

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 25.09.2018**

**CORAM:**

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

**Crl.R.C.No.894 of 2013  
& M.P.No.1 of 2013**

Sathish Kumar

...Petitioner

Vs.

The State Represented by  
The Inspector of Police  
Katpadi Police Station  
Katpadi, Vellore District.  
(Crime No.75 of 2007)

...Respondent

**Prayer:** This Criminal Revision filed under Section 377 read with 401 of Code of Criminal Procedure to set aside the judgment dated 05.04.2013 made in Cr.A.No.155 of 2010 on the file of the 1<sup>st</sup> Additional District and Sessions Judge, Vellore, Vellore District. Modifying the judgment dated 17.06.2010 made in C.C.No.80 of 2009 on the file of the Judicial Magistrate, Katpadi, Vellore District.

For Petitioner

: M.Sathish Kumar

For Respondent

: Mr.R.Ravichandran  
Govt. Advocate (Crl.Side)

**ORDER**

The Criminal Revision Case has been filed to set aside the judgment dated 05.04.2013 made in Cr.A.No.155 of 2010 on the file of the 1<sup>st</sup> Additional District and Sessions Judge, Vellore, Vellore District, modifying the order dated 17.06.2010 made in C.C.No.80 of 2009 on the file of the Judicial Magistrate, Katpadi, Vellore District.

2. The case of the prosecution is that on 15.03.2007, at about 08.40 pm on Vellore to Chittoor road near the bus stop of Katpadi Kalpudur, while the deceased Harikrishnan was standing on the eastern side of the road, the revision petitioner/accused drove the two wheeler bearing Reg.No.23 AC 9786 in a rash and negligent manner and dashed against the said Harikrishnan and caused death to him. Hence, the Inspector of Police, Katpadi Police Station filed Final Report against the revision petitioner/accused under Section 279 and 304(A) of IPC.

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3. The learned Judicial Magistrate, Katpadi after furnishing the copies of documents under Section 207 of Cr.P.C., questioned about the involvement of the accused with the offences under Section 279

and 304(A) of IPC and the revision petitioner/accused pleaded not guilty and claimed to be tried.

4. In order to prove the case on the side of the prosecution 11 witnesses P.Ws.1 to 11 were examined and 7 documents Exs.P.1 to 7 were marked. No material object was produced. No oral and documentary evidence adduced on the side of the revision petitioner/accused.

5. The trial Court, after having analyzed the arguments of both sides, found that the revision petitioner is guilty under Sections 279 and 304(A) of IPC and convicted and sentenced to undergo Simple Imprisonment for 1 year and to pay a fine of Rs.5,000/- and in default to undergo Simple Imprisonment for further period of three months for the offence under Section 304(A) of IPC.

6. Aggrieved by the order of the Judicial Magistrate, Katpadi, in C.C.No.80 of 2009 dated 17.06.2010, the revision petitioner/accused preferred the Criminal Appeal before the learned 1<sup>st</sup> Additional District and Sessions Judge, Vellore, Vellore District.

7. After giving due opportunity to both sides, the learned 1<sup>st</sup> Additional District and Sessions Judge, Vellore, Vellore District, dismissed the appeal and modified the sentence imposed under Section 304(A) of IPC, to undergo Simple Imprisonment for three months and to pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for three months.

8. Against the Judgment of the learned 1<sup>st</sup> Additional District and Sessions Judge, Vellore, Vellore District, in C.A.No.155 of 2010 dated 05.04.2013, the revision petitioner/accused has filed the present Criminal Revision Case.

9. Heard and perused the materials available on record.

10. The learned counsel for the revision petitioner/accused would submit that there was a delay in lodging the FIR. Date of occurrence was on 15.03.2007 at 08.40 pm and the same was reported on 16.03.2007 at 09.00 am. Admittedly, the deceased who was succumbed to the accident namely Harikrishnan was taken to the hospital and subsequently he was declared dead.

11. Further the learned counsel for the revision petitioner would submit that at the time of alleged accident, i.e., on 15.03.2007, the vehicle involved in the accident was not registered one is unsustainable. The complaint Ex.P.1 and the FIR Ex.P.5 goes to show that the grey colour unregistered bike was involved in the accident bearing Reg.No.TN 2 AC 9786 and the 12<sup>th</sup> column of the M.V.report goes to show that in the said vehicle Head lamp, fork, meter box assembly and mud guard front were all damaged. Further after 5 days from the date of accident, the vehicle was inspected by P.W.9, M.V.Inspector. There was a material contradiction on the side of the prosecution. Ex.P.6 rough sketch and evidence of P.W.1 and 2 goes to show that the accident had occurred on extreme left side of the road that itself shows that the appellant had driven the vehicle in right path. Further the prosecution has not examined the doctor of the private hospital, in which the deceased Hari Krishnan was given treatment. Further there are several material contradictions and inconsistencies found in the witnesses of prosecution side and pray for acquittal of the revision petitioner.

