

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

Cr1.Rev.Pet.No. 3050 of 2009 ( )

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JUDGMENT IN Cr1.A 572/2007 OF ADDITIONAL SESSIONS COURT, FAST TRACK  
(ADHOC-I), KOZHIKODE

JUDGMENT IN CC 372/2005 OF THE JUDICIAL FIRST CLASS MAGISTRATE  
COURT-I, PERAMBRA

REVISION PETITIONER/APPELLANT/ACCUSED:

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BIJU, S/O.RAMACHANDRAN,  
MARUTHORAMMAL HOUSE, MENHANYAM AMSOM DESOM  
KOYILANDY TALUK, KOZHIKODE DISTRICT.

BY ADVS.SRI.K.P.SUDHEER  
SMT.BINDU GEORGE

RESPONDENT/RESPONDENT/COMPLAINANT:

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STATE OF KERALA,  
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA  
ERNAKULAM, REPRESENTING STATION HOUSE OFFICE  
PERAMBRA POLICE STATION.

R, BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 06-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

**B. SUDHEENDRA KUMAR, J.**

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Crl.R.P. No.3050 of 2009  
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Dated this the 6<sup>th</sup> day of November, 2015

**ORDER**

The revision petitioner is the accused in C.C.No.372 of 2005 on the files of the court of the Judicial Magistrate of First Class-I, Perambra.

2. The trial court convicted the revision petitioner under Sections 279 and 338 IPC and sentenced him thereunder to simple imprisonment for three months under Section 279 IPC and simple imprisonment for three months under Section 338 IPC. The appeal filed against the said conviction and sentence, was dismissed by the appellate court. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that on 30.5.2005 at about 7.30 p.m., the revision petitioner drove a motor cycle bearing registration No.KL-11/K 6486 along Perambra Payyoli

Public road in a rash and negligent manner endangering human life and when it reached at Mammilikulam, it hit against a motor cycle driven by PW1 and consequently, PW1 was thrown to the road and he sustained injuries.

5. Before the trial court, PW1 to PW11 were examined and Exts.P1 to P7 were marked for the prosecution. No evidence was adduced on the side of the defence.

6. The courts below, after evaluating the oral and documentary evidence adduced by the prosecution, concurrently found that the revision petitioner drove the motor cycle in a rash and negligent manner and it hit against the motor cycle driven by PW1 on 30.5.2005 at about 7.30 p.m., causing injuries on PW1. Since there is concurrent finding on facts, this court will not be justified in interfering with the same, unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below

that the revision petitioner drove the motor cycle bearing registration No.KL-11/K 6486 in a rash and negligent manner on 30.5.2005 at about 7.30 p.m., along the public road and when it reached at Mammilikulam, it hit against the motor cycle driven by PW1 and as a consequence, PW1 sustained injuries, does not warrant any interference by this Court.

7. Now the question to be considered is the nature of injuries sustained by PW1. The evidence of PW4 coupled with Ext.P2 wound certificate would show that PW1 sustained only suspected fracture. There is no material before the court to show that PW1 sustained any fracture in the incident. Therefore, it cannot be said that PW1 sustained grievous hurt. No injury amounting to grievous hurt as mentioned in Section 320 IPC was sustained by PW1. Consequently, the conviction under Section 338 IPC must be altered to conviction under Section 337 IPC and accordingly, I order so.

In the result, this revision petition stands allowed in part, confirming the conviction under Section 279 IPC and

altering the conviction under Section 338 IPC to Section 337 IPC. The revision petitioner is sentenced to a fine of ₹1,000/- and in default to simple imprisonment for one month under Section 279 IPC. The revision petitioner is further sentenced to a fine of ₹500/- and in default to simple imprisonment for 15 days under Section 337 IPC.

The revision petitioner shall surrender before the trial court on 2.12.2015 to suffer the sentence.

Sd/-  
**B. SUDHEENDRA KUMAR**  
**JUDGE**

ScI/7.11.2015

True Copy

PA to Judge