



CRL RC(MD)No.54 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.08.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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Karuppaiah

... Petitioner

Vs.

State of Tamilnadu,
Rep. by the Inspector of Police,
Transport Investigation Division-3,
Madurai.
(Crime No.190/2011)

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the Judgment dated 30.11.2022 in Crl.A.No.44 of 2021 on the file of the learned IV Additional District Sessions Judge Madurai, in C.C.No.538 of 2011 on the file of the learned Judicial Magistrate No.II, Madurai.

For Petitioner : Mr.T.Seeni Syed Amma,
For M/s.Roy & Roy Associates

For Respondent : Mr.S.S.Manoj,
Government Advocate (Crl. side)

Amicus Curiae : Mr.G.Karuppasamy Pandian



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ORDER

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This Criminal Revision Case is directed against the judgment in C.A. No. 44 of 2021 of the learned IV Additional District & Sessions Judge, Madurai, confirming the conviction recorded by the learned Judicial Magistrate No.II, Madurai in C.C. No. 538 of 2011, while modifying the sentence.

2. The occurrence relates to a road traffic accident on 11.10.2011 at about 9.45 a.m. near Royal Court, Melaveli Road, Madurai, resulting in injuries to P.W.1 Suresh Kumar and the death of his wife Mary Clara Pushpam.

Gist of the Trial Court Judgment in C.C. No. 538 of 2011:

3. The learned Trial Court framed charges under Sections 279, 338, 304-A IPC and Section 134(a)(b) r/w 187 Motor Vehicles Act, 1988 (herein after referred to as "M.V Act"). On the prosecution side, P.Ws.1 to 11 were examined and Exs.P1 to P12 marked. No defence evidence was adduced.



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4. On appreciation of evidence, the learned Trial Court found that the Government bus TN-58-N-1947, driven by the accused, hit the rear of the two-wheeler TN-58-K-1697 ridden by P.W.1, causing grievous injuries to P.W.1 and fatal head injuries to the pillion rider, Mary Clara Pushpam. The Motor Vehicle Inspector (P.W.8) noted paint/scrape marks consistent with a rear-impact scenario and ruled out mechanical defects in both vehicles (Ex.P7 & Ex.P8). P.W.9 (post-mortem doctor) opined death due to head injury. Observation mahazar witnesses (P.W.4 & P.W.5) supported scene documentation; P.W.7 (SI) and P.W.11 (IO) spoke to prompt registration, alteration to Section 304-A IPC on the victim's demise, inquest, and investigation.

5. Holding that the manner of the occurrence itself spoke to negligence (rear-end impact; "*res ipsa loquitur*"), the learned Trial Court acquitted the accused of Section 134(a)(b) r/w 187 M.V. Act for want of proof but convicted him under Sections 279, 338 and 304-A IPC and imposed rigorous imprisonment for a period of six months and fine Rs. 1,000/- (Rupees One Thousand only), in default to undergo one month simple imprisonment under Sec.279, rigorous imprisonment for a period of one year and fine Rs.1,000/- (Rupees One Thousand only), in default to undergo one month simple imprisonment under Sec.338, and



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rigorous imprisonment for a period of two years and fine Rs.1,000, in default to undergo one month simple imprisonment under Sec.304-A, all concurrent.

Gist of the Appellate Judgment in C.A. No. 44 of 2021:

6. In appeal, the learned IV Additional District & Sessions Judge, Madurai, confirmed the conviction under Sections 279, 338 and 304-A IPC, upholding the learned Trial Court's reliance on (i) the rear-impact pattern borne out by Ex.P7/Ex.P8, (ii) the consistent ocular account of P.W.1 (injured witness), (iii) the corroborative scene evidence of P.W. 4/P.W.5 and (iv) the medical evidence of P.W.9. Minor inconsistencies were held natural, given the lapse of time and the injured status of P.W. 1 at the time of the statement. On sentence, the learned Appellate Court, considering age/family circumstances, partly allowed the appeal only to reduce the substantive sentence under Section 304-A IPC to one year rigorous imprisonment, and the acquittal under Section 134(a)(b) r/w 187 M.V. Act remained undisturbed.

Grounds in Revision:

7. In revision, the petitioner urges, *inter alia* that misappreciation



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of evidence; conviction allegedly contrary to weight of evidence; reliance on interested testimony of P.W.1 in the absence of independent eyewitnesses. Both the learned Trial and Appellate courts failed to apply the settled test that Section 304-A liability requires the act to be the proximate (*causa causans*) cause of death, not merely a *sine qua non*. Presence of multiple speed breakers near the locus, the petitioner claims careful driving post those breakers, thereby negating rashness. ***Abdul Subhan v. State***¹ was relied on for the proposition that “high speed” *per se* is not rashness and stressing the need for proper scene investigation including photos, skid marks, site plan, etc., which, according to the petitioner, is deficient here. Failure to consider helmet non-wearing by P.W.1 and the deceased, and alternate hypothesis of causation.

Submissions:

8. Reiterating the grounds in Revision, the learned counsel for the petitioner submitted that the petitioner is willing to compensate the victim's family, as directed by this Court.

¹ 2007 Cri LJ 1089 (Del.)



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9. Based on the submission made by the learned counsel for the petitioner to compensate the legal heirs of the deceased, this Court directed the learned Government Advocate (Criminal side) Mr.S.S.Manoj, to put the legal heirs of the deceased on notice.