12. Mr.R.Ravichandran, Government Advocate (Criminal Side) appearing for the respondent would submit that the accident took

place at 08.40 pm on 15.03.2007. FIR was registered on 16.03.2007 at 09.00 am. The natural instinct of a prudent man and his first priority will be going to the hospital in order to save the life of the injured person. So the deceased Harikrishnan was taken to the hospital at the first instance and he was given treatment and subsequently on the next day morning the FIR was launched. Hence the delay in registering the FIR cannot be viewed as suspicion. Further the counsel for the revision petitioner/accused has raised that the prosecution has not examined the doctor of the private hospital in which the deceased Harikrishnan was given treatment. Non-examination of a doctor who gave treatment to the deceased will not affect the prosecution case. P.W.9, is the Motor Vehicle Inspector, who has inspected the vehicle and given M.V.Report Ex.P.4, which goes to show that the head lamp, fork, metre box assembly and mudguard were damaged in the vehicle. Therefore, the prosecution has proved the case beyond reasonable doubt against the revision petitioner/accused. The learned Judicial magistrate, Katpadi, has rightly convicted the revision petitioner/accused under Section 279 and 304(A) of IPC and the learned I Additional District and Sessions Judge, Vellore, though confirmed the conviction and sentence imposed by the trial Court, modified the sentence imposed under Section 304(A) of

IPC, and the revision petitioner/accused is convicted and sentenced to undergo Simple Imprisonment for three months and to pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for three months. Hence the Criminal Revision Case may be dismissed.

13. The P.W.1 has deposed that on 15.03.2007, at 08.40 pm, the accident had occurred. At the time of accident, the deceased Harikrishnan was walking from east to west in the road. The hero honda vehicle driven by the revision petitioner/accused had caused the accident, thereby, the deceased Harikrishnan had sustained head injuries and subsequently he was taken to the hospital where he was declared dead. P.W.1 has given complaint and marked as Ex.P.1. P.W.2 also corroborates the evidence of P.W.1. P.W.6 has stated that a person came in the hero honda vehicle hit the deceased and in his presence the observation mahazar was prepared by the police i.e., Ex.P.2. P.W.6 has not mentioned the name of the revision petitioner. Further the vehicle involved in the accident was not registered one as mentioned in the complaint Ex.P.1 and the FIR Ex.P.5 goes to show that the grey colour unregistered bike was involved in the accident bearing Reg.No.TN 2 AC 9786 and the 12<sup>th</sup> column of the M.V.report goes to show that in the said vehicle Head lamp, fork, meter box

assembly and mud guard front were all damaged. Further after 5 days from the date of accident, the vehicle was inspected by P.W.9, M.V.Inspector.

13. There were material contradictions on the side of the prosecution evidences. Thereafter, on a perusal of the complaint and FIR name of the revision petitioner/accused has not been mentioned and in the F.I.R, vehicle number was not mentioned, though they have stated that the vehicle is for registration, at the time of accident, the offending vehicle was not registered. Though the revision petitioner also sustained injuries in the said accident, none of the witnesses identified the revision petitioner. Further the prosecution has failed to establish how the revision petitioner/accused sustained injury at the time of accident.

14. Therefore, under these circumstances, when two views are possible, always the benefit of doubt should be extended to the accused. Since the prosecution has failed to prove the case beyond reasonable doubt, conviction recorded by both the courts below are set aside.

