



Crl.RC.No.295 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 09.06.2025

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

Crl.RC.No.295 of 2023

Jayasurya

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Petitioner

Vs

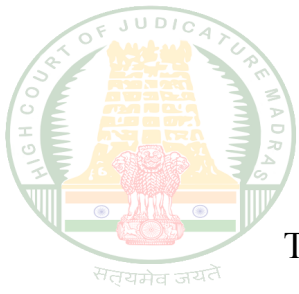
The State Rep. by
The Inspector of Police,
B-5, Harbour Police Station,
Chennai.

Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w.401 of Cr.P.C. to call for the records relating to the judgment dated 15.12.2022 passed in C.A.No.77 of 2022, on the file of the Hon'ble XX Additional Sessions Judge, Chennai partly allowing the judgment dated 23.04.2022 passed in C.C.No.1283 of 2018 on the file of XVI Metropolitan Magistrate George Town Chennai for perusing the same and setting aside the judgments above consequently acquitting the revision petition.

For Petitioner : Mr.B.Maheswaran
For Respondent : Mr.A.Gopinath
Govt. Advocate (Crl.side)

ORDER

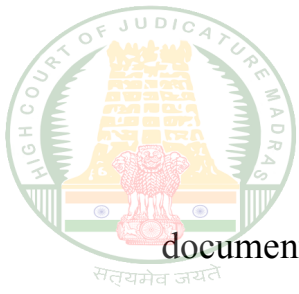


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This revision has been preferred as against the judgment dated 15.12.2022 passed in C.A.No.77 of 2022, on the file of the Hon'ble XX Additional Sessions Judge, Chennai, thereby confirming the conviction and modified the sentence alone passed in judgment dated 23.04.2022 in C.C.No.1283 of 2018 on the file of XVI Metropolitan Magistrate George Town Chennai.

2. The case of the prosecution is that on 13.08.2017 at about 09.30 p.m. the deceased parked his lorry at Dr.Ambedkar Statue in the campus of Chennai Port and while crossing the road, the petitioner drove his car bearing Reg.No.TN 18 AE 7734 in a rash and negligent manner and hit the deceased and dragged him for 10 ft. in the road. Therefore, the deceased succumbed head injury and died on the spot. On complaint, FIR has been registered in Cr.No.28/2017 for the offences punishable under Section 304(A) 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.1283/2018.

3. On the side of the prosecution they have examined P.W.1 to P.W.9 and marked Exs.P1 to P8. On the side of the petitioner no one was examined and no



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documents were marked. On perusal of oral and documentary evidence, the trial

Court found the petitioner guilty for the offence punishable under Section 304

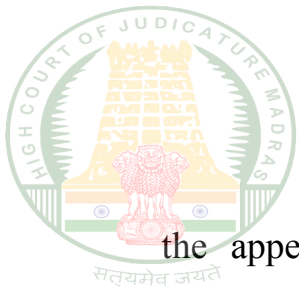
(A) IPC and sentenced him to undergo two years of rigorous imprisonment and imposed a fine of Rs.1,000/- in default to undergo one month simple imprisonment. Aggrieved by the same the petitioner preferred an appeal in C.A.No.77 of 2022 and the same was partly allowed by confirming the order of conviction and modified the sentence from two years to one year imposed by the trial Court. Aggrieved by the same the present revision has been filed.

4. The learned counsel for the petitioner would submit that the prosecution miserably failed to prove that the petitioner drove his vehicle in a rash and negligent manner. Even according to the case of the prosecution while crossing the road the deceased was hit by the offending vehicle and dragged him for 10 ft. Therefore, he sustained head injury and died. The eye witnesses of the occurrence was examined as P.W.1 and P.W.2. Even according to them there is no whispering that the petitioner drove the car in a rash and negligent manner to attract the offence under Section 304(A) IPC. The occurrence had taken place inside the Port where there is a speed breaker in between the place of accident. Therefore, absolutely there was no possibility for the petitioner to drive his vehicle in a rash and negligent manner. Even the cross examinations of the



witnesses revealed that there were several container lorries parked adjacent to the road. If the petitioner drove his vehicle in a rash and negligent manner, P.W.1 and P.W.2 might not have seen the registration number of the offending vehicle. There is contradictory statements between P.W.1 and P.W.2 with regard to noting down the registration number of the offending vehicle. Without considering the above facts and circumstances both the trial Court as well as the appellate Court have convicted the petitioner for the offences punishable under section 304 (A) IPC.

5. Per contra, the learned Government Advocate appearing for the respondent would submit that in order to prove the case of prosecution they have examined the eye witnesses P.W.1 and P.W.2. P.W.1 and P.W.2 are also drivers and they invited the deceased for dinner. When the deceased almost crossed the road, the petitioner drove his vehicle in a rash and negligent manner and hit the deceased and dragged him for 10 ft. and as such the deceased succumbed to head injuries. The way in which the deceased suffered head injuries shows that the offending vehicle was driven by the petitioner in a high speed manner. Further there is a speed breaker and without noticing the speed breaker the petitioner drove his car in a high speed manner and hit the deceased. Therefore, the prosecution proved the case beyond any doubt and trial Court and



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the appellate Court have rightly convicted the petitioner for the offence punishable under Section 304 (A) IPC.

