

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.562 of 2011

Kumar
S/o.Kolanda Gounder

... Petitioner

VS

State represented by
Inspector of Police,
Traffic Investigation Wing P.S.,
Salem District.
Crime No.43 of 2006

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of learned Judicial Magistrate II, Salem, passed in C.C.No.344 of 2007 on 18.11.2010 confirming the judgment of learned Additional District and Sessions Judge, Fast Track Court I, Salem, passed in C.A.No.173 of 2010 on 18.02.2011.

For Petitioner : Mr.S.R.Rajan

For Respondent : Mr.V.Arul
Additional Public Prosecutor

ORDER

This revision arises against two concurrent judgments of Courts below convicting petitioner for offences u/s.304-A and 279 IPC and sentencing him to 1 year S.I. and fine of Rs.5,000/- i/d 3 months S.I.

2. Prosecution case is that on 18.01.2006 at about 12.30 p.m., petitioner/accused drove the auto in a rash and negligent manner and dashed against the motor cycle driven by the deceased, owing to which the deceased sustained grievous injuries and died. A case was registered in Crime No.43 of 2006 on the file of respondent. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.279 and 304-A IPC, the case was tried in C.C.No.344 of 2007 on the file of learned Judicial Magistrate II, Salem.

3. Before trial Court, prosecution examined 10 witnesses and marked 7 exhibits. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 18.11.2010, convicted the petitioner/accused for offences u/s.304-A and 279 IPC and sentenced him to 1 year S.I. and fine of Rs.5,000/- i/d 3 months S.I. There against, petitioner preferred C.A.No.173 of 2010 on the file of

which came to be dismissed under judgment dated 18.02.2011. Hence, this revision.

4. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

5. The case has been registered in Crime No.43 of 2006 on the file of respondent on the complaint preferred by PW-1. He has preferred the complaint on his hearing of the occurrence. PWs.2, 3 and 8 were examined as eye witnesses thereto. While PW-2 has admitted to not knowing how the occurrence took place, it is the evidence of PW-3 that she had gone to the scene on hearing thereof. Another alleged eye witness, PW-8, has been treated hostile since she did not support the prosecution case. PW-4, wife of the deceased, has been examined merely to speak of her husband having suffered death in an accident. PWs.5 and 6 are the mahazar witnesses while PW-7 is the Doctor, who conducted the postmortem. PW-10 is the investigation officer. Therefore, the prosecution case is not supported by ocular testimony of the alleged eye witnesses. The conviction for offence u/s.304-A and 279 IPC can flow only when there is evidence of petitioner having driven his vehicle in a rash and negligent manner. The case is one of no evidence much less of rash and negligent act on the part of petitioner.

C.T.SELVAM, J

gm

The Criminal Revision Case shall stand allowed. The judgment of learned Judicial Magistrate II, Salem, passed in C.C.No.344 of 2007 on 18.11.2010 confirming the judgment of learned Additional District and Sessions Judge, Fast Track Court I, Salem, passed in C.A.No.173 of 2010 on 18.02.2011, shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

13.09.2017

Index:yes/no

Internet:yes

gm

To

- 1.The Judicial Magistrate II,
Salem.
- 2.The Additional District and Sessions Judge,
Fast Track Court I,
Salem.
- 3.The Inspector of Police,
Traffic Investigation Wing P.S.,
Salem District.
- 4.The Public Prosecutor,
High Court, Madras.