



CRL.R.C.No.1205 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

CORAM

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

Crl.R.C.No.1205 of 2018

Mahalingam

... Petitioner

Vs.

The State of Tamilnadu,  
Rep., by the Inspector of Police,  
Sankari Police Station,  
Cr.No.177 of 2012.

... Respondent

**PRAYER:** Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records pertaining to C.A.No.129 of 2017 on the file of the learned I Additional District Judge, Salem and set aside the order dated 17.07.2018 passed by the said Court dismissing the same and thereby confirming the judgment and order of conviction, dated 16.11.2017 recorded by the learned Judicial Magistrate No.I, Sankari convicting the petitioner/accused herein for the offences under Sections 279, 337, 338 and 304(A) of IPC, and sentencing him to pay a fine of Rs.1000/- for the offence under Section 279 of IPC and in default to undergo simple imprisonment for one month and to pay a fine of Rs.500/- for the offence under Section 337 of IPC and in default to undergo simple imprisonment for one month and to pay a fine of Rs.1000/- for the



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offence under Section 338 of IPC (three counts) (total Rs.3,000/- @ Rs.1,000/- for each count) and in default to undergo simple imprisonment for one month for each count and to undergo simple imprisonment for 2 years for the offence under Section 304 (A) of IPC and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month.

For Petitioner : Mr.K.V.Shanmuganathan

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

### **ORDER**

This Criminal Revision is directed as against the judgment passed in C.A.No.129 of 2017 dated 17.07.2018 on the file of the learned I Additional District Judge, Salem, confirming the conviction and sentence imposed in C.C.No.5 of 2014 dated 16.11.2017 on the file of the learned Judicial Magistrate No.I, Sankari, thereby convicting the petitioner for the offences under Sections 279, 337, 338 (3 counts) and 304(A) of IPC.

2. The case of the prosecution is that on 20.11.2012, at about 3.30 p.m., near Chettipatti bus stop, the petitioner drove his tipper lorry



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bearing registration No.TN33U8177, in a rash and negligence manner from Edappady to Thevoor and hit a two wheeler bearing registration No.TN52Y4818 which was also coming on the same direction in the front of the lorry and hit the persons who were walking on the left hand side of the road and hit against one cyclist and also hit a bus by name Sri Murugan bearing registration No. TN30U3009 and committed the accident. Due to the said accident, the person who was traveled in the cycle sustained grievous injury and died. The rider of the two wheeler and the pillion rider sustained grievous injury and the persons who were walking on the left hand side of the road are also sustained injuries.

3. On the complaint, the respondent registered FIR in Crime No.177 of 2012 for the offences under Sections 279, 337 and 304(A) of IPC. After completions of investigation, the respondent filed charge sheet and the same has been taken cognizance in C.C.No.5 of 2014 for the offences under Sections 279, 337, 338(3 counts) and 304(A) of IPC. On the side of the prosecution, they examined P.W.1 to P.W.24 and marked Ex.P.1 to Ex.P.16. On the side of the petitioner, no one was examined and no documents were marked. On a perusal of the oral and documentary



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evidences, the trial Court found him as guilty for the offences under Sections 279, 337, 338(3 counts) and 304(A) of IPC, and sentenced him as follows :

| Sl. No | Conviction                    | Sentence                                                                                                                         |
|--------|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| 1      | Section 279 of IPC            | to pay a fine of Rs.1000/-, in default to undergo one month simple imprisonment.                                                 |
| 2.     | Section 337 of IPC            | to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment.                                                  |
| 3.     | Section 338 of IPC (3 counts) | to pay a fine of Rs.3000/- (Rs.1,000/- for each count), in default to undergo one month simple imprisonment for each count.      |
| 4.     | Section 304(A) of IPC         | To undergo simple imprisonment for two years and to pay a fine of Rs.5000/- in default to undergo one month simple imprisonment. |

Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the judgment passed by the trial Court, as against which the present revision.

4. The learned counsel appearing for the petitioner raised



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grounds that the first appellate Court mechanically confirmed the judgment passed by the trial Court without appreciating any one of the evidence. The prosecution failed to examine any individual witness to prove its case. Even according to the prosecution witnesses there are contradictions and it is fatal to the case of the prosecution. There was no evidence to show that the petitioner drove the lorry in a rash and negligence manner. It was categorically admitted by the prosecution witnesses that there was a speed breaker near the place of the occurrence and the petitioner could not have driven the lorry in a rash and negligence manner.