6. Heard both sides and perused the materials available on record.

7. The deceased was a driver by profession and he along with P.W.1 and P.W.2 parked the vehicle for their dinner. They were working as a driver in a shipping agency. On 13.08.2017 at about 09.30 p.m. when P.W.1 and P.W.2 invited the deceased for dinner, after parking the vehicle, the deceased crossed the road. At that time the petitioner was proceeding in a car bearing Reg. No. TN 18 AE 7734 and hit the deceased and dragged him for 10 ft in the road. P.W.1 and P.W.2 were the eye witnesses to the occurrence. P.W.1 deposed that P.W.1 and P.W.2 invited the deceased for dinner and when the deceased crossed the road after parking his vehicle, the vehicle driven by the petitioner hit and dragged him for 10 ft. However, in the cross-examination of PW1 he deposed that he did not notice the registration number at the time of hit but only when the offending vehicle took U-turn and proceeded the opposite side, he noted the registration number. P.W.2 deposed that the offending vehicle was driven by the petitioner in a high speed manner without noticing the speed breaker. Both P.W.1 and P.W.2 did not even whisper that the petitioner drove his car in a rash



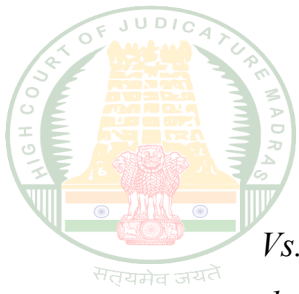
and negligent manner.

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8. On perusal of the rough sketch it is revealed that the place of accident is situated between two speed breakers. Therefore, there would be no possibility for the petitioner to drive his car in a rash and negligent manner. That apart, in both sides there were lorries parked in the place of accident. It is not the case of hit and run. Further, while the deceased was crossing the road, the offending vehicle hit him. It shows that the deceased without noticing both sides of the road had crossed the road. The occurrence had taken place at about 09.30 p.m. and there were no lights adjacent to the road. Therefore, the visibility of the road was less and the offending vehicle hit the deceased. Further, even assuming that the offending vehicle was driven by the petitioner in a high speed manner, it would not amount to rash and negligent driving, that too when the deceased was crossing the road without noticing both sides of the road.

9. In this regard it is relevant to rely upon the judgment of the **High Court of Karnataka at Bengaluru in the case of Harish Vs. State of Karnataka reported in Crl.RP No.1004/2021 dated 29.04.2025** wherein it is held as under:

“17. The Hon’ble Apex Court in the case of State of Karnataka



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Vs. Satish reported in (1998) 8 SCC 493 has settled the position of law that mere driving of vehicle in high speed neither amounts to negligence nor rashness in itself and has held in para 4 of the said judgment as under;

4. Merely because the truck was being driven at a "high speed" does not speak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case."

18. Effectively, at this juncture I find it imperative to touch upon



the nuances of understanding the term 'negligence', negligence essentially is defined or rather understood in a rudimentary sense as a breach of duty. Meaning, an act of negligence must be coupled with willful omission of doing something which a prudent person would have done in similar circumstance. This breach of duty should lead to some kind of damage. Further, while ascertaining the degree of negligence, it is significant to ruminate on the 'Principle of Foreseeability and Proximity' as laid down by Lord Atkin in the landmark case of Donoghue v Stevenson reported in 1932 A.C 562. Additionally, let us take a moment to delve into comprehending and elucidate the conundrum that needs to be addressed: What amounts to rashness and negligence? Rashness innately implies to recklessness coupled with a state of conscious breach of duty to care where there exists a necessity of care i.e., negligence. Rashness and negligence are multi-faceted concepts which cannot be comprehended and interpreted in isolation, it significantly depends on facts and circumstances of each case."

10. The above judgment is squarely applicable to the case on hand. Since no one has spoken that the petitioner has driven his vehicle in a rash and negligent manner, the prosecution miserably failed to prove the charges for the offence under Section 304A IPC.

11. In view of the above, the conviction and sentence imposed on the petitioner cannot be sustained and liable to be dismissed. Accordingly, judgment dated 15.12.2022 passed in C.A.No.77 of 2022, on the file of the



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learned XX Additional Sessions Judge, Chennai and the judgment dated

23.04.2022 passed in C.C.No.1283 of 2018 on the file of XVI Metropolitan

Magistrate, George Town, Chennai, are hereby set aside. The petitioner is

acquitted from all the charges under Section 304(A) IPC and set at liberty

forthwith. The bail bond, if any executed by the petitioner, shall stand cancelled.

12. Accordingly, this Criminal Revision Case is allowed.

09.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1. XX Additional Sessions Judge, Chennai.
2. XVI Metropolitan Magistrate, George Town, Chennai,
3. The Inspector of Police, B-5, Harbour Police Station, Chennai.
4. The Public Prosecutor, Madras High Court.

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