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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.942 of 2019

KOTHANDARAMAN ...Petitioner/Appellant/Single Accused

Vs.

State by its
SUB-INSPECTOR OF POLICE
Ponnur Police Station
Ponnur
Thiruvannamalai District
(Cr.No.82 of 2006)

...Respondent/Respondent/Complainant

Prayer : Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the Judgment passed in Criminal Appeal C.A.No.24 of 2014 dated 03.08.2019 by the Additional District Judge (FTC) Arani, Thiruvannamalai District, confirming the Judgment passed in C.C.No.678 of 2006 dated 23.09.2014 passed by the District Munsif cum Judicial Magistrate, Vandavasi.

For Petitioner	: Mr.K.G.Senthilkumar
For Respondent	: Mr.S.Sugendran
	Government Advocate (Crl.Side)

ORDER

(The case has been heard through video conference)

This Criminal Revision has been filed against the Judgment passed in C.A.No.24 of 2014 dated 03.08.2019 by the Additional District and Sessions Judge (FTC) Arani, Tiruvannamalai District, confirming the Judgment passed in C.C.No.678 of 2006 dated 23.09.2014 by the District Munsif cum Judicial Magistrate, Vandavasi.

2. The respondent police registered the case against the petitioner in Crime No.82 of 2006 for the offences punishable under Sections 279 and 304(A) IPC. After completing the investigation, they laid charge sheet before the learned District Munsif cum Judicial Magistrate, Vandavasi and the learned Magistrate taken the charge sheet on file in C.C.No.678



of 2006 and after completing the trial, convicted the petitioner for the offences punishable under Section 304(A) IPC and sentenced him to undergo one year simple imprisonment and no separate sentence was imposed for the offence under Section 279 IPC. Challenging the said Judgment of conviction and sentence, the petitioner filed an appeal before the learned Principal District and Session Judge, Tiruvannamalai, and the learned Sessions Judge taken the appeal on file in C.A.No.24 of 2014 and made over the case to the Additional District and Sessions Judge, (FTC), Arani, Tiruvannamalai District. The learned Additional District and Sessions Judge, on conclusion of arguments and after re-appreciating the entire evidence, dismissed the appeal and confirmed the Judgment of conviction and sentence passed by the learned Magistrate in C.C.No.678 of 2006 dated 23.09.2014. Challenging the said Judgment of dismissal of appeal, the present revision has been filed before this Court.

3. The learned Counsel for the petitioner would submit that the petitioner is the rider of the two wheeler "TVS 50 XL" bearing Regn.No.TN 25 Y 4009 and even if he wants, he could not drive the vehicle beyond the speed of 30 kilo meters and that there was no rash and negligent driving. It is only a collusion because of the fault on the part of the deceased. He would further submit that the deceased was a pillion rider. Therefore, it is not possible for the petitioner to hit the deceased and a false case has been foisted against the petitioner and in order to get compensation, they fixed the liability on the petitioner. He would further submit that the petitioner was not given opportunity to cross examine the witnesses viz., P.W.1 and P.W.2. Though, the petitioner approached the appellate Court, the appellate Judge without any valid reason, dismissed the same. He would further submit that the prosecution has not proved its case beyond reasonable doubt and thereby, the benefit of doubt has to be extended to the petitioner/accused. Further, the points raised before the trial Court was not considered and the trial Court without properly appreciating the entire evidence, convicted the petitioner and both the Courts below have failed to appreciate the contradictions pointed out by the defence. Further, the appellate Court has not re-appreciated the entire evidence properly and simply endorsed the views of the learned Magistrate which warrants interference of this Court.

4. The learned Government (Crl. Side) would submit that P.W.1 is the eye witness in this case and he has clearly narrated the manner of accident. The evidence of P.W.2 and the post mortem certificate are also corroborated the evidence of



P.W.1. The learned Counsel for the appellant pointed out the injuries sustained by the deceased. However, the opinion of the doctor shows that the deceased sustained head injury and due to which, he died. Therefore, both the Courts below have rightly appreciated the evidence and convicted the petitioner and sentenced as stated above. Therefore, there is no merit in the revision petition and the revision is liable to be dismissed.

5. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials on record.

