



CRL.RC.No.661 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2025

CORAM:

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

Crl.RC.No.661 of 2023

Sakthivel

... Petitioner

Versus

State rep. by
The Inspector of Police
Sulur Police Station,
Coimbatore District

... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure praying to set aside the conviction imposed in the judgment dated 11.07.2022 made in CA.No.53 of 2019 on the file of V Additional District and Sessions Judge, Coimbatore confirming the judgment dated 22.01.2019 made in CC.No.146 of 2017 on the file of the learned Judicial Magistrate, Sulur by allowing this criminal revision petition.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER



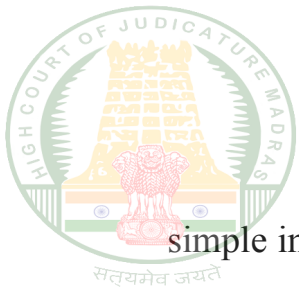
CRL.RC.No.661 of 2023

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This criminal revision case has been filed against the judgment dated 11.07.2022 passed in CA.No.53 of 2019 on the file of V Additional District and Sessions Judge, Coimbatore thereby confirmed the conviction and sentence imposed by the trial court in CC.No.146 of 2017 on the file of the learned Judicial Magistrate, Sulur dated 22.01.2019 for the offence under sections 279 and 304(A) of IPC.

2. The case of the prosecution is that on 27.08.2015 at about 7:45 p.m., when the deceased was standing to cross the road in the Pollachi Road Near Sultanpettai, Gayatri Mess, the petitioner had driven his motorcycle in a high speed manner and hit the deceased on his behind, due to which he sustained injuries and died.

3. On the side of the prosecution, they had examined PW1 to PW7 and marked Ex.P1 to P8. On the side of the petitioner, no one was examined and no documents were marked. On the basis of the oral and documentary evidences, the petitioner was found guilty under Sections 279 and 304(A) of IPC and he was sentenced under Section 304(A) of IPC to undergo one year simple imprisonment and to pay fine of Rs.3,000/-, in default to undergo three months



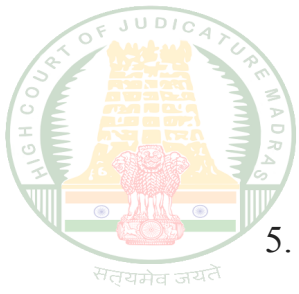
CRL.RC.No.661 of 2023

simple imprisonment. He was sentenced under Section 279 of IPC and ordered

to pay fine of Rs.500/-, in default to undergo one week simple imprisonment.

Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and the conviction and the sentence imposed by the trial court was upheld.

4. The learned counsel for the petitioner would submit that PW2 is the only eye witness and he deposed that while the deceased was standing to cross the road, the petitioner had driven his motorcycle in a high speed manner and hit the deceased, due to which he sustained injuries and died. He however did not even whisper that the petitioner had driven his motorcycle in a rash and negligent manner. When the prosecution failed to prove that the petitioner had driven his motorcycle in a rash and negligent manner, it would not be proper to convict the petitioner for offence under sections 279 and 304(A) of IPC. Mere speed would not lead to inference that rash and negligent driving had caused the accident which resulted in death. In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of *State of Karnataka Vs. Satish* reported in (1998) 8 SCC 493.



CRL.RC.No.661 of 2023

5. Per contra, the learned Government Advocate(crl.side) submitted

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that PW 2 categorically deposed that when the deceased was standing to cross the road, the petitioner had driven his motorcycle in a high speed manner and hit the deceased. Therefore, the deceased, while waiting to cross the road, the petitioner hit the deceased. Only when the petitioner had driven his motorcycle in a rash and negligent manner, he hit the deceased, that too on his back side. Therefore, the prosecution clearly proved that case and the trial court rightly convicted the petitioner.

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

7. The only point arising in this case is that whether the prosecution proved the case that the petitioner had driven his motorcycle in a rash and negligent manner and caused the accident, due to which the deceased died.

8. On perusal of records, it is revealed that on 27.08.2015 at about 7:45 p.m., when the deceased, after crossing the road in Pollachi Road near Sultanpettai, Gayathri Mess, the petitioner had driven his motorcycle from south to north in a high speed manner and hit the deceased, due to which the



CRL.RC.No.661 of 2023

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deceased sustained grievous injuries and died whereas PW2 deposed that when

the deceased was standing to cross the road from east to west on the Pollachi

Road near Sultanpettai, the petitioner had driven his motorcycle in a high speed manner from south to north and hit the deceased on his back side.

Therefore, PW2 did not even whisper that the petitioner had driven his motorcycle in a rash and negligent manner. He deposed that the petitioner had

driven his motorcycle in a high speed manner. That apart, on perusal of the rough sketch, which was marked as Ex.P4, revealed that when the deceased

was crossing the road from east to western side on the Pollachi Road near Sultanpettai, Gayatri Mess, the petitioner had driven his motorcycle from south

to north and dashed against the deceased. It shows that the deceased, without noticing on both the sides of the road, crossed the road. While crossing the

road, the petitioner drove his motorcycle in a high speed manner and hit the deceased on his back side. It is relevant to rely upon the judgment of the

Hon'ble Supreme Court of India in the case of *State of Karnataka Vs. Satish* reported in (1998) 8 SCC 493, wherein it is held as follows:

4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the



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prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.

9. Thus it is clear that mere driving of the vehicle at a high speed does not lead to inference that negligence or rash driving had caused accident resulting in death of. Except PW2, none of the witnesses had spoken about the rash and negligent driving of the motorcycle of the petitioner. Therefore in the absence of any material on record, no presumption of rashness or negligence



CRL.RC.No.661 of 2023

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could be drawn by invoking the maxim “*res ipsa loquitur*”. This is the serious infirmity and lacuna in the prosecution case. Therefore, there being no evidence on record to establish negligence or rashness in driving the motorcycle on the part of the petitioner, the conviction and sentence cannot be sustained against the petitioner.

10. In view of the above, the impugned judgments are liable to be set aside. Accordingly, this criminal revision stands allowed and the judgment dated 11.07.2022 passed in CA.No.53 of 2019 on the file of V Additional District and Sessions Judge, Coimbatore and the judgment dated 22.01.2019 passed in CC.No.146 of 2017 on the file of the learned Judicial Magistrate, Sulur, are set aside and the petitioner is acquitted from all the charges under Sections 279 and 304(A) of IPC. The bail bond, if any executed by the petitioner, shall stand cancelled. Fine amount, if any paid, shall be refunded to the petitioner forthwith.

03.06.2025

Neutral citation: Yes/No

Index: Yes/No

Speaking/Non speaking order

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G.K.ILANTHIRAIYAN. J,



CRL.RC.No.661 of 2023

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To
1.V Additional District and Sessions Judge,
Coimbatore
2.The learned Judicial Magistrate, Sulur
3.The Inspector of Police
Sulur Police Station,
Coimbatore District
4.The Public Prosecutor,
High Court of Madras

Crl.RC.No.661 of 2023

03.06.2025