



Crl.R.C.No.1039 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1039 of 2021
and Crl.M.P.No.13585 of 2021

A.Muruganandam

... Petitioner

Vs.

The State represented by
The Inspector of Police,
Thiruvenkadu Police Station,
Mayiladuthurai District.
Crime No.54 of 2010.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure to set aside the judgment of the learned Additional District and Sessions Judge, Mayiladuthurai in C.A.No.47 of 2017 dated 15.04.2021 confirming the judgment of the learned Judicial Magistrate, Sirkazhi in C.C.No.168 of 2010 dated 09.08.2017.

For Petitioner : Mr.P.Dinesh Kumar

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)
Assisted by Ms.M.Sumii Arnica



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ORDER

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The petitioner/accused was convicted by the learned Judicial Magistrate, Sirkazhi in C.C.No.168 of 2010 and sentenced to undergo two years rigorous imprisonment (two counts) and to pay a fine of Rs.3,000/- (two counts), in default to undergo three months simple imprisonment (two counts) for the offence under Section 304(A) IPC, by judgment dated 09.08.2017. Both sentences to run concurrently. Aggrieved against the same, petitioner preferred an appeal before the Sessions Court in C.A.No.47 of 2017. The learned Additional District and Sessions Judge, Mayiladuthurai dismissed the appeal confirming the conviction and sentence of the Trial Court by judgment dated 15.04.2021. Against which, the present revision is filed.

2.The gist of the case is that on 27.03.2010 at about 7.00 p.m., the defacto complainant Kaliyamoorthy went to the Government Hospital, Sirkazhi for treatment and he was waiting in the bus stand for the bus in Thiruvankadu-Saraboji Agraharam Main Road opposite to Easwar Cement Works, at that time, his son Narasimman who is employed as Conductor in a



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mini bus along with another Conductor Senthilkumar were coming in the

Bajaj Pulsor bike TN-04-U-7645. The defacto complainant's son

Narasimman was riding the bike and Senthilkumar was the pillion rider.

They were proceeding from north to south, at that time, a transport

corporation bus TN-49-N-1229 coming in the opposite direction from south

to north in a rash and negligent manner, dashed the two wheeler of the

defacto complainant's son and his son died on the spot and the other injured

person Senthilkumar was rushed to the Hospital, who died on the next day

at about 8.30 p.m. After the accident, the defacto complainant went to the

Police Station lodged a complaint to P.W.11. Thereafter, P.W.12 took up

investigation, visited the scene of occurrence, examined the witnesses

present in the scene of occurrence, prepared observation mahazar/Ex.P2 and

rough sketch/Ex.P7, sent both the bus and the two wheeler for motor vehicle

inspection, conducted inquest on the body of the defacto complainant's

son/D1 and sent the body for postmortem, D2/Senthilkumar was taking

treatment at Pondicherry Government Hospital died on the next day, inquest

conducted and his body was sent for postmortem. P.W.10/Postmortem

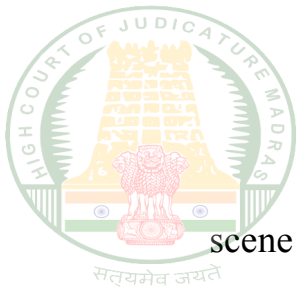
Doctor conducted autopsy on D1 and P.W.9 inspected the vehicles, issued



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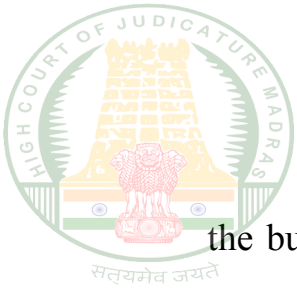
inspection report confirming the accident was not due to any mechanical defect. On collecting the medical records and other reports, charge sheet filed. During Trial, P.W.1 to P.W.12 examined and Ex.P1 to Ex.P10 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above, confirmed by the Lower Appellate Court.

