



Crl.R.C.No.746 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 03.06.2025

CORAM:

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

Crl.R.C.No.746 of 2023

K.Natarajan

... Petitioner

Vs.

The State Rep. by its
The Inspector of Police,
Magudanchavadi Police Station,
Salem District.
(Crime No. 72 of 2016)

... Respondent

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C., praying to call for the entire records relating to judgment dated 28.02.2023 made in C.A.No.11 of 2021 on the file of the learned III Additional Sessions Judge, Salem, convicting u/s.279 and 304(A) IPC. U/s. 279 IPC, the petitioner is directed to pay Rs.1,000/- as fine in default to undergo one month S.I. and 304(A) IPC, the petitioner is sentenced to undergo one year S.I. confirming the conviction and sentence passed by judgment dated 03.02.2021 made in C.C.No.148 of 2018 on the file of the Judicial Magistrate No.II, Sankari and set aside the same and thereby acquit the petitioner/accused.

For Petitioner : Mr.S.Varanesh

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



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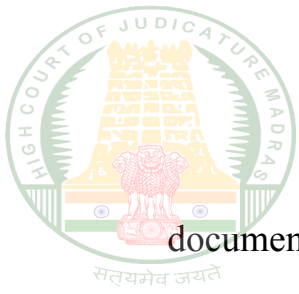
ORDER

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This Criminal Revision has been preferred against the judgment dated 28.02.2023 passed by the learned III Additional Sessions Judge, Salem, in C.A.No.11 of 2021, confirming the conviction and sentence imposed on the petitioner dated 03.02.2021 passed by the learned Judicial Magistrate No.II, Sankari, in C.C.No.148 of 2018, for the offence punishable under Sections 279 & 304(A) of IPC.

2. The case of the prosecution is that on 27.02.2016, when the deceased returned to his home by his TVS Scooty bearing registration No.TN-52-C-6478 from Elampillai to Kakkapalayam at about 1.00 p.m., near Chakaravarthi medical shop, the petitioner drove his bus bearing registration No.TN-30-N-0257 in rash and negligent manner towards Elampillai to Salem and dashed against the deceased vehicle on his back side. Therefore, the deceased had fallen down and sustained grievous injury, due to which he died on the way to hospital.

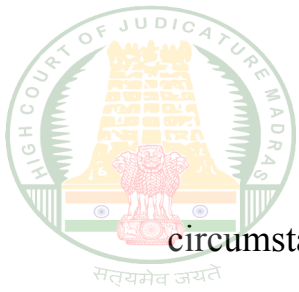
3. On the side of the prosecution, they had examined P.W.1 to P.W.13 and marked documents in Ex.P.1 to Ex.P.12. On the side of the petitioner, no one was examined and no document was marked. On perusal of the oral and



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documentary evidences, the trial Court found the petitioner guilty for the offences under Sections 279 & 304(A) of IPC and sentenced him to undergo one year simple imprisonment and to pay Rs.1,000/- as fine 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 conviction and sentence imposed by the trial Court. Hence, the present revision case.

4. The learned counsel appearing for the petitioner submitted that the prosecution failed to prove that the petitioner drove his vehicle in a rash and negligent manner. The prosecution had examined P.W.2, P.W.8 and P.W.10 as eye witnesses to the occurrence. No one had spoken that the petitioner drove his vehicle in a rash and negligent manner. The motor vehicle inspection report clearly shows that no damage was caused to the offending vehicle viz., the bus and no damage caused rear side of the two wheeler which was driven by the deceased. The specific defence taken by the petitioner was that one drunker crossed the road and dashed against the deceased due to which the deceased fell down and sustained injury and died. Therefore, there was no fault on the petitioner in the accident. It was not happened due to the rash and negligent driving of the petitioner. Without considering the above facts and



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circumstances, both the trial Court as well as the appellate Court convicted the petitioner.

5. The learned Government Advocate (Crl. Side) appearing for the respondent police submitted that P.W.2, P.W.8 and P.W.10 categorically deposed that only on the rash and negligent driving of the petitioner, the accident was occurred and due to which the deceased sustained grievous injury and died. If at all the defence of the petitioner is true and if the deceased fell down after hitting the drunken fellow on the road, he would be run over by the bus. Whereas the deceased fell down due to the hit by the bus driven by the petitioner. He sustained injury and died. Therefore, the petitioner was rightly convicted and it doesn't warrant any interference by this Court.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. The specific case of the prosecution is that when the deceased was riding his motor cycle, the petitioner had also driven his bus on the same direction and hit the motor cycle due to which, the deceased fell down and sustained injury. The prosecution had examined P.W.2, P.W.8 and P.W.10 as eye



witnesses. On perusal of the deposition of P.W.2, it is revealed that when the deceased was standing near Sakaravarthi medical shop, the bus which was driven by the petitioner, dashed against him due to which, he sustained sustained injury and died. Whereas P.W.8 and P.W.10 deposed that when the deceased was riding his motor cycle bearing registration No.TN-52-C-6478, the petitioner drove his bus in a high speed manner and hit the motor cycle on its rear side. However, both the Courts viz., the trial Court as wells as the appellate Court failed to consider those contradiction, in order to bring the charges to home.

8. Further P.W.4, P.W.8 and P.W.10 deposed that the petitioner had driven his bus in a speedy manner and hit the deceased vehicle in its rear side. However, as per the inspection report, there was no damage in the offending vehicle. In the two wheeler, some scratches found in the front bumper right side. Therefore, the prosecution failed to prove the manner of the accident. Mere the petitioner drove his vehicle in a high speed manner and hit the two wheeler, it would not amount to rash and negligent driving. 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, it is relevant to rely upon a judgment reported in **2012 9 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 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



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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 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.”

Thus it is clear that when the prosecution failed to prove that the petitioner



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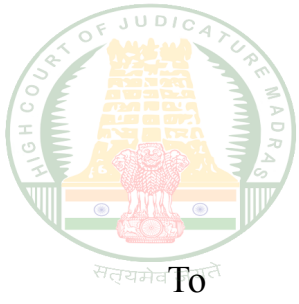
drove his bus in a rash and negligent manner, the conviction cannot be sustained for the offence punishable under Sections 279 & 304(A) of IPC.

9. In view of the above discussions, the judgment dated 28.02.2023 passed by the learned III Additional Sessions Judge, Salem, in C.A.No.11 of 2021, and the judgment dated 03.02.2021 passed by the learned Judicial Magistrate No.II, Sankari, in C.C.No.148 of 2018, for the offence under Sections 279 & 304(A) of IPC, are hereby set aside. The appellant/accused is acquitted of all charges in C.C.No.148 of 2018 on the file of the learned Judicial Magistrate No.II, Sankari. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

10. In the result, this Criminal Revision Case stands allowed.

03.06.2025

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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To
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- 1.The III Additional Sessions Judge,
Salem.
- 2.The Judicial Magistrate No.II,
Sankari.
- 3.The Inspector of Police,
Magudanchavadi Police Station,
Salem District.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J,

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