10. Pursuant to the above direction, the legal heir of the deceased, viz, S.Shalini, D/o. Suresh Kumar, (Daughter of the deceased), appeared before this Court on 28.08.2025 and at their request, this Court appointed Mr.G.Karuppasamy Pandian, as *amicus curiae* to assist the Court and the legal heirs of the deceased. He was also directed to address the Court with regard to the scope of invoking the provisions of the the Probation of Offenders Act, 1958. Thereafter, on being satisfied with regard to the applicability of the provisions of PO Act, 1958, this Court, enquired the legal heirs of the victim, if he is willing to accept the compensation offered by the petitioner and condone the act of the petitioner and pardon him. On the willingness expressed by Thiru.Suresh Kumar to receive the compensation offered by the revision petitioner, the revision petitioner had volunteered to pay a compensation of Rs.4,00,000/- (Rupees Four Lakhs only) by cash dated 28.08.2025. On receipt of the same, M/s.S.Shalini, had filed an affidavit in this regard and the relevant portion of the same is extracted



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as follows:

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3. I respectfully submit that now owing to good will, I have decided to settle this issue by obtaining a sum of Rs.4,00,000/- (four lakhs only) by way of cash from the petitioner as a compensation in the case registered in Crime No. 199 of 2011 on the file of respondent police and consequent conviction order passed by the learned judicial Magistrate No.11, Madurai, in C.C. No. 538/2011 dated 13.03.2020 and the same was concurrently confirmed by the Learned IV Additional District Sessions Judge Madurai in C.A. No. 44/2021 dated 30.11.2022.

4. I humbly submit that pending revision, the petitioner had pleaded before this Honourable Court to extend the benefit of the Probation of Offenders Act 1958 and he has volunteered to pay adequate and just compensation to the victims of the crime. I most respectfully state that I appeared in person before this Honourable Court on 28.08.2023 and this Court was pleased to enlighten and enquire us in this regard.

5. I most respectfully state that though I lost my mother in a terrific accident, which cannot be compensated by any means; but considering the plight of the petitioner who will be put behind bars. I

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with a benevolent and caring attitude wish to pardon the petitioner. Further, the petitioner / accused has also regretted for his act. I out of my own volition, with proper legal counselling, without any fear or coercion and undue influence do hereby pardon the petitioner / accused and agree to receive the compensation as fixed by this Honourable Court.

Therefore it is prayed that this Hon'ble Court may please to accept this Undertaking Affidavit and pass order and thus render Justice.



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Submissions of the Amicus Curiae (supporting extension of benefits under the Probation of Offenders Act, 1958):

11. Legislative purpose and sweep of the Probation of Offenders Act, 1958 (“PO Act”): The learned *Amicus Curiae* Mr.G.Karuppasamy Pandian submitted that, the PO Act, 1958, is a beneficial and benevolent legislation intended to further reformation and rehabilitation and to avoid the deleterious effects of jail life for suitable offenders. The Statement of Objects and Reasons traces the evolution from the 1931 draft Bill and the 1934 communication permitting provincial legislation, leading to a uniform central law because existing State enactments were non-uniform and inadequate. The Act empowers Courts, (a) to release after admonition for specified offences and for offences punishable with imprisonment not exceeding two years (Section 3), and (b) to release on probation of good conduct in suitable cases (Section 4). There is a special protection for offenders under 21 years (Section 6) restricting resort to imprisonment.

Classic exposition by the Hon’ble Supreme Court:

12. He further relied upon the “classic” judgment authored by Justice.K. Subba Rao in ***Rattan Lal vs State Of Punjab***², which

² AIR 1965 SC 444



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underscores the reformatory purpose and the Court's discretionary latitude to choose probation in deserving cases.

Interface with statutes carrying minimum sentences:

13. He further explained that, where ever a statute prescribes a fixed minimum sentence without any discretion, the PO Act, 1958, ordinarily cannot be invoked. However, where the same statute also confers discretion on the sentencing Court to go below the minimum for special reasons (e.g., the Tamil Nadu Public Property (Prevention of Damage and Loss) Act), the presence of such discretion re-opens the door for applying the PO Act. Thus, if the special statute itself empowers reduction, PO Act can operate alongside that discretion. Where the statute admits of no discretion, PO Act does not apply.

Application to offences under Section 304-A IPC (rash or negligent act):

14. As far as the applicability of PO Act with respect to offences under Section 304-A IPC carries a maximum imprisonment of two years and no minimum sentence, the learned *Amicus Curiae* insisted that, probationary jurisdiction is clearly available.



15. *Mens rea* is conspicuously absent in 304-A (rashness/negligence, not intention), making it paradigmatically fit for reformatory sentencing where facts justify.

16. The *Amicus Curiae* further relying on this Court's practice and the judgment in ***Nithin vs. State, Rep. by its Inspector of Police, TIW (East) Police Station, Coimbatore***³ emphasized that the nature of the offence, character of the offender, and the statutory "notwithstanding" clause support releasing on probation instead of immediate sentencing, upon the offender entering into a bond (with/without sureties) for a period not exceeding three years.