6. Admittedly, the case has been registered against the petitioner in Crime No.82 of 2006 for the offences punishable under Sections 279 and 304(A) IPC. After completing the investigation, they laid charge sheet before the learned District Munsif cum Judicial Magistrate, Vandavasi and the learned Magistrate after completion of trial convicted the petitioner for the offences punishable under Section 304(A) IPC and sentenced him to undergo one year simple imprisonment and no separate sentence was ordered for the offence under Section 279 IPC. Challenging the said Judgment of conviction and sentence, the petitioner filed appeal in C.A.No.24 of 2014 and the same was dismissed by the learned Additional District and Sessions Judge, (FTC), Arani, Tiruvannamalai District confirming the Judgment of conviction and sentence passed by the learned Magistrate. Challenging, the said Judgment of dismissal of appeal, the petitioner is present before this Court.

7. The case of the prosecution is that on 03.09.2006 at about 7 p.m. the defacto complainant was proceeding towards Vandavasi in his two wheeler "Hero Honda Splendor Plus" bearing Regn. No.TN 23 L 8370 along with his friend Rajendran and when they were proceeding near Sathya Nagar, the petitioner who was driving his two wheeler "TVS 50 XL" bearing Regn.No.TN 25 Y 4009 in a rash and negligent manner, dashed on the right knee of the said Rajendran who was traveling along with the defacto complainant as a pillion rider, due to which, the said Rajendran fell down and sustained injury on the back side of his head. Immediately, the said Rajendran was taken to Vandavasi Government Hospital wherein, he was referred to Chengalpet Government Hospital for higher treatment and when the injured was taken to Chengalpet Medical College, he was declared as brought dead.

8. In order to substantiate the charges framed against the accused, on the side of the prosecution, P.W.1 and P.W.2 were



examined. A reading of the evidence of P.W.1 wherein, he has clearly narrated the entire incident and deposed that the accident took place due to the rash and negligent act of the petitioner. Further, he has deposed that the petitioner is the person who dashed against the deceased who was sitting in his vehicle as pillion rider, due to which the deceased Rajendran fell down and sustained head injury.

9. P.W.1 was not cross examined and that the evidence of P.W.1 was not challenged. Since, P.W.1 is the eye witness to the accident, he has clearly spoken about the manner of accident and he has stated that the accident took place only due to the rash and negligent act of the petitioner. P.W.2 has also stated that on the date of occurrence there was an accident due to which, both the vehicles were found lying at the left side of the road and the said Rajendran had sustained head injury. Further, he has deposed that at the time of accident, the petitioner who drove the vehicle was in a drunken state. Therefore, both the Courts below have rightly appreciated the materials and the evidence of the eye witness and convicted the petitioner.

10. The scope of the revision is very limited. This Court cannot sit in the arm chair of the appellate Court and cannot appreciate or re-assess the evidence as trial Court and appellate Court. As a revision Court, this Court while exercising its power, has to find out whether there is any perversity in the appreciation of evidence in the Judgments passed by the Courts below.

11. Accordingly, a completing reading of the evidence of P.W.1 and P.W.2, this Court does not find any perversity in appreciation of evidence by both the Courts below. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

12. As far as the quantum of sentence is concerned, though the accident took place due to the rash and negligent driving of the petitioner, there was no intention on the part of the petitioner. Therefore, this Court is inclined to modify the sentence of imprisonment alone.

13. Accordingly, the Judgment passed in C.A.No.24 of 2014 dated 03.08.2019 passed by the Additional District and Sessions Judge (FTC) Arani, Tiruvannamalai District, confirming the Judgment passed in C.C.No.678 of 2006 dated 23.09.2014 by the



District Munsif cum Judicial Magistrate, Vandavasi, is confirmed. However, the sentence of imprisonment alone is modified to six months simple imprisonment instead of one year which still meets the ends of justice. The respondent police is directed to secure the petitioner to undergo remaining period of imprisonment as modified by this Court.

14. With the above modification, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Additional District and Sessions Judge (FTC),
Arani, Tiruvannamalai District
2. The District Munsif cum Judicial Magistrate, Vandavasi.
3. The Sub Inspector of Police
Ponnur Police Station
Ponnur
Thiruvannamalai District
4. The Public Prosecutor Officer, High Court, Madras.
5. The Section Officer, Criminal Section, High Court, Madras.

+1CC to Mr.K.G.Senthilkumar, Advocate, Sr.No.42562

Criminal Revision Case No.942 of 2019

KV (CO)
K.RK. (22.09.2021)