3.The contention of the learned counsel for the petitioner is that in this case, P.W.1 to P.W.4 are projected as eye witnesses, of whom, P.W.2 and P.W.4 admit that they have not seen the accident. The other witnesses are P.W.1/father of D1 and P.W.3, a relative of P.W.1. Since P.W.1 does not state anything about the presence of P.W.3 at the time of accident. Now the only evidence available is that of P.W.1, who states that he was standing in the bus stand, the accident took place 100 meters away, on seeing gathering of crowd, he went there where he found his son dead. In this case, the complaint was given with a considerable delay but no reason was given for the delay. According to the petitioner, P.W.1 was not present in the



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scene of occurrence. Even according to P.W.1., his son left the home along with his friend D2 in the two wheeler at about 4.30 p.m., P.W.1 went to the Hospital at 6.00 p.m. and reached the Hospital at 7.00 p.m., but no reason given as to what happened between 4.30 p.m. and 7.00 p.m. and why at that point of time, D1 and D2 came there. Further, in this case P.W.1 states that he informed P.W.11 about the accident and the complaint was written down by the Police but P.W.11 states that P.W.1 brought a written complaint. Hence, the complaint/Ex.P1 becomes doubtful. P.W.1 further states that he went to the Government Hospital, Sirkazhi for taking treatment but no medical records produced to show whether he had taken any treatment on 27.03.2010. P.W.1 admits that the accident spot is a crowded place, there are several shops and business establishments and it is a busy road. He had not stated that the petitioner was driving the vehicle with high speed in a rash and negligent manner. In this case the observation mahazar/Ex.P2 prepared in the presence of P.W.4. But P.W.4 admits that he signed the observation mahazar in the Police Station. He would further submit that according to the petitioner, it is the reckless driving of the deceased who had driven the two wheeler in a rash and negligent manner dashed against



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the bus on its right side. The Motor Vehicle Inspector in his report/Ex.P3 confirms that right side headlight of the bus broken and there is a dent on the right side body of the bus and bumper which confirms that the accident is only due to rashness and negligence of D1. P.W.1 further confirms that the topography of the place is such that no vehicle can be driven with high speed. Hence, the accident was not due to any rashness and negligence of the petitioner. Further, in the rough sketch/Ex.P7 the width of the road is not mentioned and it is not prepared in the presence of any witnesses. But the Trial Court gives its own version that the accident spot is a road where temple car procession normally takes place and the road should be broad as submitted by the Public Prosecutor before the Trial Court which is without any materials. Thus, the conviction of the Trial Court is perverse and not sustainable and the Lower Appellate Court without considering the evidence independently, had mechanically dismissed the appeal. He further submitted that the petitioner's service is still put on hold and he has been denied his promotion and increments due to the above case.

4.In support of his contention, the learned counsel for the petitioner



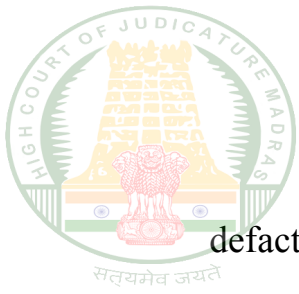
relied on the decision of this Court in the case of ***B.Karthik vs. State by***

Inspector of Police, Coonoor Town Police Station, The Nilgiris District

reported in **2022 (3) MWN(Crl.) 250**, wherein this Court submitted that three conditions are imperative to convict a person for a rash and negligent driving and causing accident, which are as follows:

- (1) All the circumstances, including the objective circumstances constituting the accident, from which the inference of guilty is to be drawn, must be firmly established.
- (2) Those circumstances must be determinative tendency pointing unerringly towards the guilt of the accused, and
- (3) The circumstances should make the chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt.

5. The learned Government Advocate (Crl. Side) submitted that in this case two deaths caused due to the rash and negligent driving of the bus. The petitioner is the Driver in the Transport Corporation. P.W.6, Conductor of the bus confirms petitioner had driven the bus on the date of accident. The accident took place on 27.03.2010 at about 7.30 p.m., at that time, the



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defacto complainant/father of D1, who was standing in the bus stand, had

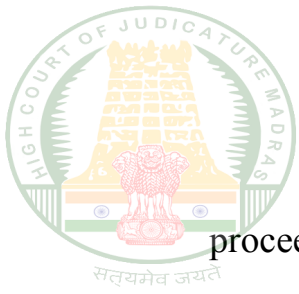
seen the accident. The defacto complainant lodged a complaint to P.W.11.