4.1. He further submitted that though P.W.2 failed to support the prosecution case, the trial Court convicted the petitioner only on reliance of the evidence of P.W.2. The Courts below only on assumption by invoking the doctrine of *res-ipsa-loquitur*, convicted the petitioner. He further submitted that the petitioner is the only bread winner of his family and therefore, he prayed to allow the present revision.

5. Per contra, the learned Government Advocate (Crl. Side)



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appearing for the respondent/Police submitted that only because of the rash and negligence driving of the petitioner, he hit the motor cycle, bicycle, pedestrians and also a bus which were proceeded in the same direction of the petitioner's lorry. In order to prove the charge, the prosecution examined P.W.1 to P.W.24 and also marked documents in Ex.P.1 to Ex.P.16. The eye witnesses as well as the injured witnesses were supported the case of the prosecution and the trial Court rightly convicted the petitioner.

5.1. He further submitted that the Motor Vehicle Inspector was examined as P.W.18 and he categorically deposed that the accident was not occurred due to any mechanical error in the motor vehicle driven by the petitioner. The doctors who treated the injured as well as the deceased were examined as P.Ws.15, 16, 17, 19 and 20. Therefore, the prosecution proved the case and the order of conviction can be sustained as against the petitioner and prayed for dismissal of the revision.

6. Heard Mr.K.V.Shanmuganathan, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate



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(Crl.Side) appearing for the respondent/Police.

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7. According to the prosecution, the petitioner drove the lorry bearing registration No.TN33U8177 from Edappady to Thevoor on 20.11.2012. While he was proceeded to Thevoor, near Chettipatti bus stop, he drove the vehicle in a rash and negligence manner and hit the two wheeler and the persons who were traveling in that vehicle sustained injury. Thereafter, the petitioner dashed against two pedestrians and also hit the bicycle. The person who traveled in the bicycle got grievous injuries and died. Again, the petitioner hit the bus bearing registration No.TN30U3009. Therefore, three persons were sustained grievous injuries and one person died.

8. The son-in-law of the deceased was examined as P.W.1. He lodged complaint and the same was marked as Ex.P.1. One of the injured was examined as P.W.2 and he deposed that while he was standing in the tea shop, the petitioner drove the lorry from Edappady to Thevoor in rash and negligence manner and dashed against him. Therefore, he was thrown out to drainage. Due to the said accident, P.W.3 was also



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sustained injury. Thereafter, the injured persons were admitted in the Government Hospital, Edappady and thereafter they referred to the Government Hospital, Erode.

9. It is seen that in the said accident the lorry was hit the motor cycle which was proceeded in the same way and it was driven by P.W.4. He also corroborated the evidence of P.W.1. Another eye witness was examined as P.W.5 and he categorically deposed that the petitioner drove the lorry in a rash and negligence manner from Edappay to Thevoor and near Chettipatti bus stop, he hit the two wheeler, bicycle, the persons who were walking on the left side of the road and also the bus. Immediately, ambulance was called and the injured were taken to hospital.

10. The offending vehicle was referred to Motor Vehicle Inspector for his report. The Motor Vehicle Inspector was examined as P.W.18 and he gave report that the accident was not occurred due to any mechanical fault. The doctors, who treated the deceased and other injured persons, were examined as P.W.15,16,17, 19 & 20 and they deposed about the injuries sustained by the injured persons and supported the case



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of the prosecution. Hence, the Courts below rightly convicted the petitioner and this Court finds no reason to interfere with the order passed by the Courts below.

11. However, the learned counsel appearing for the petitioner prayed to consider the age of the petitioner and also his family situation and also prayed to reduce the sentence. Considering the above facts and circumstances, this Court is inclined to reduce sentence.

12. Accordingly, the conviction imposed on the petitioner for the offences under Sections 279, 337, 338 (3 counts) and 304(A) of IPC, in C.A.No.129 of 2017 dated 17.07.2018 on the file of the learned I Additional District Judge, Salem, and the judgment in C.C.No.5 of 2014 dated 16.11.2017 on the file of the learned Judicial Magistrate No.I, Sankari, are hereby confirmed. Insofar as the sentence for the offence punishable under Section 304(A) of IPC is alone reduced from two years to one year. The other conditions imposed by the trial Court shall remain unaltered. Further the trial Court is directed to take steps to secure the petitioner for the purpose of sentencing him to undergo the remaining



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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.

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

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Index: Yes/No

Internet: Yes

Speaking/Non-Speaking order

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To

1. The I Additional District Judge,  
Salem.
2. The Judicial Magistrate No.I,  
Sankari.
3. The Inspector of Police,  
Sankari Police Station.  
Sankari.
4. The Public Prosecutor,  
Madras High Court,  
Chennai.



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**G.K.ILANTHIRAIYAN, J**

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