Sections 360 & 361 Cr.P.C., 1973, vis-à-vis the PO Act; exclusion by special law:

17. The learned *Amicus Curiae* further pointed out that, in Tamil Nadu, Sections 360 & 361 Cr.P.C., 1973, do not apply where the PO Act is in force, by virtue of Section 19 of the PO Act. He also referred the prior Section 562 of the 1898 Code, which is *pari materia* with Section 360 Cr.P.C., 1973.

³ CDJ 2022 MHC 9499



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18. He further lamented that the learned Trial Courts often stereotypically record reasons for not invoking Section 360 Cr.P.C., 1973, but this is misdirected when PO Act applies, as *lex specialis (generalia specialibus non derogant)*. The PO Act is a self-contained code which excludes the operation of the general Cr.P.C. probation scheme in areas where PO Act is notified.

19. Hence, he insisted that, the correct inquiry would be under Sections 3/4 of the PO Act, not under Sections 360/361 of Cr.P.C. 1973.

***Revisional/Appellate power to extend PO Act benefits
(Section 11):***

20. The learned *Amicus Curiae* pointed out that, Section 11 of PO Act, 1958, expressly empowers appellate and revisional courts to extend the benefits of Sections 3 or 4 even at the appellate/revisional stage. Therefore, this Court, in revision, can substitute a sentence with admonition as per Section 3 or release on probation of good conduct as per Section 4 of the PO Act, where the statutory pre-conditions are satisfied.



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Compensation under Section 5 of the PO Act and its calibration with MCOP awards:

21. He further submitted that, Section 5 of PO Act permits the Court, when granting probationary relief, to direct payment of compensation to the victim. In such exercise, he pointed out that, Sub-section (3) assumes central importance. In motor accident matters (where victims may have received compensation from the Motor Accident Claims Tribunal (MCOP)), the quantum already awarded/received must be taken into account while determining any additional compensation under Section 5 of P.O. Act, so that the order is not onerous or disproportionate. The Court should consider economic capacity of the offender and avoid uniform high amounts that might frustrate the benevolent aim of the statute. The type and quantum received from the Tribunal should be verified and factored.

Preference for Section 3 (admonition) of P.O. Act in suitable 304-A cases:

22. While many decisions extend Section 4 (probation of good conduct), the *Amicus Curiae* persuaded that, in 304-A matters (maximum 2 years), Section 3 (release after admonition) may be appropriately invoked, subject to statutory pre-conditions e.g., no



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previous conviction proved; expediency having regard to circumstances, nature of the offence, and character of the offender. He further explained that, the term “admonition”, though not defined, bears its ordinary meaning: reprimand/warning/caution administered by the Court.

Conditions and supervision under Section 4:

23. The learned *Amicus Curiae* submitted that, if Section 4 of PO Act, 1958, is chosen, the Court may require personal bond, sureties, and supervision by a Probation Officer for a period not exceeding three years. Periodic reporting/signature (monthly/quarterly) may be directed, reinforcing the reformatory objective.

Not a matter of right; duty to give reasons:

24. The learned *Amicus Curiae* further elaborated that, the benefits under Sections 3 / 4 of the PO Act are discretionary and not as of right. When an accused seeks PO Act benefit, the Court must render a reasoned decision, either granting or declining, consistent with Supreme Court guidance. Relying upon the recent Hon'ble Supreme



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Court decision in **Chellammal & Another V. State⁴** , the learned *Amicus curiae* emphasized that unless expressly excluded, where Section 4(1) conditions are attracted, PO Act should be considered. He also pointed out that some special statutes (e.g., Section 19 of the SC/ST Act) expressly bar the application of probationary relief; likewise Section 18 of the PO Act contains exclusions, expressly excluding section 31 of the Reformatory Schools Act, 1897 /Section 5(2) of the Prevention of Corruption Act, 1947/any law in force in any State relating to juvenile offenders or Borstal Schools.

Consequential removal of disqualification (Section 12):

25. Explaining the scope of extending Section 4 (or analogous) benefit, the learned *Amicus Curiae* pointed out that Section 12 mandates that the conviction shall not entail disqualification attached to the conviction (e.g., service disqualifications for Government employees). He also discussed the recent Supreme Court decision in **Amit Singh vs. State of Rajasthan⁵** in which the grant of Section 12 was treated as consequential to the extension of Section 4 benefit. The *Amicus* also cited the decision of this Court in the case of **Thulasidas**

⁴ 2025 INSC 540

⁵ (Crl A.Nos.4860 – 4861/2024) (arising out of SLP (Crl)Nos. 1134-1135/2023)



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and another vs State⁶, where even in a Section 326 IPC case, the Court granted PO Act, 1958, benefit and consciously extended Section 12.

26. The learned *Amicus Curiae* traces the PO Act's beneficial purpose; relies on the classic exposition of its reformatory philosophy (AIR 1965 SC 444, per K. Subba Rao, J.); emphasized Sections 3 & 4 (admonition; probation of good conduct) read with Section 6 (special protection to under-21) and Section 11 (appellate/revisional power to grant probation). For Section 304-A IPC (negligence; no *mens rea*; maximum two years), probationary jurisdiction is said to be clearly available. Reliance is placed on this Court's approach in ***Nithin vs. State, Rep. by its Inspector of Police, TIW (East) Police Station, Coimbatore⁷*** and on ***Chellammal & Another V. State⁸*** to underscore the duty to consider probation where statutorily permissible. Section 5 (compensation) to be calibrated *vis-à-vis* MCOP awards and offender's means. Section 12 (removal of disqualifications) is pressed as consequential where Section 4 benefit is granted. *Thulasidas v. State,*

⁶ 2021 (1) MWN (Cr)4

⁷ CDJ 2022 MHC 9499

⁸ 2025 INSC 540



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2021 (1) MWN (Cr) 4, is cited to show liberal application even in graver contexts.