P.W.12 took up investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch, conducted inquest on D1 on the same day and sent the body for postmortem. P.W.10 is the Doctor who conducted postmortem on D1. The pillion rider Senthilkumar/D2 who sustained injuries in the accident was taken to Government Hospital, Pondicherry where he died on the next day on 28.03.2010. The Investigating Officer went to the Hospital, conducted inquest and handed over the body to P.W.8 to produce the same for postmortem. The Postmortem Doctor in the Government Hospital, Pondicherry conducted postmortem on D2 and issued Postmortem certificate. Both the vehicles, bus and the two wheeler produced before P.W.9/Motor Vehicle Inspector, who inspected the vehicles and gave reports/Ex.P3 and Ex.P4 confirming that the accident was not due to any mechanical defect. Thereafter, on collecting the materials and on completion of investigation, charge sheet filed. During trial, P.W.1 to P.W.12 examined and Ex.P1 to Ex.P10 marked. The Trial Court on the materials and evidences, rightly convicted the



petitioner which is confirmed by the Lower Appellate Court. Hence, prayed
for dismissal.

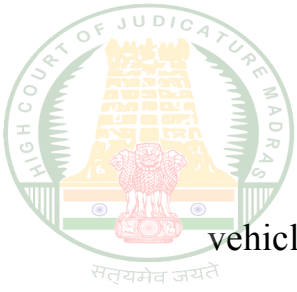
6.Considering the submissions made and on perusal of the materials, it is seen that though in this case P.W.1 to P.W.4 were projected as eye witnesses, P.W.2 and P.W.4 admit that they came to the scene of occurrence only after hearing about the accident. P.W.5 is the father of D2 who came to the Hospital after getting information about his son's injuries. In this case, the petitioner was driving the bus which is confirmed by P.W.6/Conductor. P.W.1 and P.W.3 are the projected eye witnesses. The specific case is that P.W.3 accompanied P.W.1 to the Government Hospital, Sirkazhi for medical treatment and they were standing near the bus stand at the time of accident. P.W.1 admits that he was standing 100 meters away from the accident spot, on seeing the crowd he went there and found his son dead due to the accident and D2/injured was taken to the Hospital. P.W.1 does not state anything about P.W.3 present along with him, hence the presence of P.W.3 in the scene of occurrence is doubtful. P.W.1 admits that the bus was coming from south to north and the bike driven by his son was



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proceeding from north to south, at that time, accident took place. Further,

P.W.1 specifically states that his complaint was written down in the Police Station by a Policemen and he signed the same, on the contrary, P.W.11 states that P.W.1 gave a written complaint and thereafter, FIR/Ex.P6 registered. The Motor Vehicle Inspector's report confirms that the damage to the bus is to the right head light, bumper and the damage to the two wheeler is on the head light, fork, mudguard and front wheel. The impact is on the right side to the bus. In Ex.P7/rough sketch, the width of the road is not given though in the rough sketch, the bus was shown to be on the right extreme of the road. But the rough sketch is not prepared in the presence of any witness and except for the Investigating Officer, nobody speaks about it. The other document Ex.P2/observation mahazar is without any details. P.W.4 confirms that he had signed the observation mahazar in the Police Station. Thus, Ex.P2 and Ex.P7 are not of any use to the prosecution, The evidence of P.W.1 is that the road is a busy road with public movement, there are shops and business establishments near the accident spot. Admittedly in this case no nearby shop vendors or any public examined as witness. P.W.1 admits that due to the nature of the road and traffic, no



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vehicle can be driven with high speed. No evidence available to prove the bus was driven in a rash and negligent manner. The Trial Court on its own had given a finding on the submission of the Additional Public Prosecutor that temple car procession normally takes place in that road, hence it is a broad road and the vehicle could have been driven with speed in a rash and negligent manner which is without any materials merely on submission which is subjective and it cannot be taken as evidence. Further, from the evidence, it is seen that the conditions stipulated in the decision referred to by the learned counsel for the petitioner not proved. In view of the above, this Court finds that the conviction and sentence imposed on the petitioner by the Trial Court, confirmed by the Lower Appellate Court is not sustainable.

7. Accordingly, the judgment rendered by the learned Judicial Magistrate, Sirkazhi in C.C.No.168 of 2010 dated 09.08.2017, confirmed by the learned Additional District and Sessions Judge, Mayiladuthurai in C.A.No.47 of 2017 dated 15.04.2021 both set aside. The petitioner is acquitted from all the charges.



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Consequently, connected miscellaneous petition is closed.

28.03.2025

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

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Crl.R.C.No.1039 of 2021

To

- 1.The Inspector of Police,
Thiruvankadu Police Station,
Mayiladuthurai District.
- 2.The Judicial Magistrate,
Sirkazhi.
- 3.The Additional District and Sessions Judge,
Mayiladuthurai.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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