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CrI.R.C.No.721 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2025

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.721 of 2022

Mahendiran

... Petitioner

Vs.

The State represented by
The Inspector of Police,
Ambalur Police Station,
Vaniyambadi Taluk, Vaniyambadi,
Vellore @ Tirupattur.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure to call for the entire records and set aside the order of the learned III Additional Sessions Judge, Tirupattur at Vellore @ Tirupattur in C.A.No.107 of 2019 on 08.04.2022 confirming the conviction and sentence order passed by the learned Judicial Magistrate, Vaniyambadi at Vaniyambadi in STC.No.100 of 2016 dated 31.10.2019 and found the revision petitioner guilty for the offence under Sections 279 and 304-A IPC in Crime No.60 of 2016 on his file and acquit the petitioner.



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For Petitioner : Mr.R.Dakshinamurthy
For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)

ORDER

The petitioner/accused was convicted by the learned Judicial Magistrate, Vaniyambadi in STC.No.100 of 2016 by judgment dated 31.10.2019 and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.1,000/-, in default to undergo two months simple imprisonment for the offence under Section 304(A) IPC and to undergo three months simple imprisonment for the offence under Section 279 IPC. Aggrieved against the same, the petitioner preferred an appeal before the Sessions Court in C.A.No.107 of 2019. The learned III Additional Sessions Judge, Tirupattur, Vellore dismissed the appeal by judgment dated 08.04.2022 confirming the conviction and sentence of the Trial Court. Against which, the present revision is filed.

2.The case against the petitioner is that on 01.04.2016 P.W.1/defacto complainant took her son named Billa, aged 1½ years in the two wheeler to



the Primary Health Centre, Vaniyambadi for administering vaccination. She

dropped her son near the Parking and went to park the two wheeler, at that time, the Ambulance driven by the petitioner which came in the reverse direction dashed against the defacto complainant's son, ran over him and the child died in the spot. P.W.2 to P.W.5 are the eye witnesses who witnessed the accident. The petitioner got down from the vehicle and ran away. Thereafter, a complaint was lodged to P.W.10/Sub-Inspector of Police and a case in Crime No.60 of 2016 registered for the offence under Sections 279 and 304(A) IPC. P.W.11/Investigating Officer took up the investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses in the presence of P.W.6 and P.W.8. P.W.7/Doctor conducted postmortem and confirmed that the death was due to accident. Thereafter, the vehicle was sent for inspection and P.W.9/Motor Vehicle Inspector had given a report. On conclusion of investigation, charge sheet filed. During trial, P.W.1 to P.W.11 examined and Ex.P1 to Ex.P7 marked. The trial Court on conclusion of trial found the petitioner guilty and convicted him as stated above. The Lower Appellate Court confirmed the conviction and sentence imposed by the Trial Court.



3.The contention of the learned counsel for the petitioner is that

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P.W.1, who is the mother of the boy confirmed that she brought her son in her two wheeler, dropped him in front of the Primary Health Centre and went to park her two wheeler. P.W.1 without any care dropped the boy in the middle of the carriage way where various other Public Offices like Panchayat Office, Primary Health Centre, Ration shop, Women Self Help Group office and Post Office are situated. The petitioner a driver of the Ambulance reversed the vehicle for emergency, at that time, the boy who was in the middle of the carriage way got hit and he was ran over. It is P.W.1/mother without concerned and care by negligence attributed to the accident. He would submit that the vehicle such as Ambulance, Fire service, Police are emergency vehicles where time is the essence for their driving and taking reverse cannot be said to be any negligence. P.W.2 to P.W.4 clearly stated that only after hearing the noise and cry of P.W.1/mother, they went to the scene of occurrence and they have not seen the accident. P.W.5's presence is also highly doubtful. In this case, the accident occurred purely on the negligence and carelessness of P.W.1 and the petitioner taking the vehicle in a reverse direction cannot be said to have



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driven the vehicle in a rash and negligent manner. Referring to Ex.P2/observation mahazar and Ex.P6/rough sketch, the learned counsel submitted that the place of occurrence is a public place where many Public Offices such as Post Office, Ration Shop, Panchayat Office, etc. are situated and the defacto complainant/P.W.1 left the child in the middle of the carriage way, hence there is no rash and negligence on the part of the petitioner. The Trial Court as well as the Lower Appellate Court failed to consider these aspects. He further submitted that on an humanitarian consideration, the petitioner paid a sum of Rs.1,50,000/- to P.W.1. In support of his contention, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of **Bajinath Singh vs. The State of Bihar** reported in **(1972) 2 SCC 264** for the point that criminal negligence can be found in varying sets of circumstances, in this case the negligence has to be attributed to P.W.1 and for the point that the driver of the vehicle who caused the accident will be guilty if it is proved that he had driven the vehicle at a speed deviating from the Rules of the road and proceeded on the wrong side, thereby the driver has put himself in such a position that he was able to apply the brake in time. In this case,



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there is no rash and negligence of the accused proved which attributed to the direct result of the accident and death of the victim.