Submissions of the learned Government Advocate (Crl. side):

27. The learned Government Advocate stressed deterrence, road safety, and victims' interests in fatal road accidents under Section 304-A IPC and urged that probation must not be routine and the onus lies on the accused to place material on antecedents, remorse, cooperation, and compensation. On Section 12 of the PO Act, the State cautions against broad-brush directions and service-rule consequences, if any, to be left to operate in accordance with law. On Section 5, any additional compensation must be realistic having regard to MCOP awards and the offender's means. Further replying to the learned *Amicus Curiae*, the learned Government Advocate submitted that, while Section 19 PO Act has an exclusionary effect *vis-à-vis* Section 360 Cr.P.C., 1973, where the PO Act is in force, trial courts often record reasons under Section 361 to justify departure from probation; such practice should not be treated as an error *per se* if the ultimate inquiry is aligned with Sections 3/4 PO Act and reasons are germane.



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28. Heard the learned counsel on either side and carefully perused the materials available on record.

29. Points for Determination:

(i) Whether the conviction under Sections 279, 338 and 304-A IPC warrants interference in revision?

(ii) If the conviction is to stand, whether this Court should, in revisional jurisdiction under Section 11 PO Act, substitute probation/admonition for the sentence imposed, in the facts here?

(iii) How Section 5 (compensation) and Section 12 (removal of disqualifications) ought to be calibrated?

Analysis:

30. This Court has independently re-appreciated the evidence to the extent permissible in revision. The rear-end impact is established by the concordant physical evidence in Ex.P7/Ex.P8: a paint glaze on the front-left of the bus and a scrape mark on the right rear mudguard of the two-wheeler. Mechanical defects were ruled out. P.W.1 (injured) speaks to straight-line movement on the left while the bus came from



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behind in the same direction. P.W.4/P.W.5 support the scene documentation. P.W.9 confirms the cause of death by head injury consistent with a thrown-fall due to impact. The defence did not elicit an alternate proximate cause or break the chain of causation.

31. The learned counsel for the petitioner's reliance on Delhi High Court's judgment in Abdul Subhan is misplaced on facts. The present record does not rest merely on the epithet “high analysis speed”; rather, it turns on the rear-impact geometry and absence of mechanical fault, with prompt FIR, inquest and post-mortem, and a coherent ocular-medical-mechanical nexus. Even assuming a busy carriageway reduces the probability of very high speeds, the duty of care of a following heavy vehicle towards a preceding two-wheeler remains stringent; rear-ending in such circumstances, without evidence of sudden unsafe manoeuvre by the rider, constitutes actionable negligence. The plea on non-wearing of helmet if any cannot exculpate the negligent driver from criminal consequence, at best, such a factor belongs to civil apportionment of loss.

32. The learned Trial Court’s invocation of *res ipsa loquitur* is



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legally apt in the limited sense of evidentiary inference from the manner of occurrence; the learned Appellate Court's affirmation suffers from no perversity. No material irregularity or illegality vitiating the conviction is demonstrated. Accordingly, Conviction sustained under Sections 279, 338 and 304-A IPC; acquittal under Section 134(a)(b) r/w 187 M.V. Act stands.

33. Sentencing - Applicability of the Probation of Offenders Act, 1958:

This Court in the case of **Nithin vs. State, Rep. by its Inspector of Police, TIW (East) Police Station, Coimbatore⁹**, has dealt with a similar circumstance and the relevant portion of the same is extracted as follows:

“12. Having heard the learned counsel appearing for the parties and the learned amicus curiae and perused the materials available on record, this court finds that the legal heirs of the deceased had been duly compensated and a just balance has been arrived at. Therefore, this court is of the view that it is a fit case for granting the benefit of the provisions of Probation of

⁹ CDJ 2022 MHC 9499



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Offenders Act, 1958 to the petitioner.

13. Section 3 of the Probation of Offenders Act, 1958 confers power upon the courts to release certain offenders after admonition. When a person is guilty of offence punishable for any offence with imprisonment for not more than two years or with fine or with both under the Penal Code 1860 or any other law and there is no previous conviction proved against such offender. The said legal provision is extracted hereunder for ready reference:-

"3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under



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section 4, release him after due admonition."

14. When the court empowered to try and sentence the offender to imprisonment declines to deal with him under Section 3 of the Probation of Offenders Act, 1958, the Appellate Court or the revisional court, as the case may be, i.e., either the Sessions Court or the High Court is empowered under Section 11(1) of the Act to make an order under this Act. It is relevant to extract Section 11(1) of the Act, which reads as under:-

"11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.

—

(1) Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision."

