



CRL RC(MD)No.780 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 03.09.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.780 of 2024

and

CRL MP(MD)Nos.8360 and 8361 of 2024

Sundar

... Petitioner / Appellant /
Sole Accused

Vs.

State represented by,
The Inspector of Police,
Viralimalai Police Station,
Viralimalai,
Pudukkottai District.
(Crime No.13/2016)

... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, to call for the records in CrI.A.No.55/2023 on the file of the learned Additional District and Sessions Judge, Pudukkottai, and set aside the order dated 15.07.2024, confirming the conviction and sentence imposed in C.C.No.274/2019 on the file of the learned Judicial Magistrate, Illupur, dated 12.04.2023 and acquit the petitioner / sole accused.

For Petitioner : Mr.K.C.Maniyarasu



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For Respondent : Mr.S.S.Manoj,
Government Advocate (CrI. Side)
Amicus Curiae : Mr.Karuppasamy Pandian

ORDER

Preface:

This Criminal Revision challenges the concurrent findings of conviction recorded by the learned District Munsif-cum-Judicial Magistrate, Illupur, in C.C. No. 274 of 2019 dated 12.04.2023, and affirmed by the learned Additional District & Sessions Judge, Pudukottai, in C.A. No. 55 of 2023 dated 15.07.2024, for the offences under Sections 279 and 304-A IPC. While assailing conviction on facts and law, the revision petitioner has, in the alternative, prayed for the benefit of the Probation of Offenders Act, 1958 ("PO Act").

Gist of the learned Trial Court Judgment in C.C. No. 274 of 2019:

2. The prosecution alleged that on 10.01.2016 at about 18:00 hours, on SH-71 (Viralimalai-Manapparai Road) near Sevanampatti branch road, the accused/revision petitioner, while riding Honda Shine TN-55-AX-3012, hit from behind the bicycle ridden by Karuppaiah, who



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succumbed to head injuries en route to GH, Manapparai.

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3. The learned Trial Court examined P.W.1 to P.W.7 and marked Exs.P-1 to P-7, in which P.W-1 to P.W-3 were treated as eye-witnesses; P.W.4 is the mahazar witness; P.W.5 is the Motor Vehicle Inspector who ruled out mechanical defect; P.W.6 is the SSI who registered the FIR; P.W.7 is the IO.

4. The learned Magistrate held that the rear-end impact, the absence of mechanical defect, and the consistent ocular account established rash and negligent driving beyond reasonable doubt; convicted the accused under Sections 279 & 304-A IPC and sentenced him to undergo six months simple imprisonment under Section 279 of IPC and one year simple imprisonment and Rs.3,000/- fine, in default, to undergo further two months simple imprisonment under Section 304-A of IPC, concurrently. Relief prayed under Section 360 Cr.P.C./PO Act was declined.

Gist of the Criminal Appeal Judgment in C.A. No. 55 of 2023:

5. On re-appreciation, the learned Appellate Court found the



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prosecution's narrative consistent, rejected the defence on relationship of witnesses and minor investigative lapses, and sustained that the deceased was on the left margin shortly after turning from the branch road when struck from behind. Holding that speed/rashness can be inferred from the manner of impact and surrounding facts, the learned Appellate Court confirmed conviction and sentence and dismissed the appeal.

Grounds of Criminal Revision:

6. The revision enumerates, *inter alia*: (i) judgments contrary to law, evidence and probabilities; (ii) reliance on conjectures; (iii) cross-examination of P.W.1 showing south-to-west movement contrary to Ex.P1/LW statements; (iv) absence of independent witnesses on SH-71; (v) P.W.1-P.W.5 are relatives; (vi) witnesses did not actually see the occurrence but came on hearing a sound; (vii) no proof of rashness/negligence; (viii) timing anomalies between receipt of information (11.01.2016, 6.00 a.m.) and alleged earlier enquiry of P.W.2 & P.W.3; (ix) P.W.4's signature in Ex.P5 obtained later and at IO's instance; (x) contradictions on petty/tea shop; (xi) mismatch in vehicle production/inspection dates (12.01.2016 vs. 18.01.2016); (xii) oral vs. written complaint discrepancy; (xiii) cumulative benefit of doubt; and



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(xiv) alternate plea for PO Act in view of compensation paid.

