



*CRL.R.C.No.791 of 2018*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.791 of 2018

Pachamuthu

... Petitioner

Vs.

State Represented by its  
The Inspector of Police,  
Bhuvanagiri Police Station,  
Cuddalore District.  
(Cr. No.62 of 2006)

... Respondent

**PRAYER:** Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the conviction and sentence imposed upon the petitioner herein by the learned District Munsif cum Judicial Magistrate Porto Novo, Cuddalore District in C.C.No.106 of 2006 dated 22.01.2018 and confirmed by the learned II Additional District and Sessions Judge, Chidambaram, Cuddalore District in C.A.No.8 of 20187 dated 26.06.2018 and acquit the petitioner herein.

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mr.A.Gopinath  
Government Advocate (Crl. Side)



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### **ORDER**

This Criminal Revision is directed as against the judgment passed in C.A.No.8 of 201 dated 26.06.2018 on the file of the learned II Additional District and Sessions Judge, Chidambaram, Cuddalore District, confirming the judgment passed in C.C.No.106 of 2006 dated 22.01.2018 on the file of the learned District Munsif cum Judicial Magistrate, Proto Novo, Cuddalore District, thereby convicting the petitioners for the offence punishable under Sections 279, 337 (24 counts), 338 (2 counts), 304(A) ( 2 counts) of IPC.

2. The case of the prosecution is that on 23.03.2006 at about 11.00 a.m., when the injured persons were traveling in a mini door load auto bearing Registration No. TN31M4744 from Cuddalore to Bhuvanagiri national highway 45-A road, near Adhivaraga Nallur Village, the petitioner drove the vehicle in a rash and negligence manner and capsized the vehicle, due to which two persons died and all the passengers who traveled in the vehicle suffered grievous and simple injuries. Hence the complaint.

3. On receipt of the complaint, the respondent registered the



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FIR in Crime No.62 of 2006 for the offences under Sections 279, 337 (24 counts), 338 (2 counts), 304(A) ( 2 counts) of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial Court in C.C.No.106 of 2006. On the side of the prosecution they had examined P.W.1 to P.W.34 and marked documents as Ex.P.1 to Ex.P.37. On the side of the accused one one was examined and no documents were marked.

4. On a perusal of the oral and documentary evidence, the trial Court found the petitioner's guilty for the offence under Sections 279, 337 (24 counts), 338 (2 counts), 304(A) ( 2 counts) of IPC and sentenced him as follows :-

| Sl.No. | Convection                     | Sentence                                                                                                                                    |
|--------|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | Section 279 of IPC             | To pay a fine of Rs.1,000/- in default to undergo simple imprisonment for the period of one month.                                          |
| 2.     | Section 337 (24 counts) of IPC | To pay a fine of Rs.1,000/- for each count total fine of Rs.24,000/- in default to undergo simple imprisonment for the period of 24 months. |
| 3.     | Section 338 (2 counts) of IPC  | To pay a fine of Rs.1,500/- for each count total fine of Rs.3,000/- in default to undergo simple imprisonment for the period of 7 months.   |
| 4.     | Section 304(A)                 | To undergo one year (6 months for each count)                                                                                               |



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| Sl.No. | Convection        | Sentence                                                                                                                                                          |
|--------|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | (2 counts) of IPC | simple imprisonment and to pay a fine of Rs.3,000/- for each count total fine of Rs.6,000/- in default to undergo simple imprisonment for the period of 6 months. |

The trial Court further ordered that the petitioner shall undergo imprisonment consecutively. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the judgment passed by the trial Court. Hence the present revision.

5. The learned counsel appearing for the petitioner submitted that admittedly on the date of accident there was a rain and due to rain, the vehicle skit by itself and capsized, due to which two persons died and other passengers sustained grievous and simple injuries. None of the witnesses had spoken that the vehicle was driven by its driver in a rash and negligence manner. Therefore, the prosecution failed to prove that the petitioner drove the vehicle in a rash and negligence manner and caused the accident.

