



Crl.R.C.No.727 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2025

CORAM:

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

Crl.R.C.No.727 of 2023

Azhagiri

.... Petitioner

Versus

State Rep.by
The Sub Inspector of Police,
Tirupattur Taluk Police Station,
Tirupattur,
Vellore District.
(Crime No.30 of 2011)

.... Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure to set aside the judgment passed in Crl.A.No.5 of 2018 dated 10.06.2020 on the file of III Additional Sessions Judge, Vellore @ Tirupattur in confirming the order of conviction dated 27.02.2018 passed in C.C.No.156 of 2013 on the file of the Judicial Magistrate II, Tirupattur.

For Petitioner : Mr.B.A.Sanjay Prasanna
for M/s.Deepanuday

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

ORDER

This Criminal Revision Case has been filed as against the concurrent



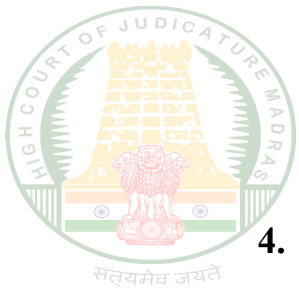
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findings of conviction rendered by the learned Judicial Magistrate II, Tirupattur in C.C.No.156 of 2013, which was confirmed by the appellate Court in Crl.A.No.5 of 2018 on the file of the III Additional Sessions Judge, Tirupattur, for the offences punishable under Sections 297, 337 (13 counts), 338 (8 counts) and 304A (4 counts) of I.P.C.

2. The case of the prosecution is that, on 12.01.2011, the petitioner was driving a private bus bearing registration No. TN 30 H 3344 in a rash and negligent manner on the Salem National Highways near korati petrol bunk. He lost his control of the vehicle and collided with a Tavera car bearing registration number TN 23 BZ 6825, which was coming from the opposite direction. Due to the said accident, a First Information Report was registered in Crime No.30 of 2011 for the offence under Sections 297, 337 (13 counts), 338 (8 counts) and 304A (4 counts) of I.P.C. After completion of investigation, the same has been taken cognizance before the trial Court.

3. The prosecution examined PW.1 to PW.29 and marked thirty-six (36) documents as Ex.P1 to Ex.P36. On the side of the accused, no witnesses were examined and no documents were marked.



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4. On perusal of oral and documentary evidence, the trial Court

convicted the petitioner for the offence under Section 297 of I.P.C., and sentenced him to undergo simple imprisonment for 6 months; for the offence under section 337 (13 counts) of IPC, he was sentenced to undergo simple imprisonment for 3 months for each count; for the offence under section 338 (8 counts) of IPC, he was sentenced to undergo simple imprisonment for 6 months for each count; for the offence under Section 304A (4 counts) of IPC, he was sentenced to undergo simple imprisonment for 2 years for each count. All the sentences were ordered to run concurrently.

5. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed, confirming the order of conviction and sentence imposed by the trial Court. Hence the present revision case.

6. The learned counsel appearing for the petitioner submitted that the prosecution failed to prove the charges, as no witnesses had stated that the petitioner drove the bus in a rash and negligence manner. The basic requirements to convict a person under section 304 A of IPC are absent in this case. Though the prosecution has examined 29 witnesses to support their case,



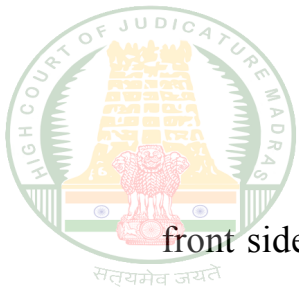
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in support of his contention, he relied upon the judgment of this Court in

WEB Crl.R.C.No.1069 of 2011 held in the case of *Vijayendran Vs. State by*

Inspector of Police. In which, this Court held that the death of a person should have been caused by a rash and negligent act of the accused. The crux of the offence under section 304 A IPC is commission of a rash and negligent act. Mere fast driving does not constitute an offence under section 304 A IPC. He further submitted that though the prosecution examined 29 witnesses, none of them identified the petitioner as the person who was driving the bus at the time of the accident.

7. The learned counsel for the petitioner relied upon the deposition of PW.25, who is none other than the son of one of the deceased, Chennian. In his evidence, PW.25 deposed that his father was riding a cycle and was about to cross the road when the petitioner, in an attempt to avoid hitting him, swerved the vehicle to his right side and collided with the vehicle coming from the opposite side. Therefore, the accident did not occur due to any rash or negligent act on the part of the petitioner. He also relied upon the Motor Vehicle Inspection Report, which states that the left front side of the bus sustained damage due to the impact. The bus had directly collided with the vehicle coming from the opposite direction, which also sustained damage on its right



front side. If the accident had occurred due to a vehicle hitting the left side of

the bus, then the damage would have been consistent with that scenario.

However, in the present case, the damage pattern shows a direct frontal collision. Hence, it is submitted that the prosecution miserably failed to prove the charges framed against the petitioner. Despite this, both the Courts convicted the petitioner for all the charges, which is legally unsustainable.

8. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police submitted that several prosecution witnesses have clearly stated that the petitioner drove the bus in a rash and negligent manner. The witnesses deposed that the petitioner was driving the vehicle at a high speed and collided with a vehicle coming from the opposite direction. Therefore, it amounts to negligent driving as per the settled legal principles.