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Submissions:

7. The learned counsel for the revision petitioner submitted that the eyewitness account is biased and given after the event. A rear-end collision alone does not prove rashness. He further contended that the contradictions on direction of travel, nature of timings, mahazar signatures, and Motor Vehicle Inspection date undermine the core. He insisted that the benefit of doubt should follow, also requested in the alternative, to consider Section 304-A IPC prescribes only a maximum sentence of 2 years and no minimum sentence. He further pleaded to consider the clean antecedents of the petitioner and insisted that, Section 3/4 PO Act, 1958, may be invoked, exercising power under Section 11 of the PO Act, 1958. The learned counsel for the petitioner further submitted that the petitioner is now prepared to compensate the legal heirs of the deceased by paying a sum of Rs.70,000/- (Rupees Seventy Thousand only) as *ex-gratia* payment, exclusive of other amount / compensation which they are entitled to receive under any law.

8. The learned Government Advocate (Criminal side) pointed out that, rear-end collision shortly after the deceased turned onto the main



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road, coupled with no mechanical defect and consistent testimony of P.W.1 to P.W.3, proves rash and negligent driving. He reiterated that, lapses are minor, not going to the root, made it clear that, deterrence in road deaths is vital. If any relief is considered, he suggested structured probation with fair compensation, adjusted for any MCOP award.

9. Assistance of Amicus Curiae:

Detailed submissions on the beneficial sweep of the PO Act; Section 3 or 4 is available for 304-A IPC; Section 11 empowers appellate/revisional Courts to extend probation; Section 5 permits calibrated compensation accounting for MCOP; and Section 12 removes disqualifications consequent upon probation. Preference for Section 3 (admonition) in suitable 304-A IPC cases, else Section 4 with conditions/supervision.

10. Heard the learned counsels on either side and carefully perused the materials available on record.



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11. Points for Determination:

(i) Do the grounds raised warrant interference with conviction under Sections 279 & 304-A IPC?

(ii) If conviction stands, should this Court modify the sentence by invoking Sections 3/4 read with Section 11 PO Act, 1958, especially in view of compensation already paid?

Analysis:

12. Rear-end impact & proximate cause: The consistent case of the prosecution is that the deceased, having just turned from the Sevanampatti branch road, was riding on the left margin when struck from behind by the revision petitioner's motorcycle. The Motor Vehicle Inspector (P.W.5) excludes mechanical failure. In road jurisprudence, a rear-end collision is a strong circumstance for inferring the trailing driver's lack of due care, unless displaced by credible material; none is forthcoming here.

13. Direction of travel & “tea/petty-shop” semantics: Small differences about whether it was south-to-west or south-to-north and



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then west, and about what the shop looked like, do not weaken the core issue that there was a rear-end hit on the left soon after the turn. They are natural discrepancies, not contradictions.

14. **Interested witnesses: Relationship is not a disqualification:** what matters is intrinsic credibility and corroboration. P.W.1 to P.W.3 are consistent on the manner and site; their presence is natural; the defence has not demonstrated any motive to falsely implicate this accused as opposed to an unknown offender.

15. **Investigative lapses:** The timing of forwarding the FIR, the date of mahazar signatures, and the Motor Vehicle Inspection date, assuming some irregularity are peripheral where ocular, site, and mechanical evidence converge. The Court's task is to assess proof of rashness/negligence, not to reward investigative imperfections.

16. **Hearsay plea:** The witnesses being in proximity, hearing an impact and immediately reaching the spot, and describing the position of the vehicles and the aftermath, supply direct facts perceived by the senses.



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17. On the totality, this Court finds no perversity in the concurrent conclusion that the revision petitioner drove rashly/negligently and caused the fatality. Conviction under Sections 279 & 304-A IPC stands affirmed.

