

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2015

Coram

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

Criminal Revision Case No.202 of 2010

Kumar

.. Petitioner/Accused

Versus

State of Tamilnadu
The Inspector of Police,
Kedar Police Station (L & O)
Villupuram District.
(Cr.No.117 of 2005)

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the Judgment dated 23.12.2009 made in Criminal Appeal No.36 of 2009 on the file of the learned Principal District and Sessions Judge, Villupuram, confirming the order dated 21.10.2009 made in C.C. No.328 of 2005 on the file of the Judicial Magistrate No.II, Villupuram.

For Petitioner : Mr.P.Senguttuvan

For Respondent : Mr.V.Arul,
Government Advocate (Crl.side)

ORDER

This Criminal Revision Case has been preferred against the Judgment dated 23.12.2009 made in Criminal Appeal No.38 of 2008 on the file of the learned Principal District and Sessions Judge, Villupuram, confirming the order dated 21.10.2009 made in C.C. No.328 of 2005 on the file of the Judicial Magistrate No.II, Villupuram.

2. The case of the respondent/complainant is that on 10.09.2005, the petitioner/accused had driven the lorry in a rash and negligent manner and dashed against the bicyclist/victim a 16 years old, school going girl. Hence, a case under Sections 279, 304(A) of IPC had been registered. After trial, the accused was convicted under Section 304 (A) and sentenced to undergo one year rigorous imprisonment and to pay a fine of of Rs.2,000/- in default to undergo three months simple imprisonment. Aggrieved over the same, the accused preferred an appeal and the same was also dismissed. Against which, this Criminal Revision Case has been filed.

3. Learned counsel appearing for the revision petitioner would contend that though the accused was charged under Sections 279 & 304 (A) of IPC, he was convicted only under Section 304(A) of IPC and hence, there was no rash and negligent driving on the part of the accused. Further, he would contend that only on mere presumption, a

case had been registered against the accused which is not in accordance with law and hence, prays for allowing the revision.

4. Learned Government Advocate (Crl.side) appearing for the respondent would content that the court below only after considering the evidence of eye witnesses P.W.2, who had identified the accused and the evidence of P.W.3, who was running the tea shop and also taking into consideration the evidence of other eye witnesses has categorically given finding that the accused had committed the offence. Therefore, there is no error or infirmity in the order passed by the court below and prays for dismissal of the revision.

5. Heard both sides and perused the materials available on record.

6. On a careful perusal of the order, it is seen that there is clear evidence of P.W.3, who has clearly stated about the registration number of the offending vehicle and from the reading of the other witnesses, it is clear that the petitioner had committed the offence. Even if we take into account the contentions raised by the learned counsel for the petitioner that there was a presumption on the accused, it is seen from the evidence that the accused after committing the offence had ran away from the scene of occurrence would definitely make out a case against him. Only after analysing the evidences of P.Ws.1 and 3 especially the evidence of P.W.3, who is the owner of the tea shop both the courts below have categorically held that the accused had driven the vehicle in a rash and negligent manner and caused the accident. Hence, I do not find any infirmity or illegality in the orders passed by the courts below. However, taking into consideration the submission of the learned counsel for the petitioner/accused that the accused had already undergone sentence of 63 days and also taking into account that he is a poor person and has to maintain his family, I am inclined to show some leniency to the accused.

7. Accordingly, the conviction and sentence imposed on the petitioner is modified to that effect that the accused is directed to undergo rigorous imprisonment for six months instead of one year as ordered by the court below including the period already undergone. The Court below is directed to take necessary steps to arrest the accused to undergo the remaining period of sentence.

8. With the above modification in sentence, this Criminal Revision Case is partly allowed.

Smi

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Principal District and Sessions Judge,
Villupuram.
2. The Judicial Magistrate No.II,
Villupuram.
3. The Chief Judicial Magistrate,
Villupuram
4. The Public Prosecutor,
High Court, Madras

CrI.R.C.No.202 of 2010

CA(CO)
sd : 24/11/2015



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