

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

**Dated 11.03.2019**

**CORAM:**

**THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN**

**Criminal Revision No.476 of 2012**

Surendran

Petitioner

Vs

The State by  
Inspector of Police  
Traffic Investigation Wing (Central)  
Coimbatore  
Cr.No.358/2007

Respondent

**Prayer:** Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. Against the Judgment dated 09.12.2011, in C.A.No.215 of 2011 by the Additional District Sessions Judge cum Fast Track Court No.III, Coimbatore confirming the trial Court Judgment made in CC No.489 of 2008 dated 14.09.2011 by the Judicial Magistrate No.VIII, Coimbatore.

For Petitioner : Mr. J. Franklin

For Respondent : Mr. T. Shunmugarajeswaran  
Government Advocate

**ORDER**

The Revision Petitioner herein is the accused in CC No.489 of 2008 on the file of Judicial Magistrate No.VIII, Coimbatore. He was found guilty by the trial Court, for the offence under Section 279 r/w 304 A of

IPC and sentenced him to undergo one year simple imprisonment and imposed a fine of Rs.1000/-, in default 3 months simple imprisonment, against which, the Revision Petitioner has preferred an appeal before the Additional District Sessions Judge cum Fast Track Court No.III, Coimbatore. After re-appreciating the evidence and the documents, the lower Appellate Court has confirmed the conviction and sentence imposed on the Revision Petitioner by the trial Court.

2. Aggrieved by the lower Appellate Court Judgment, the Revision petitioner has come forward before this Court, with this Criminal Revision.

3. The case against the Revision Petitioner is that on 24.08.2007 at about 8.30 pm, while he was taking U turn of his Car bearing Registration No. TN 72 W 3622, near Thiruvalluvar bus stand, V.K.K. Menon Road, Gandhipuram, Coimbatore, in a rash and negligent manner, hit against one Palanisamy, who was walking on the extreme left of the Road. Due to the accident, the said Palanisamy sustained severe injuries and he was taken to Ramakrishna Hospital. After providing him first aid, he was shifted to Government Hospital, Coimbatore, wherein he died on 29.08.2007.

4. To prove the case, the prosecution has examined 10 witnesses and marked 10 exhibits.

5. PW-1 Nagaraj is the son of deceased and PW-3 is the son-in-law of the deceased, they are the eye witnesses. Considering the ocular evidence of PW-1 and PW-3 coupled with the evidence of Post Mortem Report Ex.P.5 and the Rough Sketch Ex.P.8, the Courts below have held that the accident has taken place, while the Revision Petitioner drove his Car bearing Reg.No. TN 72 W 3622 rash and negligently and when he was taking U turn near Thiruvalluvar bus stand, the accident occurred. PW-1 and PW-3, who are the residents of the Housing board, near the scene of accident have witnessed the accident, while they were standing near bakery. The Accident Register as well as Post Mortem Certificate indicates that the victim Palanisamy was admitted in the Hospital for the injuries sustained by him in the road accident. Therefore, considering these evidences, which are incriminating against the Revision Petitioner, the Courts below have held that the Revision petitioner guilty of the charge, under Section 279 and 304 A of IPC.

6. The learned Counsel appearing for the Revision Petitioner would submit that PW 1 and PW 3 are son and son-in-law of the deceased respectively and they are the interested witnesses. Their presence in the scene of accident is highly unbelievable. Both these two witnesses had deposed that, they were standing near Prasanna bakery opposite to Thiruvalluvar Bus Stand, whereas the Rough Sketch Ex.P.8 reveals that there is no Bakery by name Prasanna, opposite to Thiruvalluvar Bus stand.

7. The learned Counsel appearing for the Revision Petitioner would further submit PW-2 had identified the offending vehicle as Ambassador Car. But, the Motor Vehicle Inspector has given a report indicating that TN 72 W 3622 is a Fiat Car. Admittedly, along with Thiruvalluvar Bus stand, Omni bus is used to park in rows East west. Therefore, it is highly impossible for a person to watch the accident, by standing opposite to Thiruvalluvar Bus stand or in front of Palanisamy House, which is marked on the north end of the Sketch.