5.1. He further submitted that all the witnesses deposed



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contradictory and failed to support the case of the prosecution. No individual witness was examined by the prosecution in order to bring the charges to home. The road was slippery due to rain and as such the petitioner was driving the vehicle slowly. When the other vehicle wanted to overtake, the vehicle got slipped in the end of the road, which would show that there was no rash and negligence driving on the part of the petitioner.

5.2. He also submitted that the Courts below convicted the petitioner and sentenced him to undergo six months imprisonment for each counter totally one year for the offence under Section 304(A) of IPC and the sentence shall run consecutively. The petitioner never drove the vehicle in a rash and negligence manner and it was caused due to rain and it is an act of god and the petitioner is not liable to be punished for any offence. Hence, he prayed to allow this revision.

6. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the vehicle which was



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driven by the petitioner is meant for goods carrier. The petitioner was not supposed to carry the passengers. In the mini door load auto, the petitioner loaded 29 passengers and also he had driven the vehicle in a rash and negligence manner, due to which the said vehicle got capsized and all the passengers sustained grievous and simple injuries and two passengers were died. There was absolutely no contradiction between the prosecution witnesses and all of them categorically deposed that only due to rash and negligence driving of the petitioner the accident took place and both the Courts below rightly convicted the petitioner. Hence, he prayed to dismiss the revision.

7. Heard Mr.R.Karthikeyan, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent/police.

8. According to the prosecution, the petitioner drove the mini door load auto carrying 29 passengers and all the passengers were traveled in the vehicle to attend condolence. The petitioner drove the



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vehicle in a rash and negligence manner and he himself capsized the vehicle. There was raining also and the passengers warned him to drive slowly. Even then, the petitioner drove the vehicle in high speed and hence it got capsized, due to which two persons died and others sustained simple and grievous injuries.

9. On a perusal of the prosecution witnesses, they deposed that petitioner drove the vehicle in high speed and they warned him to go slow. Even then the petitioner did not hear their voice and drove the vehicle in a rash and negligence manner and caused accident. Though on the date of occurrence, there was a rain, even then the petitioner failed to drive the vehicle in slow manner. In fact, he was not supposed to carry the passengers in his vehicle. The vehicle is meant for goods and it is three wheeler. This Court cannot even imagine how the petitioner loaded 29 passengers in a small vehicle that too meant for goods carrier.

10. The motor vehicle inspection report was marked as Ex.P.8 and it revealed that the accident was not happened due to mechanical defect in the vehicle. Admittedly, it was not colluded with any other vehicle. Therefore, only because of the rash and negligence driving of the



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petitioner, the accident had occurred. Further the petitioner himself was driving the vehicle and capsized the same. In such circumstances, the *res-ipsa-loquitur* came to play and the accident had been happened due to negligence on his part. Therefore, both the Courts below rightly convicted the petitioner for the offence under Sections 279, 337 (24 counts), 338 (2 counts), 304(A) ( 2 counts) of IPC. However, the learned counsel appearing for the petitioner submitted that the sentence may be ran concurrently instead of consecutively.

11. Considering the above submission, judgment passed in C.A.No.8 of 201 dated 26.06.2018 on the file of the learned II Additional District and Sessions Judge, Chidambaram, Cuddalore District, and the judgment passed in C.C.No.106 of 2006 dated 22.01.2018 on the file of the learned District Munsif cum Judicial Magistrate, Proto Novo, Cuddalore District, are hereby confirmed. Insofar as the sentence is concerned, it shall go concurrently instead of consecutively for the offence under Section 304(A) (2 counts) of IPC alone. The other conditions imposed by the trial Court shall remain unaltered. Further the trial Court



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is directed to take steps to secure the petitioner for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C.

12. Accordingly, the Criminal Revision Petition stands partly allowed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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**G.K.ILANTHIRAIYAN, J**

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To

1. The District Munsif cum  
Judicial Magistrate,  
Porto Novo,  
Cuddalore District.
2. The II Additional District  
and Sessions Judge,  
Chidambaram,  
Cuddalore District.
3. The Inspector of Police,  
Bhuvanagiri Police Station,  
Cuddalore District.
4. The Public Prosecutor,  
Madras High Court,  
Chennai.

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