9. In support of his submission, he relied upon the judgement of this Court in ***Crl.R.C.No.438 of 2018 dated 20.10.2022*** in the case of ***Sakthivel Kumar Vs. State Represented by Inspector of Police***. He further submitted that though PW.25 deposed that his father was riding a bicycle and was crossing the road when the accident occurred, the wife and another son of the deceased Chennian namely PW.20, PW.21 and nephew PW.22, categorically deposed



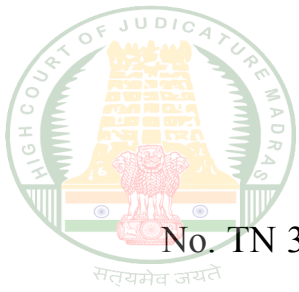
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that the deceased Chennian was travelling as a passenger in the bus driven by the petitioner and that he sustained grievous injuries in the accident and later succumbed to them. Hence, the testimony of PW.25 is hearsay witness and cannot be relied upon to discredit the consistent evidence of the other witnesses.

10. The learned Government Advocate (Crl.Side) further submitted that though the Motor Vehicle Inspector was not examined, his report was marked through the Investigating Officer. The report clearly establishes that the accident did not occur due to any mechanical defect in the vehicle. Therefore, it is clear that the accident took place only due to the rash and negligent driving of the petitioner, which resulted in the death of four persons and injuries to 21 others. Hence, the trial Court as well as the appellate Court rightly convicted the petitioner. The concurrent findings of fact do not warrant any interference by this court.

11. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent police.

12. Admittedly, the petitioner was driving the bus bearing registration



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No. TN 30 H 3344 on 21.01.2011 at around 15:40 hours on the Salem National

Highway near korati petrol bunk. At the same time, a Tavera car bearing registration No.23 BZ 6825 was coming from the opposite direction. Due to the accident, 21 persons sustained serious injuries and four persons died.

13. On perusal of the depositions, no witness has stated that the petitioner, without any valid reason, suddenly turned the bus to the left and collided with the oncoming vehicle. In fact, to avoid the accident, the driver of the Tavera car turned to his right side. As a result of the impact, the front portion of both vehicles sustained damage. Seven persons, who were travelling in the car sustained grievous injuries and one person travelling in the bus sustained serious injuries and later died. Several others also suffered injuries due to the impact.

14. The learned counsel appearing for the petitioner vehemently contended that the petitioner did not drive the bus in a rash and negligent manner. Even assuming that the petitioner drove the bus at a high speed, it would not, by itself, amount to rash and negligent driving within the meaning of Section 304 A IPC. Therefore, the prosecution miserably failed to prove the charge under Section 304A IPC. In this regard, the learned Government



Advocate (Crl.Side) relied upon a judgment of this Court reported in **2012 9**

WEB **SCC 284** in the case of **Ravi Kapur Vs. State of Rajathan**, in which the Hon'ble

Supreme Court has held as follow:

“(A) Rash and negligent driving

Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to ‘rash and negligent driving’ within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words ‘manner so rash or negligent as to endanger human life’. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the



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penalty contemplated under Section 279 IPC is attracted.

‘Negligence’ means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence”.

19. In the light of the above, it has to be verified that if negligence in the case of an accident can be gathered from the attendant circumstances, the doctrine of res ipsa loquitur is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant



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circumstances and basic facts are proved. Either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the Court, with the aid of proper evidence, may take assistance of the attendant circumstances and apply the doctrine of res ipsa loquitur.”

15. In the case on hand, the petitioner drove the bus in a rash and negligent manner and collided with a vehicle coming from the opposite direction. Without any reason, the petitioner suddenly turned the bus to the right and hit the oncoming vehicle, resulting in the death of four persons and causing server injuries to 21 others.

16. In such circumstances, the plea that the petitioner was in control of the bus and that the accident did not occur due to his negligence is not believable. The petitioner has also failed to establish that the accident occurred due to any cause other than his own negligence. Therefore, the trial Court as well as the appellate Court rightly convicted the petitioner for the offences



under Sections 297, 337 (13 counts), 338 (8 counts) and 304A (4 counts) of

WEB I.P.C. Further, PW.25, who is none other than the son of the deceased

Chennian, deposed that while his father was riding his cycle and was about to cross the road, the accident took place. However, in order to corroborate the version of events as deposed by PW.25, no supporting evidence was adduced. In fact, the wife and another son of the deceased, who were examined as Pws.20 & 21, categorically deposed that the deceased was travelling in the bus met with an accident, as a result of which, he sustained fatal injuries. One of the relatives was examined as PW.22 also deposed that when the deceased was travelling in the bus was met with an accident. Though the Motor Vehicle Inspector was not examined by the prosecution, the Motor Vehicle Inspection Report has been marked as Ex.34 and Ex.35.

17. On perusal of Exhibits 34 and 35, it is clear that the accident did not occur due to any mechanical defect in the bus. Therefore, the non-examination of the Motor Vehicle Inspector is not fatal to the case of the prosecution. It is clear that the accident occurred only due to the negligence on the part of the partitioner.

18. In view of the above, this Court finds no infirmity or illegality in



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the conviction and sentence passed by the trial Court as well as the appellate

WEB COPY Court. However, the learned counsel for the petitioner submitted that considering the age of the petitioner, the sentence may be reduced to some extent.

19. Taking into account the age of the petitioner and the nature of the offence, this Court is inclined to reduce the sentence of imprisonment imposed under Section 304A of the IPC from *two years to one year*. Accordingly, this Criminal Revision Case is partly allowed.

11.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To

- 1.The III Additional Sessions Judge, Vellore @ Tirupattur
- 2.The Judicial Magistrate II, Tirupattur.
- 3.The Sub Inspector of Police,
Tirupattur Taluk Police Station,
Tirupattur,
Vellore District.

- 4.The Public Prosecutor,



High Court of Madras,
Chennai.

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G.K.ILANTHIRAIYAN, J.



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