



Crl.R.C.(MD).No.469 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT.

Reserved On	:	20.12.2023
Pronounced On	:	19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Krishnamoorthi

... Petitioner/Appellant/Accused

Vs.

The State rep. by
The Inspector of Police,
Thiruvaiyaru Police Station,
Thiruvaiyaru,
Thanjavur District.
(Crime No.326 of 2014)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the judgment and conviction dated 29.07.2022 made in Crl.A.No.5 of 2022 on the file of the learned II Additional District and Sessions Judge, Thanjavur, confirming the judgment of conviction in C.C.No.56 of 2015 on the file of the learned Judicial Magistrate, Thiruvaiyaru, by its judgment dated 10.12.2021, and acquit the petitioner/accused.

For Petitioner : Mr.S.Deenadhayan

For Respondent : Mr.R.Sivakumar,
Government Advocate(Crl.Side)



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ORDER

The petitioner is the accused in C.C.No.56 of 2015 on the file of the learned Judicial Magistrate, Thiruvaiyaru. The learned Judicial Magistrate, Thiruvaiyaru passed the judgment of conviction against him under Sections 279, 338 and 304-A IPC. He was convicted for the offence under Section 279 of IPC and sentenced to pay a fine of Rs.1,000/- in default to undergo two weeks simple imprisonment, for the offence under Section 338 of IPC sentenced to pay a fine of Rs.1,000/- in default to undergo two weeks simple imprisonment and for the offence under Section 304(A) of IPC sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo one month simple imprisonment.

2.The said conviction and sentence of imprisonment was confirmed in Crl.A.No.5 of 2022 on the file of the II Additional District and Sessions Judge, Thanjavur. Challenging the said concurrent finding, he filed this revision.

3.According to the prosecution, on 15.12.2014 at 07.45 p.m., the deceased namely Iyyappan drove his two wheeler bearing registration No.TN 61 B 1829



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along with P.W.6 in the Thiruvaiyaru to Thirumanur Main Road near Vilangudi Bus stop. The said vehicle was followed by the another two wheeler driven by P.W.3. At that time, the petitioner drove his Multi Axil Lorry bearing Registration No. TN 52 A 1289 in the opposite direction in a rash and negligent manner and dashed against the deceased and caused injuries to the deceased and P.W.6. The same was witnessed by the P.W.3 and other witnesses. They took them and sent them to the hospital where the hospital authorities declared the death of Iyyappan and hence, his uncle P.W.1 made a complaint to the respondent Police and same was registered for the alleged offence under Sections 279, 338, 304(a) of IPC. After completion of investigation, the investigating agency filed the final report before the learned Judicial Magistrate, Thiruvaiyaru. The learned Judicial Magistrate had taken the same on file in C.C.No.56 of 2015. He issued a summon to the accused. After his appearance, he served the copies under Section 207 Cr.P.C. After that, learned trial Judge framed the necessary charges and questioned the accused. He denied the charges and pleaded not guilty. He stood for trial.

4.The prosecution proved the case by examining the witnesses P.W.1 to P.W.14 and Marked Ex.P1 to Ex.P.10. The learned trial judge after recording the



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above evidence, questioned the accused under Section 313 (1) Cr.P.C. The same was denied by the accused as false. On the side of the accused neither defence witness was examined nor document was marked.

5.The learned trial Judge after considering the above evidence and documents convicted the petitioner and imposed sentence of imprisonment as stated above. Challenging the same, he preferred the appeal before the II Additional District and Sessions Judge, Thanjavur, in C.A.5 of 2022. The same was also confirmed.

6.The learned counsel appearing for the petitioner submitted that there is a contradiction between the prosecution witnesses relating to the registration of the case. From the evidence of the witnesses it is clear that FIR was antedated one. There are number of contradictions between the eye witnesses. The said contradiction is material one. The eye witnesses never deposed that the petitioner drove his vehicle in a rash and negligent manner and hence, their evidence is not sufficient to sustain the conviction under Section 304(A) IPC. The prosecution failed to explain previous complaint made on the side of deceased. According to the evidence of the prosecution, one Ravichandran made a previous complaint



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and the same was not produced and he was also not examined. The prosecution never examined any independent witnesses. P.W.4 and P.W.5 followed the deceased two wheeler is not believable one. The evidence of the P.W.11 injured witness also suffered infirmities and hence, his evidence also is liable to be rejected. It is clear from the rough sketch and observation Mahazer, the accident is not as a result of the rash and negligence. The above aspects were not properly considered by the learned trial and Appellate judge. Therefore, he seeks for interference in the judgment of the both the Courts below. The learned counsel appearing for the petitioner also submitted that the petitioner is also entitled to the benefit of the probation of offenders Act 1958. For which, he relied the judgment of the Honourable Supreme Court reported in **(2015) 13 SCC 444** and unreported judgment of this Court in ***Crl.R.C.No.1094 of 2015 and Crl.R.C.No.939 of 2019.***

7.The learned Additional Public Prosecutor submitted that eye witness to the occurrence including the injured witness P.W.11 clearly deposed that the petitioner drove his vehicle in a rash and negligent manner and caused the said accident. Even though there are some minor contradiction and omission, there is no sufficient reason to disbelieve their evidence. P.W.4 clearly deposed that the



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petitioner drove his vehicle in a rash and negligent manner. The petitioner is not entitled to the benefit of the probation of Offenders Act, 1958 on the ground that the petitioner will not come under the category of eligibility. The same was properly analyzed by the Courts below and hence he seeks to confirm the judgment of the Courts below.