15. It is relevant to note that the Hon'ble Apex Court, in several cases, has held that in case of motor accidents, rash and negligent driving should be taken serious note of and in number of cases, it has desisted from invoking the provisions of



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Probation of Offenders Act, 1958 However, in State vs. Sanjiv Bhalla (2015) 13 SCC 444, taking into consideration its earlier decisions, the Apex Court has held as under:-

"11. Every accused person need not be detained, arrested and imprisoned—liberty is precious and must not be curtailed unless there are good reasons to do so. Similarly, everybody convicted of a heinous offence need not be hanged however shrill the cry “off with his head”— and this cry is now being heard quite frequently. Life is more precious than liberty and must not be taken unless all other options are foreclosed. [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] Just sentencing is as much an aspect of justice as a fair trial and every sentencing Judge would do well to ask: Is the sentence being awarded fair and just?

12. In Ved Prakash v. State of Haryana [(1981) 1 SCC 447 : 1981 SCC (Cri) 182] this Court observed that: (SCC p. 448, para 1)

“1. ... [I]t is the duty of the sentencing court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitation slant.”

A little later in the judgment, it was held that: (SCC p. 448, para 1)



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“1. [E]ven if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of Offenders Act.”

In other words, this Court was of the view that punishment should be rehabilitative and humanising and, therefore, need not necessarily be retributive in character.

13. Subsequently, in Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551 : 1988 SCC (Cri) 984] this Court held that extending the benefit of probation to first-time offenders is generally not inappropriate. The humanising principle was extended even to a conviction under Part II of Section 304 IPC in State of Karnataka v. Muddappa [(1999) 5 SCC release on probation was granted to the convict.

14. The benefit of the provisions of Section 6 of the Probation of Offenders Act (relating to restrictions on the imprisonment of offenders below 21 years of age) [“6.Restrictions on imprisonment of offenders under twenty-one years of age.—(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and



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the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.(2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in sub-section (1), the court shall call for a report from the Probation Officer and consider the report, if any, and other information available to it relating to the character and physical and mental conditions of the offender.”] was extended to persons convicted of attempted rape. This was in *State of Haryana v. Prem Chand* [(1997) 7 SCC 756 : 1997 SCC (Cri) 1176] which was followed in *State of H.P. v. Dharam Pal* [(2004) 9 SCC 681 : 2004 SCC (Cri) 1477].

15. Similarly, in *Om Prakash v. State of Haryana* [(2001) 10 SCC 477 : 2003 SCC (Cri) 799] the convicts, first-time offenders, were given the benefit of Section 360 and Section 361 of the Criminal Procedure Code and it was held that reasons ought to have been recorded for the denial of such a benefit. [“360.Order to release on probation of good conduct or after admonition.—(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or



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*imprisonment for life, and no previous conviction is proved against the offender, if it appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the court may direct and in the meantime to keep the peace and be of good behaviour: Provided....(2)**(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Penal Code, 1860 punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.(4)-(10) 361. Special reasons to be recorded in certain cases.—Where in any case the court could have dealt with—(a) an accused person*



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under Section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.”] The offence in that case was punishable under Section 323 and Section 325 read with Section 148 and Section 149 IPC.

16. In the meanwhile, however, in Dalbir Singh v. State of Haryana [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] this Court declined to give to the appellant, convicted of an offence punishable under Section 279 and Section 304-A IPC, the benefit of Section 4 of the Probation of Offenders Act [“4.Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence



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when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the Probation Officer concerned in relation to the case.(3)-(5)] keeping in mind “the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families”. It was held that: (Dalbir Singh case [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] , SCC p. 87, para 13):-

“13. ... [C]riminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence.” That decision, in which a cyclist was killed, resulted in a sentence of three months and one year respectively for the violation of the two sections mentioned above.



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That decision, in a sense, was a precursor to a stricter application by this Court of the provisions for releasing a convict on probation and went contrary to the grain of earlier decisions of this Court.

17. In Karamjit Singh v. State of Punjab [(2009) 7 SCC 178 : (2009) 3 SCC (Cri) 330] the convict, a first-time offender, was denied the benefit of release on probation in view of the gravity of the offence and a large number of injuries on the victim. The conviction in that case was for an offence punishable under Section 307 IPC and Section 27 of the Arms Act. That decision contains an inadvertent error, to the following effect: (SCC p. 185, para 26)

“26. In Manjappa v. State of Karnataka [(2007) 6 SCC 231 : (2007) 3 SCC (Cri) 76] this Court considered the scope of grant of relief under the provisions of Section 361 CrPC or under the provisions of the Probation of Offenders Act, 1958 reconsidering earlier judgment of this Court in Om Prakash v. State of Haryana [(2001) 10 SCC 477 : 2003 SCC (Cri) 799] , and held that such a relief should be granted where the offence had not been of a very grave nature and in certain cases where mens rea remains absent as in a case of rash and negligent driving under Section 279 read with Section 304-A IPC.”



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18. As has been noticed above, *Om Prakash* [(2001) 10 SCC 477 : 2003 SCC (Cri) 799] related to an offence punishable under Section 323 and Section 325 read with Section 148 and Section 149 IPC. *Manjappa* [(2007) 6 SCC 231 : (2007) 3 SCC (Cri) 76] relates to the offences punishable under Sections 323, 325 and 504 IPC. There is no reference to any offence punishable under Section 279 or Section 304-A IPC. However, it appears that this Court desired to convey that an offence punishable under Section 279 and Section 304-A IPC is the result of an accident and is, therefore, not “grave” since there is an absence of *mens rea*.

