

**Joy Vs. State**

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**Court :** Kerala

**Decided On :** Dec-20-2012

**Judge :** Honourable Mr.Justice S.Siri Jagan

**Appellant :** Joy

**Respondent :** State

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN THURSDAY, THE 20TH DAY OF DECEMBER 2012 29TH AGRAHAYANA 193 CrI.Rev.Pet.No. 1511 of 2002 ----- CRA.142/2000 of 5TH ADDL.SESIONS JUDGE,EKM STC.285/1998 of J.M.F.C.,KOLENCHERRY REVISION PETITIONER(S)/APPELLANT/ACCUSED:: ----- JOY, S/O. VARKEY, PUTHUPULLY VEEDU, MARANGATTULLIKARA THIRUVANIYOOR VILLAGE. BY ADV. SRI.M.S.MANIKANDAN COMPLAINANT(S)/RESPONDENTS/COMPLAINANTS::

----- 1. STATE, REPRESENTED BY THE S.I. OF POLICE PUTHENCROUZ.

2. PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY ADV. PUBLIC PROSECUTOR SRI.BIJU MEENATTOOR. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-12-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: stu S.SIRI JAGAN, J.

===== Crl.R.P. No. 1511 of 2002 ===== Dated  
this the 20th day of December, 2012

## ORDER

The petitioner is the accused in Calender Case No. 285 of 1998 before the Judicial First Class Magistrate, Kolencherry. He was prosecuted for an offence punishable under Section 185 of the Motor Vehicles Act. The prosecution case was that the petitioner drove service bus bearing registration not KL7 L 297.on 04.06.1997 at 6.45 p.m. through Muvattupuzha-Ernakulam National Highway from west to east and when the bus reached at Puthupanam, on being checked by CW7 Sub Inspector of Police it was revealed that the petitioner had consumed liquor and he drove the bus consuming liquor, thus committing the offence under Section 185 of the Motor Vehicles Act.

2. The prosecution examined PWs.1 to 5 and marked Exhibits P1 to P4. The defence examined DW1 and marked Crl.R.P. No. 3050 o

2. Exhibit D1 trip sheet. After considering the evidence adduced, the Magistrate convicted the petitioner and sentenced him to undergo simple imprisonment for one month and to pay fine of Rs.1000/- , with a default sentence of simple imprisonment for 15 more days. The petitioner challenged the judgment of the Magistrate by filing Criminal Appeal No.142 of 2000 before the 5th Additional Sessions Judge, Ernakulam, which was dismissed. The petitioner is challenging the judgments of the courts below.

3. The case of the petitioner is that the prosecution case is totally false. According to him, the bus in question was garaged on the date in question, which has been proved by Ext.D1 trip sheet of the bus and DW1 Conductor of the bus also stated so in his evidence. The petitioner submits that the defence put up by the petitioner is more probable. According to the petitioner, the petitioner has consumed alcohol along with CW's 3 and 4 and two other Policemen in a bar and there was a dispute regarding the payment of bill, enmity arose, consequent to which a false case has been foisted on the petitioner and the petitioner was sent for Crl.R.P. No. 3050 o

3. medical examination.

4. On the other hand, the learned Public Prosecutor would contend that the prosecution has proved the case through the concerned Sub Inspector of Police, who apprehended the petitioner and by examining a passenger of the bus in question, whose evidence would conclusively prove the prosecution case. It is pointed out that regarding the defence version, there was no consistency. In the statement under Section 313 of the Criminal Procedure Code, the case of the petitioner was that he and other two policemen consumed alcohol in the police quarters and after consuming the alcohol, the policemen demanded the price of the alcohol, consequent to which there was a scuffle. It is because of that enmity, the petitioner has been taken to the doctor and medical examination conducted is the case of the defence. On the other hand, while cross examining PW5 Sub Inspector of Police, the suggestion put to him is that CWs.3, 4 and two other police officers had consumed liquor with the petitioner in a bar and pursuant to a dispute regarding the payment of bill, the case was CrI.R.P. No. 3050 o

4. falsely foisted on the petitioner. This discrepancy itself is sufficient to prove that the defence version is totally false, is the contention raised.

5. I have considered the rival contentions in detail.

6. The prosecution has proved the case by examining the Sub Inspector of Police, who checked the bus, while it was conducting service. A passenger of the bus was also examined to prove the same. Of course, the passenger did not identify the driver of the vehicle. He only stated that the police had taken the driver of the bus in which he travelled into custody. He did not state that the driver was the petitioner. But still the evidence of the passenger namely, PW2, at least proves that the very same bus was inspected by PW5 Sub Inspector of Police and the driver of that bus was taken into custody by the Sub Inspector of Police. It is not in dispute that the petitioner was the driver usually employed in that bus, although he would dispute that, on that day he had driven the vehicle. Of course, the petitioner had raised a specific contention that he had liquor along with CWs.3 and 4 in a bar. The CrI.R.P. No. 3050 o

5. prosecution had included them as witnesses, but they did not examine them. Ideally, when the petitioner raised a specific contention that he had liquor with

CWs.3 and 4 in a bar, the prosecution could have examined them to disprove the same, especially after including them in the witnesses list. But it is a fact that the version of the petitioner in respect of his defence was not consistent. In the statement under Section 313, his contention was that he was taken from a workshop by CWs.3 and 4 and others to the police quarters and they had consumed liquor together in the police quarters from where he was taken for medical examination as a result of a dispute on account of the petitioner refusing to pay for the liquor. But the suggestion put by him to PW5 Sub Inspector of Police was that he had liquor along with the policemen in a bar where there was dispute regarding payment of bill. The petitioner does not have a case that the Sub Inspector of Police had any role in the dispute also. As such, I am satisfied that the prosecution has proved their case beyond a reasonable doubt on which the petitioner could not put any doubt by his evidence. CrI.R.P. No. 3050 o

6. Therefore, I am not inclined to interfere with the conviction entered by the courts below.

7. However, I am inclined to interfere with the punishment imposed. Taking a lenient view, I reduce the punishment to one till rising of the court and increase the fine to Rs.2,000/-. The petitioner shall appear before the Magistrate to undergo the sentence of imprisonment till rising of the court, after paying the fine amount, on 21.01.2013. Till then Magistrate shall not execute the sentence. The Criminal Revision Petition is disposed of as above. S.SIRI JAGAN, JUDGE. stu

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