8. The learned Government Advocate appearing for the state would submit that the presence of PW-1 and PW-3 at the scene of accident can not be doubted, since they both reside near the scene of accident. The trial Court has pointed out this fact in its Judgment. Just because they are related to the deceased, their evidence can not be disbelieved. The factum of evidence, the manner in which the accident taken place not only spoken by the eyewitnesses, but also the evidence recorded by the Investigating officer during the Inquest and Rough Sketch go to show that the Revision Petitioner had not taken due care while taking U turn in a busy place. Due to his rash and negligent driving, he has ran over the legs of the victim Palanisamy. Since his legs were crushed, he was taken to Hospital. Despite proper medical assistance, he could not survive. Therefore, the First Information Report which was initially registered for offence under Section 279 and 337 of IPC was later altered to 279 and 304 A of IPC, after the death of the deceased

Palanisamy. The time of accident, the place of accident and manner in which the accident had taken place cumulatively proved that the Revision Petitioner/ accused has caused the death of Palanisamy due to his rash and negligent driving.

9. Heard both the counsels. Records were perused.

10. The accident has taken place on 24.08.2007 at about 8.30 pm. The place of accident is near Thiruvalluvar bus stand, which is a very busy place. It is proved through the witnesses that the accident has taken place when the Revision petitioner took U turn, while driving his Car bearing Registration No. TN 72 W 3622 near Thiruvalluvar bus stand, V.K.K. Menon Road, Gandhipuram, Coimbatore. In the Rough Sketch, there is a bakery by name Amritha Bakery. However, PW 2 has said that he saw the accident while taking tea at Prasanna bakery. The trial Court has given its explanation that the name of the bakery though differs, existence of bakery is proved through the Rough Sketch and the witnesses. Identifying the bakery by name of its owner or the trade name is possible. The accident has taken place on 24.08.2007, whereas PW-2 was examined on 26.02.2009, there is every possibility of change in the name or the owner in between these two years. But the fact remains that the accident has taken place near Palanisamy house, which is located in between Thiruvalluvar bus stand and the bakery. The manner in which the accident taken place could be easily inferred from the Rough Sketch

marked as Ex.P.8. Even according to the Revision Petitioner, the place is busy place, where omni bus and other vehicle are parked. In such circumstances, any driver who takes U turn has to take enough caution while negotiating the turn. Here is the case where the accident had occurred, while the revision petitioner took U turn. He had hit against Palanisamy and crushed his legs. The nature of injury found on the body of Palanisamy indicates that the offending vehicle was driven rashly.

11. Regarding the identity of the vehicle, PW-2 neither in the First Information Report nor in the previous statement, witnesses have spoken that the offending vehicle was Ambassador car. For the first time, in the chief examination of PW-3, he has not deposed that it is specifically a Ambassador Car. Any wrong description of the make of the Car by a rustic witnesses after 2 years of the accident may not matter much. After the accident, the vehicle has stopped there and taken by the respondent police in the course of the investigation. So, this does not cast any doubt.

12. This Court finds that the findings arrived at by the Courts below regarding the rash and negligence of the Revision petitioner is well supported by the evidence. As far as the sentence is concerned, the trial Court has sentenced one year simple imprisonment and a fine of Rs.1000/- the same has been confirmed by the Appellate Court.

13. Considering the long period of the pendency of the case and the age of the Revision petitioner, the sentence is modified to 6 months simple imprisonment. No change in the fine amount. Period of sentence already undergone by the Revision petitioner/ accused shall be set off under Section 428 of Cr.P.C. Accordingly, this Criminal Revision is partly allowed.

**11.03.2019**

Speaking Order / Non-Speaking Order

Index : yes/no

Internet : yes/no

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**To**

1. The Additional District Sessions Judge cum Fast Track Court No.III, Coimbatore
2. The Chief Judicial Magistrate Court, Coimbatore
3. The Judicial Magistrate Court No.VIII, Coimbatore.
4. The Public Prosecutor  
High Court, Madras

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**DR.G.JAYACHANDRAN,J**

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**Date: 11.03.2019**