19. Notwithstanding this, in *State of Punjab v. Balwinder Singh* [(2012) 2 SCC 182 : (2012) 1 SCC (Cri) 706] it was again held that the punishment for causing death by rash or negligent driving should be deterrent, in view of the frequency of such incidents. The accident in that case resulted in the death of five persons, and the punishment was six months' rigorous imprisonment with a fine of Rs.5000.

20. In *Alister Anthony Pareira v. State of Maharashtra* [(2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953] the convict's driving resulted in the death of seven persons



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and injuries to eight others. This Court upheld his conviction by the High Court for the offences punishable under Part II of Section 304; Sections 338 and 337 IPC and sentenced him to rigorous imprisonment for three years and a fine of Rs 5 lakhs. This Court also observed that the case was not a fit one for releasing the convict on probation. It was also observed that our country has the dubious distinction of registering the maximum number of deaths in road accidents and that “It is high time that lawmakers revisit the sentencing policy reflected in Section 304-A IPC”.

21. In *State v. Sanjeev Nanda* [(2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2013) 3 SCC (Cri) 899] six persons were killed and one injured as a result of the convict's driving. The trial court convicted him for an offence punishable under Section 304 Part II IPC and sentenced him to undergo rigorous imprisonment for five years. On appeal, the High Court found the convict guilty of commission of an offence punishable under Section 304-A IPC and reduced the sentence to two years. By the time the convict completed his term of imprisonment. That being so, while restoring the conviction under Section 304 Part II IPC, this Court did not deem it appropriate to enhance the sentence awarded. Several reasons were given for this, including the fact that the convict had given compensation to the families of the deceased to the extent of Rs 10 lakhs each and to the family of the injured to



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the extent of Rs 5 lakhs. The convict was further directed to deposit an amount of Rs 50 lakhs with the Central Government for paying compensation to the victims of other hit-and-run cases and to do community service for two years.

22. It does appear that depending upon the facts of each case, causing death by what appears (but is not) to be a rash or negligent act may amount to an offence punishable under Part II of Section 304 IPC, not warranting the release of the convict under probation. There may also be situations where an offence is punishable under Section 304-A IPC in an accident “where mens rea remains absent” and refusal to release a convict on probation in such a case may be too harsh an approach to take. An absolute principle of law cannot be laid down that in no case falling under Section 304-A IPC should a convict be released on probation. This is certainly not to say that in all cases falling under Section 304-A IPC, the convict must be released on probation—it is only that the principles laid down in Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act should not be disregarded but should be followed and an appropriate decision, depending on the facts of the case, be taken in each case.

23. In Ajahar Ali v. State of W.B. [(2013) 10 SCC 31 : (2013) 3 SCC (Cri) 794] the appellant was convicted of an



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offence of outraging the modesty of a woman punishable under Section 354 IPC. This was held to be “a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded” and so the benefit of the Probation of Offenders Act was not given to him. This may be contrasted with *Prem Chand* [(1997) 7 SCC 756 : 1997 SCC (Cri) 1176] and subsequently *Dharam Pal* [(2004) 9 SCC 681 : 2004 SCC (Cri) 1477] where the convict was guilty of a far more serious offence of attempted rape and yet granted the benefit of the Probation of Offenders Act, notwithstanding the nature of the crime, and only because of his age.

24. These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift—from punishment being a humanising mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the Judge is to strike a fine balance between releasing a convict after admonition [Probation of Offenders Act, 1958, “3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Penal



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Code, 1860, or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Penal Code, 1860 or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition. Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4.”] or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanising mission must not be forgotten.

25. There are other legislative requirements that need to be kept in mind. The Probation of Offenders Act provides, in Section 5 thereof [“5.Power of court to require released offenders to pay compensation and costs.—(1) The court directing the release of an offender under Section 3 or Section 4, may, if it thinks fit, make at the same time a further order directing him to pay—(a) such compensation as the court thinks



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reasonable for loss or injury caused to any person by the commission of the offence; and(b) such costs of the proceedings as the court thinks reasonable.(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Sections 386 and 387 of the Code.(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.”] for payment of compensation to the victim of a crime (as does Section 357 of the Criminal Procedure Code). Yet, additional changes were brought about in the Criminal Procedure Code in 2006 providing for a victim compensation scheme and for additional rights to the victim of a crime, including the right to file an appeal against the grant of inadequate compensation. How often have the courts used these provisions?

26. In *Ankush Shivaji Gaikwad v. State of Maharashtra* [(2013) 6 SCC 770 : (2014) 1 SCC (Cri) 285] and *Jitendra Singh v. State of U.P.* [(2013) 11 SCC 193 : (2013) 4 SCC (Cri) 725] this Court held that consideration of grant of compensation to the victim of a crime is mandatory, in the following words taken from *Ankush Shivaji Gaikwad* [(2013) 6 SCC 770 : (2014) 1 SCC (Cri)



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285] : (SCC p. 797, para 66)

“66. ... [W]hile the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation.”

27. This being the position in law, there is a necessity of giving justice to the victims of a crime and by arriving at a fair balance, awarding a just sentence to the convicts by treating them in a manner that tends to assist in their rehabilitation. The amendments brought about in the Criminal Procedure Code in 2006 also include a chapter on plea bargaining, which again is intended to assist and enable the trial Judge to arrive at a mutually satisfactory disposition of a criminal case by actively engaging the victim of a crime. It is the duty of a trial Judge to utilise all these tools given by Parliament for ensuring a fair and just termination of a criminal case.

