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Crl.R.C.No.665 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2025

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.665 of 2021
and
Crl.M.P.Nos.10748 & 10750 of 2021

Suresh

... Petitioner

Vs.

State by
The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.
Crime No.40 of 2010

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to set aside the judgment, conviction passed against the petitioner in C.A.No.134 of 2017 dated 19.09.2018 by the learned IV Additional District and Sessions Judge, Coimbatore modifying the order passed by the learned Judicial Magistrate No.VI, Coimbatore in C.C.No.463 of 2011 dated 09.06.2017.

For Petitioner : Mr.M.Ganesh
Legal Aid Counsel

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



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ORDER

The petitioner/accused in C.C.No.463 of 2011 was convicted by the Trial Court by judgment dated 09.06.2017 and sentenced him to undergo six months simple imprisonment for the offence under Section 279 IPC, to undergo six months simple imprisonment for the offence under Section 337 IPC and to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo two months simple imprisonment for the offence under Section 304(A) IPC. Aggrieved against the same, the petitioner preferred an appeal before the Sessions Court in C.A.No.134 of 2017. The learned IV Additional District and Sessions Judge, Coimbatore dismissed the appeal confirming the conviction and sentence of the Trial Court by judgment dated 19.09.2018. Against which, the present revision is filed.

2.The gist of the case is that the defacto complainant/P.W.1 was riding his two wheeler Bajaj Caliber bearing registration No.TN-38-U-0040 on 15.01.2010 at about 12.45 p.m. in Coimbatore-Mettupalayam road proceeding from North to South near Ramakrishna English School with the



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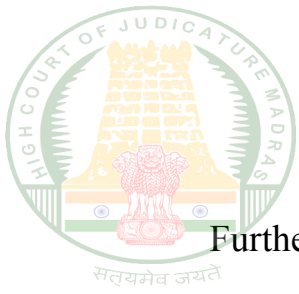
deceased Rangasamy as pillion rider, at that time, a Tata lorry bearing registration No.-TN-33-N-2939 driven by the petitioner with high speed in a rash and negligent manner came in the same direction and hit the two wheeler of P.W.1, in which, P.W.1 fell on the left side of the road and the pillion rider to the right side of the road and was run over by the rear right side tyre of the lorry. P.W.1 was taken to the Hospital, took treatment from P.W.9, information from the Government Hospital reached the respondent police. One Duraisamy, Head Constable on receipt of information visited the Hospital, recorded the statement of P.W.1/defacto complainant and registered FIR/Ex.P7. P.W.10/Investigating Officer took over the investigation, visited the scene of occurrence, prepared observation mahazar, rough sketch in presence of the witnesses, examined the witnesses present in the accident spot, namely, P.W.3 and P.W.4, rider and pillion rider of another bike who were travelling behind P.W.1. Thereafter, inquest conducted, body of Rangasamy was sent for Postmortem. After getting the postmortem report from P.W.8 confirming the death was due to the accident, both two wheeler and the lorry sent to P.W.7 for vehicle inspection. On completion of investigation, charge sheet filed. During trial, P.W.1 to P.W.10 examined and Ex.P1 to Ex.P9 marked on the side of the prosecution.



On the side of the defence, no witness examined and no documents marked.

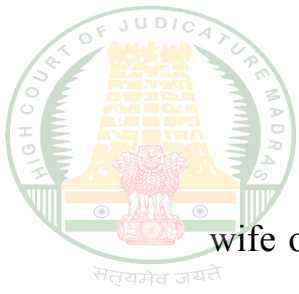
On conclusion of trial, the Trial Court convicted the petitioner as stated above which was confirmed by the Lower Appellate Court. Against which, the present revision filed.

3.The contention of the learned counsel for the petitioner is that in this case P.W.1, P.W.3 and P.W.4 are the projected eye witnesses. P.W.1 in his complaint states that while he was riding his two wheeler, the lorry driven by the petitioner came from behind in a rash and negligent manner and dashed the two wheeler and caused the accident. But in his evidence, he states that the lorry brushed his shoulder on the right side when overtaking and P.W.1 fell down to the left side of the road and sustained injuries but the pillion rider who fell on the right side of the road was run over by the right side rear wheels of the lorry. In this case, the deceased Rangasamy caught under the right rear tyre of the lorry. Though it was projected that the lorry hit the two wheeler from behind, it is seen that there is no damage either to the two wheeler or to the lorry. There was no impact of the vehicles. The damage is on the left mirror, left handle bar and front side of the two wheeler. Likewise, the damage to the lorry is on the left rear tyre fender.