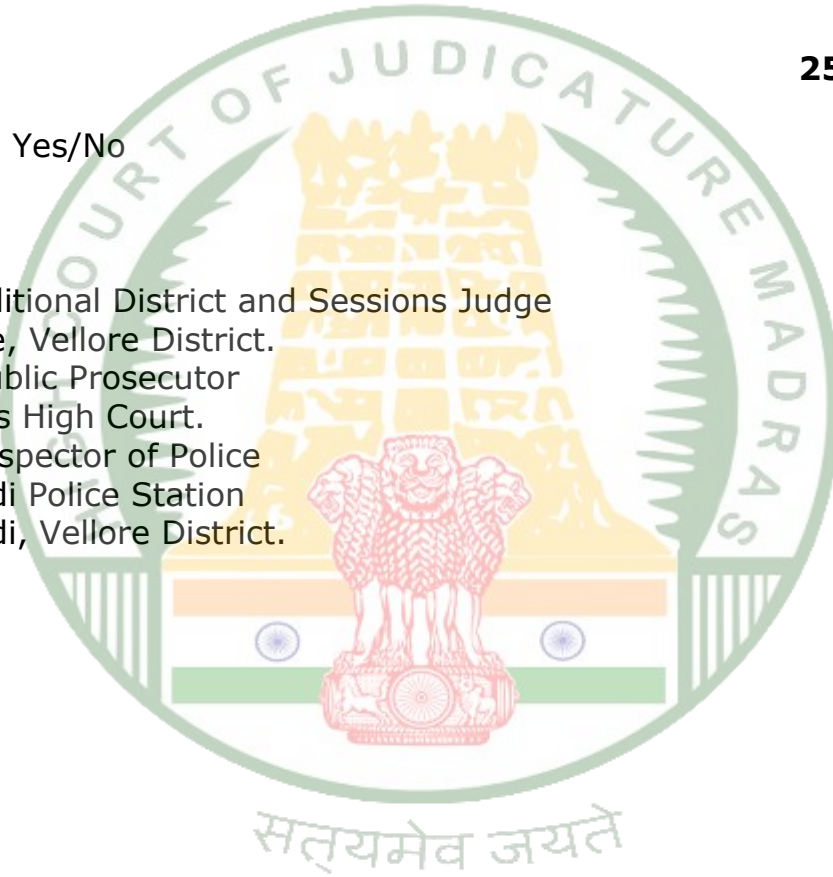
15. In the result, the Criminal Revision Case is allowed and the revision petitioner is acquitted. Fine amount if any paid may be refunded. Consequently connected miscellaneous petition is closed.

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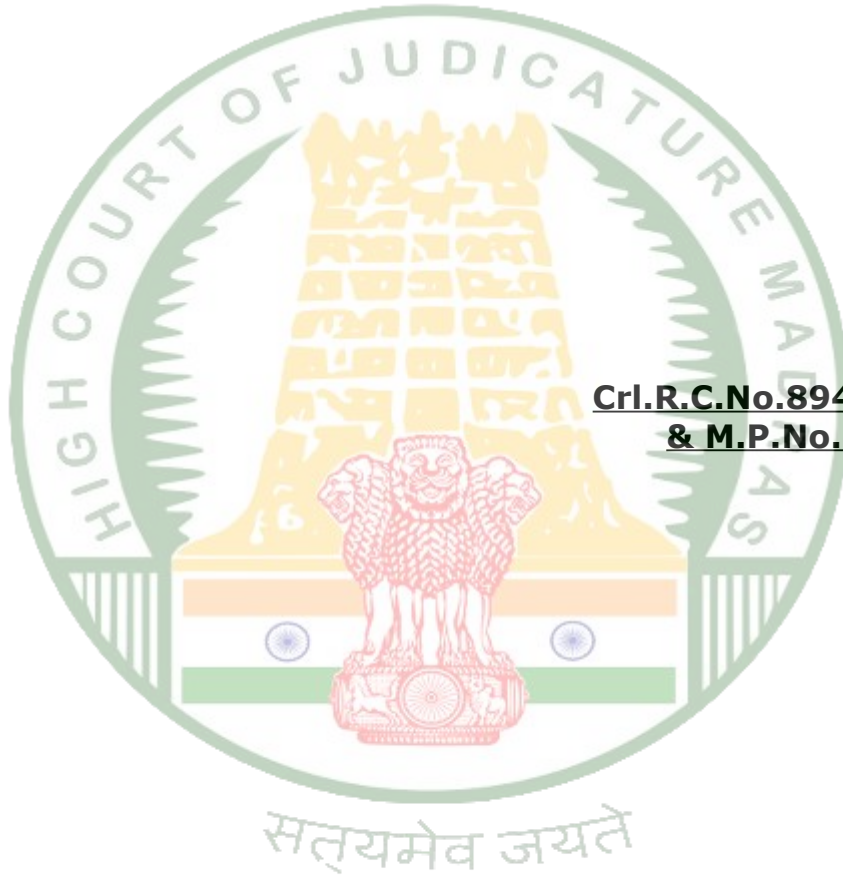
1. 1<sup>st</sup> Additional District and Sessions Judge  
Vellore, Vellore District.
2. The Public Prosecutor  
Madras High Court.
3. The Inspector of Police  
Katpadi Police Station  
Katpadi, Vellore District.



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**P.VELMURUGAN, J.,**

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