18. This Court has dealt with a similar case in ***Nithin vs. State, Rep. by its Inspector of Police, TIW (East) Police Station, Coimbatore¹***, 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 Offenders Act, 1958 to the petitioner.

¹ CDJ 2022 MHC 9499



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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 section 4, release him after due admonition."



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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 Probation of Offenders Act, 1958 However, in State vs. Sanjiv



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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)

“1. [E]ven if the Bar does not help, the Bench must fulfil



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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 the character of the offender, it would not be desirable to deal



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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 imprisonment for life, and no previous conviction is proved



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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 under Section 360 or under the provisions of the Probation of



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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 when called upon during such period, not exceeding three years,



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

19. The Hon'ble Apex Court in the case of **Chellammal & Another V. State**² 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.”

20. Section 304-A IPC carries a maximum of two years imprisonment and no minimum period of imprisonment; there is no special-statute bar. The field for Section 3 (admonition) or Section 4 (probation of good conduct) of the PO Act, 1958, is open. By Section 11 of PO Act, 1958, this Court can extend probation at the revisional stage.

21. The offences, though grave in consequence, is negligence-based (no *mens rea*). The revision petitioner has no prior convictions on record; he has co-operated for fair trial; and there is no material of aggravation such as drunken driving, hit-and-run, or repeat violations.



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22. 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 Mr.S.S.Manoj, to put the legal heirs of the deceased on notice.

23. Pursuant to the above direction, the legal heir of the deceased, viz, Thiru.Vaithiyalingam, S/o.Karuppaiah (Son 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.Vaithiyalingam, to receive the compensation offered by the revision petitioner, the revision petitioner had volunteered to pay a compensation of Rs.70,000/- (Rupees Seventy Thousand only) vide demand draft in D.D.No.540722 dated 12.08.2025, Indian Bank, High Court Branch, Madurai, drawn in favour of the *defacto* complainant. On



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receipt of the same, Thiru.Vaithiyalingam had filed an affidavit in this regard and the relevant portion of the same is extracted as follows:



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IN THE HIGH COURT OF JUDICATURE OF MADRAS

AT MADURAI BENCH

Crl.R.C.(MD)No.780 of 2024

Against

C.A.No.66 of 2023

(On the file of the Additional District and Sessions Judge, Pudukkottai)

In

C.C.No.2/4/2019

(On the file of the District Munsif cum Judicial Magistrate, Ilupur)

Sundar(M/39),

S/o.Kuruppinah,

Aththipsiam,

Viralimalai Taluk,

Pudukkottai District.

... Petitioner / Sub Accused

Vs.

State of Tamil Nadu

Represented by its

Inspector of Police,

Viralimalai Police Station

Viralimalai, Pudukkottai District.

Crime No.13 of 2016

... Respondent / Complainant

AFFIDAVIT FILED BY THE DE-FACTO COMPLAINANT

I, Vaithiyalingam, son of Kuruppinah, aged about 39 years, residing at Sevampatti, (Aadhar No.8430 6010 1342) Viralimalai Taluk, Pudukkottai District, has come down to Madurai and do hereby solemnly affirm and sincerely state as follows:



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1. I respectfully submit that the petitioner herein has preferred revision petition against the order passed by the District Munsif cum Judicial Magistrate, Illupur in C.C.No.274/2019 dated 12.04.2023 and the same was concurrently confirmed by the Additional District and Sessions Judge, Pudukkottai in C.A.No.55/2023 dated 15.07.2024.
2. I respectfully submit that the petitioner was convicted for offences under Sections 279, 304A I.P.C and sentenced him to undergo Rigorous imprisonment for 6 months under section 279 of IPC and 1 year simple imprisonment with fine amount of Rs.3000/- in default of two months imprisonment under section 304A of IPC.
3. I respectfully submit that now owing to good will, I have decided to settle this issue by obtaining Rs.70,000/- vide D.D.No.540722 dated 12.08.2023 drawn at INDIAN BANK, HIGH COURT BRANCH, MADURAI, in favour of "Mr.M.VAITHIYALINGAM" from the petitioner as a compensation in the case registered in Crime No.13 of 2016 District Munsif cum Judicial Magistrate, Illupur in C.C.No.274/2019 dated 12.04.2023 and the same was concurrently confirmed by the Additional District and Sessions Judge, Pudukkottai in C.A.No.55/2023 dated 15.07.2024.
4. I humbly submit that pending revision, the petitioner had pleaded before this Honourable Court to extend the benefit of the Probation of



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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 12.08.2025 and this Court was pleased to enlighten and enquire us in this regard.