Further, in the complaint, P.W.1 not identified the petitioner as the person who drove the lorry on the fateful day. In this case, P.W.1 admits that he is a relative of the deceased and the injury sustained by P.W.1 are a split injury on the left knee and left big finger. This might have been due to the skid of the two wheeler while it attempted to get into the thar road from the mud road lost balance, skidded, had a fall, the accident is due to P.W.1's improper riding of the two wheeler and not by the petitioner. P.W.3 and P.W.4 who are the other projected eye witnesses both claim they followed P.W.1 bike and they both took the injured/P.W.1 and the deceased to the hospital in 108 Ambulance, but in the Accident Register of P.W.1, it is recorded that one Kuppusamy brought P.W.1 to the hospital, likewise the deceased Rangasamy was accompanied by P.W.1/Ramesh. Since P.W.3 and P.W.4 are relatives to the deceased, they are projected as eye witnesses. They both state that the lorry driven by the petitioner attempted to overtake the two wheeler driven by P.W.1 and dashed the two wheeler from behind, but the Motor Vehicle Inspector report is otherwise. Hence, the presence of P.W.3 and P.W.4 at the accident spot is highly doubtful.

4.The learned counsel for the petitioner further submitted that P.W.2,



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wife of the deceased and P.W.6 is the daughter of P.W.2 and the deceased, both not seen the accident and are in the nature of hearsay witnesses. P.W.5, witness to observation mahazar, admits that he signed observation mahazar/Ex.P5 without knowing, what is written in the observation mahazar. P.W.7/Motor Vehicle Inspector confirms the damage to the two wheeler is to the left mirror and front portion of the two wheeler and as regards the lorry, damage is on the left rear tyre and no damage to the two wheeler on the rear side and front side of the lorry. P.W.8/Doctor conducted postmortem on the body of the deceased, confirms that the death is due to the accident. P.W.9/Doctor examined P.W.1, who states that injuries sustained by P.W.1 was simple in nature. P.W.10/Investigating Officer conducted investigation and filed charge sheet before the Trial Court. He further submitted that in this case, it is admitted that Coimbatore-Mettupalayam road is a busy road with heavy traffic where vehicle can travel following bumper to bumper. The place of occurrence is near Ramakrishna English School, a congested place where the vehicles cannot ply with speed and rashness. The observation mahazar confirms the road width, School and other buildings in the area. Further in the rough sketch, the place of occurrence is shown in the middle of the road which cannot be



so. Hence, the Trial Court failed to consider that the rider of the vehicle is the contributing factor for the accident who attempted to get into the thar road from the mud road got brushed with the lorry, losing balance fell down on the left side of the road and the pillion rider fell to the right side got under the rear left tyre of the lorry and the petitioner cannot be attributed to have driven the lorry in a rash and negligent manner and caused the accident.

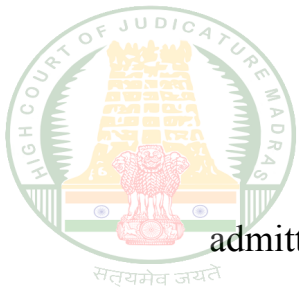
5. In support of his contention, the learned counsel for the petitioner relied upon the decision of this Court in the case of **B.Karthik vs. State** reported in **MANU/TN/5243/2022**, wherein this Court in paragraph No.9 held as follows:

“9. A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular.”



WEB COPY 6.He further relied upon the decision of this Court in the case of *Sakthivel vs. State* reported in *MANU/TN/5739/2022*, wherein it is held that mere damage, substantial or otherwise, cannot be the sole basis to infer culpable rashness or negligence, by applying the principle of ‘res ipsa loquitur’. He has also relied upon the decision in the case of *Arulanandham vs. State* reported in *MANU/TN/5746/2022*, wherein it is held that “negligence” or “rashness” per se are not culpable unless it is grave or gross in nature.

7.The learned Government Advocate (Crl. Side) opposed the petitioner’s contention and submitted that in this case the victim, a pillion rider in the two wheeler driven by P.W.1. On 15.01.2010 at about 12.45 p.m., P.W.1 riding the bike with pillion rider was passing by Ramakrishna English School in Coimbatore-Mettupalayam, at that time, lorry driven by the petitioner in a rash and negligent manner dashed the two wheeler from behind and P.W.1 fell down on the left side of the road and the pillion rider to the right side of the road and the lorry ran over the pillion rider caused instant death. P.W.1 was taken to hospital by P.W.3 and P.W.4 and



