



CRL RC(MD)No.985 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.08.2025

PRONOUNCED ON : 20.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.985 of 2025

Arunkumar

... Petitioner / Appellant / Accused

Vs.

The State,

Through the Sub Inspector of Police,

Sattur Taluk Police Station,

Virudhunagar District.

...Respondent / Respondent / Complainant

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, to call for the records of the impugned judgement dated 24.04.2025 in C.A.No.138/2024 passed by the learned Additional District and Sessions Judge, Virudhunagar, modifying the conviction and sentenc passed by the learned Judicial Magistrate – II, Sattur, in S.T.C.No.695/2022 dated 05.12.2023 and set aside the same.

For Petitioner : Mr.Shaji Chellan,
For Mr.S.Bharathi

For Respondent : Mr.S.S.Manoj,
Government Advocate



CRL RC(MD)No.985 of 2025

ORDER

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Preface of the case:

This Criminal Revision, at the instance of the accused/revision petitioner, assails (i) the judgment dated 05.12.2023 in S.T.C. No. 695 of 2022 passed by the Judicial Magistrate No.II, Sattur, convicting the petitioner under Sections 279 and 338 IPC, and (ii) the judgment dated 24.04.2025 in C.A.No. 138 of 2024 of the learned Additional District and Sessions Judge, Virudhunagar, partly allowing the appeal by modifying the conviction from Section 338 to Section 337 IPC while sustaining the conviction under Section 279 IPC. The petitioner seeks acquittal.

Prosecution Case:

2. A road-traffic accident involving a Tata Ace water delivery vehicle bearing Reg. No. TN-49-AA-8964 allegedly reversed on a public street and hit PW-5 Mariammal, causing injuries and the same is alleged to have happened on 29.01.2019, around 08:00 a.m., on Kalamman Koil Street, near Lucky Match/Lucky Theepati Office, Sattur. Following which, on the complaint lodged by the son of the victim, one Kumar, a F.I.R. in Crime No.24 /2019 was registered as



CRL RC(MD)/No.985 of 2025

against the petitioner herein by the Sathur Taluk Police Station for the offences under Sections 279 and 337 IPC; which was later altered to Sections 279 and 338 IPC based on medical papers. After investigation, charge sheet was filed under Sections 279 and 338 IPC on 23.02.2021.

3. Based on the complaint (Ex.P1) lodged by PW1 Kumar, a FIR (Ex.P2) in Crime No. 24/2019 was registered. The observation Mahazar (Ex.P3) and Rough Sketch (Ex.P4) were prepared by the Investigating Officer (PW8). The vehicle inspection was conducted, MVI Report (Ex.P5). Accident Register (Ex.P6) issued by the Star Hospital and Wound Certificate (Ex.P7) issued by Meenakshi Mission are the medical records. The offences under Sections 279 and 337 IPC was altered to Sections 279 and 338 IPC based on “grievous” classification in papers. The final report was filed on 22.03.2019.

4. Eight witnesses were examined as PW1 to PW8, among which PW1 Thiru.Kumar is the *de-facto* complainant/son of the victim, one Thiru.Manikanda Prabhu who is a relative to PW1 was examined as informed witness, PW3 & PW4 one Thiru.Karuthapandi and Thiru.Kaliraj were projected as eye-witnesses, injured victim was



CRL RC(MD)No.985 of 2025

examined as PW5 , PW6 & PW7 are the relatives of the victim later turned hostile, and the Investigation Officer was examined as PW8, through whom eight documents were marked as Ex.P1 to Ex.P8. No material objects were marked

5. The main contention of the prosecution is that the accused, while reversing the Tata Ace on a public way, acted rashly/negligently, hit PW5, and caused injuries corroborated by ocular evidence and medical papers.