28. To sum up:

28.1. For awarding a just sentence, the trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Criminal Procedure Code;



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28.2. When it is not possible to release a convict on probation, the trial Judge must record his or her reasons;

28.3. The grant of compensation to the victim of a crime is equally a part of just sentencing;

28.4. When it is not possible to grant compensation to the victim of a crime, the trial Judge must record his or her reasons; and

28.5. The trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case."

34. The Hon'ble Apex Court in the case of **Chellammal & Another V. State**¹⁰ has dealt with the nuance of PO Act and the relevant portion of the same is extracted as follows:

"28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in sub- section (1) of Section 4 of the Probation Act are attracted, the court has no

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discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.”

35. In the instant case, the question is whether, notwithstanding the sustained conviction, this Court should, in revisional jurisdiction, extend probation/admonition under the PO Act. The statutory architecture is clear: Section 3 (admonition) and Section 4 (probation of good conduct) permit release in lieu of sentence in eligible cases; Section 11 expressly enables appellate/revisional courts to grant such relief; Section 304-A IPC carries a maximum of two years, with no minimum, and does not import *mens rea*; There is no special-law bar here (contrast statutes that exclude probation). The individualized sentencing inquiry in fatal 304-A cases must balance deterrence and denunciation with reformation, the offender's antecedents, post-



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occurrence conduct, and victim redress.

36. The record shows that no material of prior convictions or adverse antecedents. Cooperation with investigation; no allegation of hit-and-run; the charge under Section 134 M.V. Act failed for want of proof.

37. Ms. S. Shalini, daughter of the deceased, along with her sister, has received Rs.4,00,000/- (Rupees Four Lakhs only) on 28.08.2025 as compensation from the revision petitioner; a joint memo has been filed; the other daughter has confirmed receipt via video conferencing. It is pertinent to record that the *defacto* complainant, that is, husband of the victim has passed away in the interregnum.

38. In these circumstances and bearing in mind, the Hon'ble Supreme Court's consistent reminder that probation is not a matter of right but a sound judicial discretion where statutory preconditions are met, this Court is persuaded that Section 4 PO Act (rather than Section 3) is appropriate. A fatality is involved; a structured period of supervision with good-conduct bond best aligns reformation with



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accountability. Deterrent objectives are not jettisoned; they are recalibrated through conditions and oversight rather than incarceration.

39. This is a fit case to substitute probation for the substantive custodial sentence under Sections 279, 338 and 304-A IPC, invoking Sections 4 and 11 of the PO Act.

40. ***Calibration of Section 5 (Compensation) & Section 12 (Disqualifications):***

Section 5 of PO Act authorizes compensation when probationary relief is granted. The *Amicus Curiae* rightly urges calibration with any MCOP awards and the offender's means, to avoid onerous orders that defeat the Act's benevolent aim. Here, in view of the sum of Rs. 4,00,000/- (Rupees Four Lakhs only) already paid under compromise and the availability/possibility of MCOP adjudication under the M.V. Act regime, this Court considers it unnecessary to direct any additional compensation under Section 5 at this stage. The relevant portion of the joint memo filed by the revision petitioner and Ms.S.Shalini is extracted as follows:



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**IN THE HIGH COURT OF JUDICATURE AT MADRAS
MADURAI BENCH
(Criminal Revision Jurisdiction)**

Crl. R.C. No. 54 of 2023

- Against -

Crl. A. No. 44 of 2021
(On the file of the Additional District and Sessions Judge,
Madurai)

- In -

C.C. No. 538 of 2011
(On the file of the
Judicial Magistrate No.11 Court, Madurai)

Karuppaiah (47/2025)
S/o. Chinnan,
No: 5/35, North Street,
A. Ramanathapuram,
Vadugapatti Post,
Usilampatti Taluk,
Madurai.

Petitioner/Sole Accused

Vs-

State of Tamil Nadu
Represented by its
Inspector of Police,
Transport Investigation Division -3,
Madurai,
Crime No.190 of 2011

Respondent/Complainant

MEMO FILED BY PETITIONER/SOLE ACCUSED

I, S.Karuppaiah, S/o. Chinnan, aged about 47 years, residing at No: 5/35, North Street, C. Ramanathapuram, Vadugapatti Post, Usilampatti Taluk, Madurai District do hereby states as follows:

1. That I am the Petitioner in the above Criminal Revision case and I am well acquainted with the facts of the case and I agreed to give compensation to the two daughters of the deceased by paying a sum of Rs. 2,00,000/- (Two Lakhs) each in the above case.

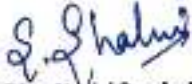


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2. That On 28.08.2025, I hereby disbursing a total sum of Rs. 4,00,000/- (Four Lakhs) Cash on hand to the 2nd daughter of the deceased namely., S. Shalini D/o. Suresh Kumar who had also received the money on behalf of her sister i.e., 1st daughter of deceased.
3. Therefore, it is most respectfully prayed that this Hon'ble Court may be pleased to record this memo as part and parcel of the Judgment and thus render Justice.

Dated at Madurai on this 28th day of August, 2025


Shalini/2nd daughter
of deceased


Karuppaiah /Petitioner


Public Prosecutor


Counsel for Petitioner



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41. Liberty is reserved to the parties to work out civil remedies/adjustments in pending or future MCOP proceedings, if any, in accordance with law.