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admitted in Government Hospital, Coimbatore. P.W.9 examined P.W.1, recorded the injuries in the Accident Register/Ex.P6 and thereafter, P.W.9 informed the respondent police. On receipt of information, one Duraisamy, Head Constable attached to the respondent police visited the hospital, recorded the statement of P.W.1 and FIR registered. P.W.10 took up investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses present in the scene of occurrence and P.W.1 in the hospital, thereafter inquest conducted and the body of the deceased was sent for postmortem. P.W.8/Doctor conducted postmortem, issued Postmortem certificate/Ex.P9 confirming that the death was due to the accident. The two wheeler driven by P.W.1 and the lorry driven by the petitioner both sent for vehicle inspection. P.W.7/Motor Vehicle Inspector conducted inspection and issued inspections reports/Ex.P3 and Ex.P4 confirming that the two wheeler's right side rear view mirror broken, crash bar bend and front headlight damaged and with regard to the lorry, left side rear wheel mudguard damaged. Thus, on completion of investigation, charge sheet filed before the Trial court. The Trial Court on the evidence of witnesses and materials produced rightly convicted the petitioner which was confirmed by the Lower Appellate Court. Hence prayed for dismissal.



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8.Considering the submissions made and on perusal of the materials, it is seen that in this case, P.W.1 is an injured witness. On 15.01.2010 at about 12.45 p.m., P.W.1 was riding his two wheeler along with Rangasamy as pillion rider, both hail from the same Village and they were proceeding to Coimbatore. At that time, the petitioner, driving the lorry, in a rash and negligent manner attempted to overtake the two wheeler and hit the two wheeler from behind and P.W.1 fell down to the left side of the road escaped with injuries and the pillion rider fell down to the right side of the road and caught under the rear side tyre of the lorry. The other projected eye witnesses are P.W.3 and P.W.4, who admit that they are relatives of P.W.1 and the deceased. Further, both of them claim that they took P.W.1, the deceased to the hospital in a 108 Ambulance. But in the Accident Register/Ex.P6, it is recorded by P.W.9 that P.W.1 was accompanied by one Kuppusamy on 15.01.2010 at about 2.20 p.m. and it is recorded in the Accident Register of deceased, P.W.1/Ramesh brought the deceased to the Hospital. Hence, P.W.3 and P.W.4 not gone to the Hospital. Their version is that the petitioner's lorry hit the two wheeler of P.W.1 from behind but P.W.1's evidence is that lorry brushed his right shoulder, thereby he fell



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down and accident caused. Hence, presence of P.W.3 and P.W.4 is highly doubtful. The other witnesses, namely, P.W.2 and P.W.6, who are the wife and daughter of the deceased are hearsay witnesses. The only evidence is that of P.W.1. to find out whether the petitioner had driven the vehicle in a rash and negligent manner. It is admitted by the Investigating Officer that Coimbatore-Mettupalayam road is a busiest road with heavy traffic and the vehicles travel bumper to bumper. The place of occurrence is near Ramakrishna English School and next to it, there are other public buildings and the question of driving the vehicle with high speed does not arise. Further P.W.1's evidence is that the lorry brushed his right shoulders but P.W.9/Doctor does not find any bruises or any mark on the right shoulders of P.W.1. Thus, the version of P.W.1 that the lorry brushed his right shoulder is highly doubtful. Likewise, the evidence of other witnesses is that the lorry dashed against the two wheeler of P.W.1 from behind but P.W.7/Motor Vehicle Inspector confirms that there is no damage to the two wheeler on the rear side. Hence, the presence of P.W.3 and P.W.4 becomes doubtful. P.W.1 had not identified the petitioner as the driver of the vehicle. Further there is nothing to show that the vehicle was driven in a rash and negligent manner with high speed. The explanation given by the petitioner



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that the two wheeler driven by P.W.1 attempted to get into the thar road from the mud road and P.W.1 had a slip, fell down and attributed to the accident gains acceptability. From the above, it is seen that the prosecution miserably failed to prove the case beyond all reasonable doubt that the petitioner had driven the lorry in a rash and negligent manner, dashed from behind caused accident is not proved. Hence, this Court finds the conviction and sentence imposed by the Trial Court, confirmed by the Lower Appellate Court not sustainable.

9.Accordingly, the judgment rendered by the learned Judicial Magistrate No.VI, Coimbatore in C.C.No.463 of 2011 dated 09.06.2017, confirmed by the learned IV Additional District and Sessions Judge, Coimbatore in C.A.No.134 of 2017 dated 19.09.2018 both set aside. The petitioner is acquitted from the charges.

10.In the result, the Criminal Revision Petition stands allowed. Consequently, connected miscellaneous petitions are allowed.

11.This Court appreciates Mr.M.Ganesh, Legal Aid Counsel for the



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petitioner for his strenuous efforts in doing research and putting forth the case of the petitioner effectively. The Legal Services Authority to pay the remuneration to the Legal Aid Counsel as per Rules.

25.03.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The IV Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate No.VI,
Coimbatore.
- 3.The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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