Gist of the Trial Court Judgment in S.T.C. No. 695 of 2022:

6. The learned Trial Court relying upon the evidence of PW1 (son/complainant), PW3 and PW4 (stated to be eye-witnesses), FIR (Ex.P2), complaint (Ex.P1), mahazar (Ex.P3), rough sketch (Ex.P4), MVI report (Ex.P5), Accident Registers/Wound Certificates (Exs.P6 & P7), held that on 29.01.2019 at about 08.00 a.m., near Lucky Match Office on Kalamman Koil Street, the petitioner, while reversing a Tata Ace (Reg. No. TN-49-AA-8964) in a rash and negligent manner, hit PW5 Mariammal and the right rear wheel passed over her, causing injuries. On such finding, the learned Trial Court proceeded to convict the



CRL RC(MD)No.985 of 2025

petitioner for the offences under Sections 279 and 338 IPC and sentencing him to a fine of Rs.1,000/- (Rupees One Thousand only) each, in default, to undergo one week simple imprisonment.

Gist of the Judgment in Criminal Appeal in Crl.A. No. 138 of 2024:

7. The learned Appellate Court held that “grievous hurt” was not proved as the medical officer(s) were not examined and mere marking of the wound certificate would not suffice. Consequently, the conviction under Section 338 IPC was modified to Section 337 IPC. The conviction under Section 279 IPC was sustained and sentenced him with fine, for Section 337 IPC was fixed at Rs.500/- (Rupees Five Hundred only), in/default one week simple imprisonment and other findings of the learned Trial Court were affirmed.

Grounds of Revision:

8. The Judgments of the courts below are against law, the weight of evidence, and the probabilities of the case and passed without appreciating the law and the facts of the case in proper light. The learned Appellate Court has modified the conviction from 338 of IPC to



CRL RC(MD)/No.985 of 2025

337 of IPC for the reason that the medical witness was not examined and so the grievous nature of the injury was not proved. The learned Appellate court has rightly held that mere marking of wound certificate will not prove the grievous nature of the injury. But unfortunately, it has convicted the petitioner under section 337 of IPC. The reasons held by the learned Appellate Court for not convicting the petition u/s.338 of IPC would apply to section 337 of IPC also.

9. The Courts below failed to note that PW1 Kumar, in his deposition, stated that while he and his mother, PW5 Mariammal, were going to a shop, a TATA ACE vehicle bearing Reg. No. TN49 AA 8964 was reversed without looking back by its driver with a loud reversing alarm and hit his mother's leg. She fell down, and despite this, the driver did not stop the vehicle and ran over her. As a result, she sustained injuries on her right cheek, leg, and head. PW1 further stated that he, along with Manikanda Prabhu, transported her in a truck to Sattur Star Hospital, gave first aid, and sent her to Madurai Government Hospital through his relative, after which both he and Manikanda Prabhu went to the Sattur Taluk Police Station and filed a complaint. He also stated that Manikanda Prabhu signed as a witness in the said complaint.



CRL RC(MD)/No.985 of 2025

10. The Courts below failed to note that during cross-examination, PW1 stated that his mother fell down and bled at the place of the accident, and while lifting her into the truck, his clothes were stained with blood. He mentioned going to the police with those blood-stained clothes but did not hand them over. He further added that Ramesh drove the truck, and if he were questioned, it would reveal who was present at the scene. The Courts below failed to note that PW1 did not depose that the driver was negligent, reckless, speeding or failed to sound a horn or drove in a rash manner. Instead, his evidence was inconsistent, as he claimed the vehicle reversed with a loud reversing sound and struck his mother.

11. PW2 Manikanda Prabhu is merely a hearsay witness on behalf of the prosecution. But in his cross-examination, he said he heard from the police that the vehicle hit her while reversing with a loud sound. PW3 Karuthapandi stated that the TATA ACE vehicle suddenly reversed without sounding any horn and ran over Mariammal, causing the right wheel to climb over her left side. She was then taken by auto to Sattur Hospital, where the police came and enquired about the incident, and later she was referred to Madurai for further treatment. He also said that while in the hospital, Kumar (PW1) was asked to write the



CRL RC(MD)No.985 of 2025

complaint.