8.This Court has considered the rival submission and perused records and impugned orders and the precedents relied upon them.

9. P.W.11 is the injured witness. He clearly deposed about the rash and negligent driving of petitioner causing injuries to him. The same also is revealed from the Ex.P.7 and Ex.P9. P.W.4 in his evidence clearly deposed that the petitioner drove his vehicle in a rash manner and dashed against the deceased. After dashing, the petitioner ran away from the place of the occurrence. The said evidence of P.W.4 and P.W.11 corroborated with the evidence of P.W.5. Both the courts below correctly appreciated the said facts and correctly convicted the petitioner for the charged offence and imposed the above sentence and hence, this Court finds no merits in the contention of the petitioner.



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10. The specific submission of the petitioner is that P.W.4 has not seen the accident and hence, the evidence is liable to be rejected. The Hon'ble Supreme Court has held that the Court must read the entire evidence and not to make its decision on the stray statement obtained during the cross examination. In this case, P.W.4 categorically deposed that he followed the vehicle of deceased at a distance of 100 feet and he saw the accident caused by the lorry driven by the petitioner. Before he could reach the spot, nearby people assembled there. Hence, he answered in the cross examination in such a way that before he reached the place of occurrence, number of people assembled. The injured witness P.W.6 clearly deposed about the accident caused by the lorry. The said lorry was identified by P.W.4. The conduct of the petitioner, after causing the accident fleeing away from the occurrence place and no explanation was offered during 313 Cr.P.C., questioning, cumulatively establish the fact that the accident was caused by the petitioner in a rash and negligent manner and the same can not be interfered by this Court under Section 397 r/w 401 of Cr.P.C.

11. Petitioner seeks benefit under the probation of offenders Act. The learned counsel relied the following judgment of the Hon'ble Supreme Court and this Court.



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(i) In the Case of *Central Bureau of Investigation, Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla and another* reported in 2015 (13) SCC 444

(ii) In the case of *Nithin Vs. State of Tamil Nadu* in Crl.R.C.No.939 of 2019 dated 01.02.2022

(iii) In the case of *Suresh @ Yuvaraj Vs. State of Tamilnadu* in Crl.R.C.No. 1094 of 2015 dated 24.01.2022

13.The Hon'ble Supreme Court in the above cited judgment in Paragraph No.22 stated that the entitlement of the benefit under the probation of Offenders Act 1958 is to be decided on the facts of each case. The Hon'ble Supreme Court in earlier judgement reported in 2012 2 SCC 182, 2012 2 SCC 648 and 2004 SCC Crl 1183 laid down the law that the plea of the accused who are convicted under Section 304 A of IPC is not entitled to the benefit of the Probation of Offenders Act 1958. The relevant portion of the judgements are as follows:

In the case of ***State of Punjab v. Balwinder Singh***, reported in ***(2012) 2 SCC 182***

12.The following principles laid down in that decision are very relevant: (Dalbir Singh case [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] , SCC pp. 84-85 & 87, paras 1 & 13)



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“1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must



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constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

The same principles have been reiterated in B. Nagabhushanam v. State of Karnataka [(2008) 5 SCC 730 : (2008) 3 SCC (Cri) 61] .

13. *It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering*



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the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in Dalbir Singh [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] .

In the case of ***Alister Anthony Pareira v. State of Maharashtra***, reported in **(2012) 2 SCC 648**

98. We are satisfied that the facts and circumstances of the case do not justify benefit of probation to the appellant for good conduct or for any reduction of sentence. The appeals are, accordingly, dismissed. The appellant's bail bonds are cancelled. He shall forthwith surrender for undergoing the remaining sentence as awarded by the High Court in the judgment and order dated 6-9-2007 [State of Maharashtra v. Alister Anthony Pareira, 2007 All MR (Cri) 2840 (Bom)] .

In the case of ***Thakur Singh v. State of Punjab***, reported in **2004 SCC (Cri) 1183 at page 209**

4. It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into canal. In such a situation the doctrine of res ipsa loquitur comes into play and the burden



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shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part.

5. We have stated the above aspects only in the wake of the grievance expressed by the learned counsel that the petitioner was not heard by the High Court. We find no reason to interfere with the conviction passed by the trial court and confirmed by the appellate court which the High Court declined to interfere with.

6. Learned counsel lastly made an alternative plea that the Probation of Offenders Act may be applied to secure his job. This Court has held in Dalbir Singh v. State of Haryana [(2000) 5 SCC 82] that the Probation of Offenders Act cannot be invoked in cases involving rash or negligent driving of the bus resulting in death of human beings. This is what this Court observed there: (SCC p. 87, para 13)

“13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent



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provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

7. There is no reason to depart from the dictum laid



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down in the case referred to above.

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In this case, when two persons sustained grievous injuries as a result of the accident caused by the petitioner, it is the duty of the petitioner to take steps to give treatment to them. But he fled away from the occurrence place, after causing the accident with rash and negligent manner. Therefore, in view of the above law laid down by the Hon'ble Supreme Court, he is not entitled to get the benefit under the Probation of Offenders Act 1958.

14. Accordingly, this Criminal Revision Case stands dismissed and the orders passed by the Courts below are hereby confirmed.

19.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

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- 1.The 2nd Additional District and Sessions Judge,
Thanjavur.
- 2.The Judicial Magistrate, Thiruvaiyaru.
- 3.The Inspector of Police,
Thiruvaiyaru Police Station,
Thiruvaiyaru, Thanjavur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

Pre-delivery Order made in
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