



Crl.R.C.No.726 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2025

CORAM:

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

Crl.R.C.No.726 of 2025

and

Crl.M.P.No.10795 of 2025

Pachamuthu

..... Petitioner

Vs

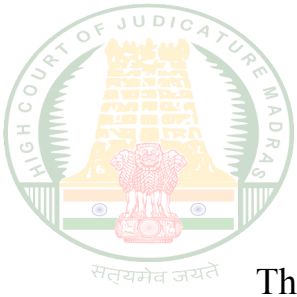
The State of Tamil Nadu,
Represented by the
Inspector of Police,
Mecheri Police Station,
Salem District.
Crime No.466 of 2018.

..... Respondent

PRAYER: Criminal Revision Case is filed under Sections 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to allow the revision and set aside the impugned Judgment order of dismissal by the Appellate Court and confirmation of conviction passed in Crl.A.No.84 of 2024 dated 16.04.2025 by the Additional District Judge, Mettur and to call for the police record pertaining to the present case.

For Petitioner : Mr.V.Elzanchezhiyan

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



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ORDER

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This Criminal Revision Case has been filed challenging the judgment dated 16.04.2025 passed in Crl.A.No.84 of 2024 on the file of the Additional District Judge, Mettur, confirming the order dated 01.03.2024 made in C.C.No.235 of 2019 on the file of the Judicial Magistrate No.II, Mettur, convicting the petitioner for the offences punishable under Sections 279 and 304(A) of IPC.

2. The case of the prosecution is that, on 18.11.2018 at about 5.45 a.m., while the deceased was riding in his bicycle at Vellar to Kaligoundanur Road, from south to north, on the left extreme of the road near Elluparai Subramani's land, the accused, who was driving in an Omni Van bearing Registration No.TN-47-AA-5225, came from south to north in a rash and negligent manner and hit against the deceased. Due to the said accident, the deceased sustained severe head injuries and subsequently died due to the same. Hence, the present complaint came to be lodged.

3. Based on the said complaint, the respondent Police registered an FIR in Crime No.466 of 2018 for the offences punishable under Sections 279 and 304(A) of IPC. After completion of the investigation, a final report was filed



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and the same was taken cognizance by the Judicial Magistrate No.II, Mettur, in

WEB C.C.No.235 of 2019.

4. On the side of the prosecution, P.Ws. 1 to P.W.11 were examined and Exs.P.1 to P11 were marked. On the side of the accused, no witness was examined and no document was marked.

5. On a perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty of the offences under Sections 279 and 304(A) of IPC. The accused was sentenced to undergo three months simple imprisonment and to pay fine of Rs.1,000/- in default, to undergo simple imprisonment of two weeks for the offence punishable under Section 279 of IPC and to undergo six months simple imprisonment and to pay fine of Rs.1,000/-, in default, to undergo one month simple imprisonment for the offence punishable under Section 304(A) of IPC. Aggrieved by the said conviction and sentence, the petitioner preferred an appeal in Crl.A.No.84 of 2024 before the Additional District Judge, Mettur and the same was dismissed and confirming the order of conviction passed by the Trial Court. Hence, the present Criminal Revision Case has been filed.

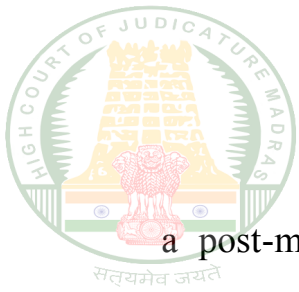


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6. The learned counsel appearing for the petitioner would submit

that the prosecution has miserably failed to prove the charges for the offences punishable under Sections 297 and 304(A) of IPC. In order to prove the essential ingredients of the offences, the prosecution did not adduce sufficient evidence. The identity of the petitioner as the driver of the offending vehicle was not proved in the manner known to law. Further, none of the witnesses deposed that the petitioner drove the van in a rash and negligent manner. Further, the prosecution failed to examine the doctor, who conducted the post-mortem, as well as the Motor Vehicle Inspector, who examined the offending vehicle. Therefore, the prosecution failed to prove the cause of death of the deceased and failed to prove the guilt of the petitioner beyond reasonable doubt.