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12. There is a material contradiction between the testimonies of PW1 and PW3. The complaint allegedly given at the hospital was suppressed by the prosecution. The learned Trial Court failed to appreciate this when the defence brought up this inconsistency. PW6 Marithai, daughter of PW5, was also declared hostile upon the request of the prosecution. PW7 Samuthiram, husband of PW6 and brother-in-law of the injured, was also declared hostile.

13. The learned Trial Court failed to note that PW1 to PW4 and PW6 are all relatives of the injured PW5 Mariammal. Independent witnesses from the locality were not examined. Important documentary and oral evidence have not been properly considered by the learned Trial Court. PW1 and PW4 deposed that Mariammal was bleeding at the scene and blood stained their clothes. PW4 said the blood-stained cloth was taken to the police. However, the police neither seized the cloth nor recorded any blood stains at the scene in the sketch or mahazar. The observation mahazar and sketch were not prepared at the actual scene. The Courts below failed to consider this. It was the



CRL RC(MD)/No.985 of 2025

sudden appearance of the vehicle and Mariammal's inability to notice it that caused the accident.

14. All witnesses, including PW1 Kumar, PW2 Manikanda Prabhu, and PW4 Kaliraj, stated that the vehicle reversed with a loud beeping sound before hitting Mariammal. Therefore, the petitioner cannot be said to have acted negligently. The Courts below failed to consider this crucial defence argument. Only PW3 said the vehicle reversed suddenly without a horn. In cross-examination, PW8 admitted that the observation mahazar and sketch did not record any traces of blood at the scene. He also confirmed that the driver Ramesh and one Karthik, who helped transport the injured to the hospital, were not examined. These were material witnesses whose non-examination casts serious doubt on the case. None of the witnesses, including those who deposed in Court, stated that the TATA ACE driver drove negligently or recklessly.

15. The instant case suffers from non-examination of the material witnesses. In the case of **Takhaji Hiraji v. Thakore Kubersing Chamansing and Ors.**¹, it has been held that if a material witness,

¹ (2001) 6 SCC 145



CRL RC(MD)/No.985 of 2025

who would unfold the genesis of the incident or an essential part of the prosecution case, is not convincingly brought to the fore otherwise, or where there is a gap or infirmity in the prosecution case, which could have been supplied or made good by examining a witness who, though available, is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution. The prosecution has not examined many of the material witnesses in this instant case. Had the prosecution been unbiased, they would have examined all the above stated persons.

16. The Courts below completely rejected the defence argument that the police had started the investigation even before registering the FIR. PW3 Karuthapandi clearly stated that the complaint was obtained from PW1 in the hospital, and PW4 Kaliraj stated that the police came to the hospital based on information and enquired into the matter.

Submissions:

17. The learned counsel for the petitioner Mr.Shaji Chellan relied on the Star Hospital Accident Register dated 28.01.2019 describing a



CRL RC(MD)/No.985 of 2025

different setting, that the victim sustained injuries during an accidental fall while “fetching water near house” and pointed out the various inconsistent descriptions of place and dates. He further urged that non-examination of doctors and mahazar witnesses is fatal and that the two immediate witnesses, namely, Ramesh and Karthik, were not examined. Categorically contending that PW5 did not support identity or manner of accident, he further insisted to negate the version of PW1 to PW4, who are related/interested witnesses. He strategically argued that there was no proof of rashness/negligence. On the contrary, several witnesses state the vehicle reversed with a loud beeping alarm.

18. He drew my attention towards the various investigation lapses, more particularly the lapse on the part of the Investigation Officer who failed to seize the blood-stained clothes and blood marks in scene documents. Putting forth a suggestion of an investigation set in motion before the FIR and pointing out that the complaint allegedly obtained at the hospital has been suppressed, he prayed for acquittal of the revision petitioner.