4.The learned Government Advocate (Crl. Side) strongly opposed the petitioner's contention and submitted that in this case, P.W.1 to P.W.5 are the eye witnesses, P.W.6 and P.W.8 are the witnesses for observation mahazar and rough sketch, P.W.7 is the Postmortem Doctor. He would submit that the petitioner not cross examined P.W.1 to P.W.7 and their evidence has to be taken in total. P.W.1 is the mother of the deceased, P.W.2 to P.W.5 are the witnesses who are present in the scene of occurrence and they clearly deposed about the manner in which the petitioner had driven the vehicle in a rash and negligent manner, drove the Ambulance in the reverse direction with high speed without confirming, what is there in the rear side and dashed and ran over the 1½ years old boy who had been nipped in the bud by the act of the petitioner. He further submitted that in this case P.W.1 lodged a complaint/Ex.P1 to P.W.10/Sub-Inspector of Police, who registered FIR/Ex.P5, P.W.11 took up investigation, prepared observation mahazar/Ex.P2 in the presence of P.W.6., Postmortem



Certificate/Ex.P3 issued by P.W.7/Doctor confirms that the vehicle was ran over the victim, the skull was smashed and the victim died on the spot.

P.W.9/Motor Vehicle Inspector given a report/Ex.P4 confirming that the accident was not due to mechanical defect. Thereafter, on conclusion of investigation charge sheet filed. From the evidence of P.W.1 to P.W.11 and Ex.P1 to Ex.P7, the Trial Court rightly convicted the petitioner. The act of the petitioner and the manner in which he caused the accident clearly confirm that the petitioner had driven the vehicle in a rash and negligent manner. Further, the petitioner on his own admits that it is a public utility place where Public offices, School, Ration shop, Hospital are located and it is expected that there will be movement of public, in such circumstances, the petitioner ought to have been careful while driving the vehicle that too, when taking the vehicle in a reverse direction. Therefore, the Trial Court had rightly convicted the petitioner. He would further submit that for the offence under Section 304(A) IPC, a lighter punishment of six months was imposed and the petitioner ought to have been imposed with maximum punishment of two years. He fairly submitted that the State had not filed any appeal for inadequacy of sentence. Hence prayed for dismissal.



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it is seen that in this case P.W.1 is the mother of the deceased Billa aged about 1½ years, she brought her son for administering vaccination, dropped him near the Primary Health Centre and went park the two wheeler. The petitioner admittedly driven the vehicle in the reverse direction without any care and caution, in a rash and negligent manner, hit the boy who was standing near the Primary Health Centre and ran over him. It is also seen that it is a Public utility area where there are Panchayat Office, School, Ration shop and other public offices, hence the petitioner by any reason ought to have driven the vehicle with care and caution while there is movement of public. In this case, the petitioner drove the vehicle in the reverse direction, ran over P.W.1's son, crushed his skull and the boy died on the spot which is confirmed by the evidence of P.W.7/Doctor. P.W.2 to P.W.5 are the eye witnesses who came to the Primary Health Centre, witnessed the accident and their evidences are natural. The petitioner failed to cross examine P.W.1 to P.W.7 and also not taken any steps to challenge the evidence. The Trial Court discussed the witnesses in detail rightly



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convicted the petitioner and the Lower Appellate Court had rightly confirmed the conviction of the Trial Court. Further, the citations referred to by the learned counsel for the petitioner are not applicable to the facts of the present case. Hence, this Court finds no reason to interfere with the conviction and sentence imposed by the Trial Court which was confirmed by the Lower Appellate Court.

6.In the result, the Criminal Revision Petition stands dismissed.

25.02.2025

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
cse



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To

- 1.The Inspector of Police,
Ambalur Police Station,
Vaniyambadi Taluk, Vaniyambadi,
Vellore @ Tirupattur.
- 2.The III Additional Sessions Judge,
Tirupattur,
Vellore @ Tirupattur
- 3.The Judicial Magistrate,
Vaniyambadi.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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