7. In support of his contentions, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in *(1997) 6 SCC 171* in the case of *Vijender Vs. State of Delhi*, wherein it was held that the prosecution is bound to lead the best available evidence to prove a particular fact, especially in cases involving proof of homicidal death. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in *(2002) 1 SCC 351* in the case of *Munshi Prasad and others Vs. State of Bihar*, wherein it was observed that



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a post-mortem report is not substantive evidence by itself; it is only the statement of the doctor, which carries the credibility of substantive evidence.

He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **MANU/SC/0920/2022** in the case of **J.B.Pardiwala J in Ghulam Hassan Beigh Vs. Mohammed Maqbool Magrey and Ors**, in which the Hon'ble Supreme Court of India held that the post-mortem report of the doctor is merely a previous statement based on his examination of the dead body and is not substantive evidence. The doctor's oral statement before the Court alone is the substantive evidence. The post-mortem report can only be used to corroborate his statement, refresh his memory or contradict his statement in the witness box. Therefore, according to the learned counsel, non-examination of the doctor, who conducted the post-mortem is fatal to the case of the prosecution. He further contended that the prosecution failed to prove whether the accident occurred due to mechanical defect or human error, as the Motor Vehicle Inspector who inspected the offending vehicle was not examined.

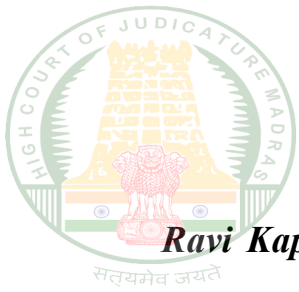
8. Heard the learned counsel appearing on either side and perused the materials available on record.



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9. A perusal of the records reveals that P.W.5, who is an eye witness to the occurrence, categorically deposed that on 18.11.2018, at about 5.30 to 5.45 a.m., while he was proceeding towards Vellar after supplying milk to the shops, he saw the deceased, whom he used to meet daily at a tea shop on Kaligoundanur Road. On the date of occurrence, the deceased was riding his bicycle on the extreme left side of the road, when an omni van, driven by a rash and negligent manner, came from behind and dashed against him. As a result, the deceased sustained grievous injuries. Immediately, someone called the ambulance and the injured was taken to the hospital at Mecheri, where he was given first aid and thereafter referred to the Government Hospital, Salem, for further treatment. However, he was declared brought dead. Immediately the body of the deceased was subjected to post-mortem. All the other witnesses were only hearsay witnesses. Further, P.W.5 clearly identified the petitioner as the person who was driving the offending vehicle at the time of accident and categorically stated that the petitioner drove the van at a high speed in a rash and negligent manner and caused the accident.

10. In this regard, the learned Government Advocate (Crl.Side) relied upon a judgment of this Court 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.



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‘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 circumstances and basic facts are proved. Either the accident must be proved by proper and cogent*



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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.”

10. The prosecution has clearly proved that the petitioner was the one who drove the vehicle at a high speed in a rash and negligent manner and dashed against the deceased. In respect of the said occurrence, P.W.6 lodged a complaint and he admitted his signature found in the complaint. The Observation Mahazar was marked as Ex.P3, in which P.W.7 acted as a witness and duly proved the same through his evidence. After the post-mortem, the post-mortem report was marked as Ex.P10 through P.W.11, viz., the Investigating Officer. On a perusal of Ex.P11, Motor Vehicle Inspection Report, it is proved that the deceased died due to head injuries sustained in the accident. The Inquest Report was marked as Ex.P9 through P.W.11, which also corroborates that the deceased died due to head injuries sustained in the road accident. Further, the Accident Register was marked as Ex.P7. A combined reading of Exs.P7, P9 and P10 clearly establishes that the death was caused due



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to the accident. Therefore, the Judgments relied upon by the learned counsel

for the petitioner are not applicable to the case on hand, since the non-examination of the doctor, who conducted the post-mortem is not fatal to the case of the prosecution, when the cause of death has otherwise been proved through cogent documentary and corroborative evidence.

11. In view of the foregoing discussion, this Court finds no infirmity or illegality in the order of conviction and sentence imposed by the Trial Court and confirmed by the Appellate Court. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

19.06.2025

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



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1. The Additional District Judge,
Mettur,

2. The Judicial Magistrate No.II,
Mettur.

3. The Inspector of Police,
Mecheri Police Station,
Salem District.

4. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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