19. The learned Government Advocate (Crl. side) Mr.S.S.Manoj



CRL RC(MD)/No.985 of 2025

submitted that the date discrepancy in the Accident Register is a clerical error and instead that the sequence of FIR, treatment, and admission shows the occurrence on 29.01.2019. He further explained that the three place descriptions refer to the same locality on Kalamman Koil Street, and the differences are merely descriptive. Pointing out that the doctors' examination would have been formal, he made it clear that documents were exhibited without dispute.

20. Relying upon the evidence of PW1, PW3 and PW4 which firmly speak to reversing and impact, he categorically contended that minor semantic variations about "front/back" or "horn/beeper" are immaterial. Seeking dismissal of the criminal revision petition, he submitted that the conviction under Sections 279 and 337 IPC was rightly sustained by the learned Appellate Court.

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



CRL RC(MD)/No.985 of 2025

WEB COPY

22. Points for determination:

(i) Whether the prosecution has proved, beyond reasonable doubt, that the petitioner drove the vehicle “rashly or negligently” on a public way so as to attract Sections 279 and 337 IPC?

(ii) Whether the cumulative effect of (i) date/place inconsistencies between the contemporaneous Accident Register and later police papers, (ii) non-examination of material witnesses (including doctors and first witnesses), and (iii) investigative lapses, renders the prosecution version unsafe?

(iii) Whether, in revisional jurisdiction, the concurrent findings suffer?

Analysis:

23. Section 279 IPC requires proof of rash or negligent driving on a public way. Section 337 IPC requires proof that hurt was caused by such a rash or negligent act endangering life or personal safety. Thus, even where “grievous hurt” fails for want of medical proof (hence 338 instead of 337), the substratum of rash/negligent act must still be established beyond reasonable doubt.



CRL RC(MD)/No.985 of 2025

24. The various discrepancies in evidence shake the genesis and origin of the prosecution case. To be more specific, PW1 states the vehicle reversed “with a loud beeping sound” and hit PW5 and that the driver did not stop thereafter. But PW3 claims “sudden reverse without horn,” and PW4 speaks of “high speed with beeping sound.” These accounts are not merely minor variations; they are mutually destructive on two key indicia of care: warning sound and speed. If, as PW1 & PW4 say, an audible reversing alarm was on, that circumstance *prima facie* indicates the driver took at least one safety measure; if, as PW3 says, there was no horn/signal, the versions cannot stand together without satisfactory reconciliation. I have no hesitation to observe that such reconciliation is not found in either judgment.

25. Hence, I am of the considered view that, crucially, none of the witnesses clearly testify to specific negligent manoeuvre(s) beyond the mere fact of reversing. No doubt the learned Trial Court/Appellate Court have inferred negligence from the occurrence itself, but the law requires the prosecution to establish rashness/negligence as a fact, not presume it from the accident alone.



CRL RC(MD)No.985 of 2025

26. The Star Hospital Accident Register (Ex.P6) records the date 28.01.2019, the time around 08:00 a.m., and the history as “Road Traffic Accident while fetching water from water delivery vehicle near her house at O. Mehtupatti.” But the FIR (Ex.P2) narrates the date as 29.01.2019 around 10.15 hours and the place as near Lucky Theepati Office. On the contrary rough sketch (Ex.P4) notes “Suppu Athaal Veedu.” The prosecution’s explanation that “28” is a clerical error and that all three place descriptions refer to the same street is, at best, an inference. The doctor who authored Accident Register - Ex.P6 was not examined to clarify either the date or the narrative of “fetching water near house.”

27. In the face of two competing versions, one contemporaneous and medical, the other subsequent and investigative, the failure to examine the author of the first, foundational record is a serious lacuna, and the same goes for the root of the prosecution case. It is needless to state that these are not peripheral discrepancies. They go to the genesis (date/time/place/manner) of the occurrence. In short, the learned Appellate Court treated them as inconsequential without reasons for addressing the Accident Register head-on.