42. Section 12 PO Act provides that a person dealt with under Section 3 or 4 shall not suffer disqualification attached to the conviction under any law. As clarified by the Hon'ble Supreme Court, Section 12 is consequential to the grant of Section 4 benefit; however, the operation of Section 12 in any given service-law context must be applied in accordance with the governing rules. It is therefore declared that Section 12 shall operate in the petitioner's favour as per law consequent upon the grant of Section 4 relief herein.

43. As regards the submission of the learned *Amicus Curiae* that the learned Trial Courts frequently and stereotypically record reasons for not invoking Section 360 Cr.P.C., 1973, despite the Probation of Offenders Act, 1958, being in force in the State, and that such approach is misdirected since the proper inquiry ought to be under Sections 3 and 4 of the said Act, this Court finds merit in the clarification advanced by the learned Government Advocate. The learned



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Government Advocate has rightly pointed out that, although Section 19 of the Probation of Offenders Act, 1958, operates to exclude the application of Section 360 Cr.P.C., 1973, in areas where the Act is in force, the practice of the learned Trial Courts recording reasons under Section 361 Cr.P.C., 1973, to justify departure from granting probation cannot, by itself, be treated as an error *per se*, provided that the underlying judicial inquiry is consistent with the principles embodied in Sections 3 and 4 of the Probation of Offenders Act, 1958, and that the reasons recorded are relevant, substantial, and germane to the refusal of probation.

44. Section 361 of the Code of Criminal Procedure mandates that
“Where in any case the Court could have dealt with

(a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or

(b)

but has not done so, it shall record in its judgment the special reasons for not having done so.”



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45. For a clearer understanding of the statutory scheme, Section 19 of the Probation of Offenders Act, 1958 is extracted below:

“19. Section 562 of the Code not to apply in certain areas.—Subject to the provisions of Section 18, Section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.”

46. It is evident that Section 562 of the Code of Criminal Procedure, 1898, which corresponds in substance to Section 360 of the Code of 1973, stands superseded in its operation wherever the Probation of Offenders Act, 1958 has been brought into force. The legislative intent underlying Section 19 of the Probation of Offenders Act is to exclude the applicability of the general probationary provision under Section 562/360 of the Code in such territories.

47. However, the said exclusion does not extend to Section 361 of the Code, which merely imposes a judicial duty to record “special reasons” whenever the benefit of probation, whether under Section 360 of the Code or under the provisions of the Probation of Offenders Act, is not extended to an eligible offender. Consequently, in States where the



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Probation of Offenders Act, 1958 is in force, only Section 360 Cr.P.C., 1973, and that portion of Section 361(a) which reads “an accused person under Section 360 or” become redundant. Section 361 in its remaining part continues to apply with full force, requiring Courts to record special reasons for any departure from granting the benefit of probation under the Probation of Offenders Act.

48. In fine, the conviction of the revision petitioner under Sections 279, 338 and 304-A IPC is affirmed. The acquittal under Section 134(a) (b) r/w 187 M.V. Act is left undisturbed. The report of the jurisdictional probation officer dated 19.11.2025 has been received by this Court, for the purpose of extending the benefit of P.O. Act in favour of the petitioner and the same shall form part of this order.

49. In exercise of powers under Section 11 of the Probation of Offenders Act, 1958, this Court sets aside the substantive sentences imposed under Sections 279, 338 and 304-A IPC and releases the revision petitioner on probation of good conduct under Section 4 PO Act.



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50. In view of the above discussion, the Criminal Revision is partly allowed on the question of sentence, with the following directions:

51. The petitioner shall execute a personal bond for Rs.10,000/- (Rupees Ten Thousand only) with one surety for a like sum to the satisfaction of the Judicial Magistrate No.II, Madurai, within four weeks from the date of receipt of this order.

52. The probation period shall be one (1) year from the date of execution of bond.

53. The petitioner shall be placed under the supervision of the jurisdictional Probation Officer, Madurai, and shall report once in a quarter and comply with all lawful directions issued by the Probation Officer during the currency of probation.

54. The petitioner shall maintain good behaviour, not commit any offence, strictly abide by traffic laws, and intimate any change of address/employment to the Probation Officer and the learned Trial



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Court forthwith.

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55. In case of breach of any condition, it will be open to the learned Trial Court to cancel the benefit under Section 4 and call upon the petitioner to undergo the sentence in accordance with law.

56. It is declared that Section 12 shall operate in favour of the petitioner consequent upon the grant of Section 4 benefit herein, to the extent and in the manner recognized by law, without pronouncing upon the application of any specific service rule, which shall be dealt with by competent authorities in accordance with law.

57. The Judicial Magistrate No.II, Madurai, shall secure and accept the bonds, notify the Probation Officer, and monitor compliance.

58. The Registry shall transmit the trial and appellate records forthwith with a copy of this order to the trial court and the Probation Officer concerned for necessary follow-up.



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59. This Court records a special note of appreciation to the *Amicus Curiae* Mr.G.Karuppasamy Pandian for effectively assisting this Court.

60. In view of the above discussion, this Criminal Revision Petition is partly allowed.

27.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.The Additional District Sessions Judge,
Madurai.
- 2.The Judicial Magistrate No.II,
Madurai.
- 3.The Inspector of Police,
Transport Investigation Division-3,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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27.11.2025