5. I most respectfully state that though I lost my father in a terrific accident, which cannot be compensated by any means; but considering the plight of the petitioner who will be put behind bars in his young age and having the benefit of job offers to run his livelihood; I 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 orders and thus render Justice.

Dated at Madurai on this 3rd day of September 2025

De-Facto Complainant

K. S. S. S. S.



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24. Section 5 PO Act, 1958, empowers this Court to order compensation while granting probation. Accordingly, Rs.70,000/- (Rupees Seventy Thousand only) has already been disbursed as compensation. Without evidence of an MCOP award or its quantum in this case file, it would be inappropriate to impose a disproportionate additional sum that defeats the reformatory aim. A modest, supplemental amount will balance deterrence, responsibility and reformation.

25. Given a fatality has occurred, and to preserve structured accountability, Section 4 (probation of good conduct) with conditions is more apposite than a bare admonition under Section 3 of PO Act, 1958. Consequent upon the grant of Section 4 of PO Act, 1958 relief, Section 12 of PO Act, 1958, will operate in accordance with law, as a statutory consequence regarding disqualifications attached to conviction, subject to the applicable service-rule framework.

26. Accordingly, the case is fit for probation under Section 4 of PO Act, 1958, with calibrated compensation under Section 5 of PO Act, 1958, and supervision. The report of the jurisdictional probation officer



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dated 17.11.2025 in this regard has been received by this Court, and the same shall form part of this order.

27. In fine, the conviction of the revision petitioner under Sections 279 & 304-A IPC as recorded by the learned Trial Court and affirmed in appeal is confirmed.

28. In exercise of powers under Section 11 of the Probation of Offenders Act, 1958, the substantive sentences of imprisonment imposed on the revision petitioner are set aside.

29. The revision petitioner is released on probation of good conduct under Section 4(1) PO Act, 1958, for a period of one year, subject to the following conditions:

[a] the execution of a personal bond for Rs.10,000/- (Rupees Ten Thousand only) with one surety for the like sum to the satisfaction of the learned Trial Court, within 30 days from the date of receipt of a copy of this order.

[b] the supervision by the jurisdictional Probation Officer, the revision petitioner shall report once in every month and comply with all



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lawful directions; any breach will entail the benefit being withdrawn and the original sentence revived.

[c] Consequent upon the grant of probation under Section 4, the removal of disqualification as contemplated by Section 12 of PO Act, 1958, shall follow in accordance with law.

[d] The bond already furnished under Section 437-A Cr.P.C., 1973, shall continue for one year from today.

30. The learned Trial Court / Probation Officer / DLSA is hereby directed to:

[a] Secure the bond/surety within 30 days;

[b] Place the revision petitioner under Probation Officer supervision and obtain quarterly reports;

[c] Report any breach for appropriate orders.

30. Criminal Revision case is partly allowed to the extent of modification of sentence as aforesaid; conviction stands. Consequently, connected miscellaneous petitions are closed.



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31. *Epilogue:*

Road fatalities demand accountability; yet, in negligence-based offences with clean antecedents and victim compensation, the reformatory mandate of the PO Act must not be eclipsed. The present modification secures deterrence through structured probation, vindicates victims' rights through compensation, and advances rehabilitation, the triad that the statute envisions.

32. In fine, this Criminal Revision case is partly allowed.

27.11.2025

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

To

- 1.The Additional District and Sessions Judge, Pudukkottai.
- 2.The Judicial Magistrate, Illupur.
- 3.The Inspector of Police, Viralimalai Police Station, Viralimalai, Pudukkottai District.

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4.The Probation Officer,
Pudokkottai District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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27.11.2025