shows that if he is sent to prison there is every likely hood of his-meeting with his end in the prison itself. The fact that the occurrence in this case took place 14 years ago and that the accused has been on bail all along is also a matter to be taken note of along with his present age.

10. When all the said circumstances are taken into account, I am of the view that imposition of fine would be proper and adequate punishment for the Petitioner. Consequently the sentence imposed by the trial court and confirmed y the appellate court is set aside and the accused is directed to pay a fine of Rs. 12,000 for the offence u/s 304A of the I.P.C. and fine of Rs. 1,000 for the offence u/s 279 of the I.P.C. When the fine is realised a sum of Rs. 10,000 out of the same will be paid over to the legal heirs of the deceased. In case the fine is not paid the accused will undergo alternative term of S.I. for a period of three months and one month respectively. The fines will be paid within a period of one month from today to the trial court, which will issue necessary notice in the matter of release of the compensation amount directed to the legal heirs as above, to Venu, who is the son of the deceased whose details are made mention of in column 9 of Ext. P-10 inquest report, as a representative of all legal heirs. I also declare, u/s 20 of the Motor Vehicles Act, 1988 that the Appellant shall be disqualified from holding any driving licence for the rest of his life. It was directed, as per order passed in Crl. M.P. 583/94 on 3rd March 1994 that the Petitioner should surrender his driving licence. If it is surrendered it will be sent over to the Authority who issued the same along with a copy of this Judgment for making appropriate endorsement/action as required by the M.V. Act and the Rules framed thereunder. If, however, the licence is not yet surrendered, necessary action for implementing the directions in this Judgment as regards the licence shall be pursued by the licencing authority on receipt of a copy of this Judgment.