CRL RC(MD)/No.985 of 2025

28. Further, this Court is duty bound to observe that, both mahazar witnesses were not examined. More importantly, the two immediate/transport witnesses, i.e., Ramesh - the truck/auto driver and Karthik, the helper, were admittedly available but withheld. The Investigation Officer (PW8) concedes that he neither seized the blood-stained clothes nor noted blood at the scene in Ex.P3 or Ex.P4. When the core matter is disputed and versions diverge, withholding such material and available witnesses attracts the principle in **Takhaji Hiraji vs. Thakore Kubersing Chamansing and others**², which mandates that Courts may draw an adverse inference if material witnesses who could have unfolded the genesis are not examined.

29. The learned Appellate Court brushed aside the omission to examine doctors as “formal”, yet relied on Ex.P7 to sustain Section 337 IPC while simultaneously accepting that medical proof was inadequate for Section 338 IPC. This internally inconsistent approach further weakens the prosecution case.

30. Though PW5 (injured) turned hostile on material particulars, asserting she fainted and did not notice the vehicle/driver, PW2 is

² (2001) 6 SCC 145



CRL RC(MD)No.985 of 2025

largely hearsay; PW6 and PW7 also turned hostile. PW1–PW4 are related to PW5; while the relationship is not a ground for rejection, in the absence of independent witnesses from the locality (none examined despite availability), I am of the considered view that it is necessary for this Court to look for stronger internal consistency and external corroboration. And obviously those are missing.

31. Further, PW3's statement that a complaint was obtained in the hospital and PW4's version that the police came to the hospital "on information" raise a fair doubt about the sequence of complaint/FIR/scene inspection, particularly when the Accident Register purports to note the police intimation on 28.01.2019 itself. The prosecution did not dispel this doubt through the author-doctor or hospital staff. Needless to state, when the earliest version is left unproved and potentially inconsistent with later police papers, the benefit must go to the accused.

32. The learned Trial Court inferred rashness/negligence mainly from the accident and the fact of reversing. The learned Appellate Court corrected the medical facet (338 to 337) but overlooked that proof of



CRL RC(MD)/No.985 of 2025

rashness/negligence was itself shaky. The cumulative effect of (i) unresolved date/place contradictions *vis-à-vis* the Accident Register, (ii) mutually destructive ocular variations including horn/beeper; “sudden reverse”; “high speed”, (iii) non-examination of doctors and first-witnesses, and (iv) investigative omissions (no blood-stain record/seizure), creates a reasonable doubt that cannot be bridged by mere surmise.

33. In the given circumstances, with a flawed prosecution story, I am of the considered view that the concurrent findings, therefore, suffer from a misdirection in law and non-consideration of material infirmities and interference in revision is warranted to prevent miscarriage of justice.

34. In the result, this Criminal Revision case is allowed.

35. The judgment dated 05.12.2023 in S.T.C. No. 695 of 2022 (Judicial Magistrate No.II, Sattur) and the judgment in Crl.A. No. 138 of 2024 (Additional District & Sessions Judge, Virudhunagar) are set aside.



CRL RC(MD)No.985 of 2025

36. The revision petitioner/accused is acquitted of all charges under Sections 279 and 337 IPC. The fine, if paid, shall be refunded to the petitioner forthwith. The bail bond, if any, stands cancelled. The petitioner is discharged from all consequences of the conviction.

20.11.2025

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

To

- 1.The Judicial Magistrate – II,
Sattur.
- 2.The Additional District and Sessions
Judge, Virudhunagar.
- 3.The Sub Inspector of Police,
Sattur Taluk Police Station,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL RC(MD)No.985 of 2025

L.VICTORIA GOWRI, J.,

Sml

CRL RC(MD)No.985 of 2025

20.11.2025