



CRL RC(MD)No.1183 of 2023

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.1183 of 2023

and

CRL MP(MD)No.15076 of 2023

M.Saravanaperumal

... Petitioner

Vs.

State Rep. by the Inspector of
Police,
Nathampatti Police Station,
Virudhunagar District.
(Crime No.20/2014)

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 and 401 Cr.P.C., 1973, to call for the records of the impugned order passed in C.C.No.44/2015 dated 19.11.2020 on the file of the learned Judicial Magistrate No.1, Srivilliputhur, and confirmed in C.A.No.65/2020 dated 21.08.2023 on the file of the learned Additional District & Sessions Judge, Srivilliputhur and set aside the same.

For Petitioner : Mr.RM.Arun Swaminathan

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



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Amicus Curiae : Mr.G.Karuppasamy Pandian

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ORDER

This Criminal Revision Case is filed by the petitioner/accused challenging the concurrent findings of guilt recorded by both the Courts below for offences under Sections 279 and 304-A IPC. The learned Trial Court in C.C.No. 44 of 2015 convicted and sentenced him to six months Rigorous Imprisonment with fine Rs.500/- in default, one month simple imprisonment, for Section 279 IPC and one year rigorous imprisonment with fine Rs.1,000/- in default, three months simple imprisonment, for Section 304-A IPC. The learned Appellate Court in C.A. No. 65 of 2020 confirmed the conviction and sentence. Both sentences were ordered to run concurrently.

2. The occurrence took place on 08.02.2014 at about 8.30 a.m. on the Madurai-Tenkasi National Highway (NH-208) near Azhagapuri Junction, when the deceased, Yugandhan, son of P.W.1 Nalliyappan, riding his motorcycle, was hit by the Maxicab 407 Van TN-67-AZ-3690 driven by the accused. The victim succumbed to injuries at the spot. The accused was charged for offences under Sections 279, 338, and 304-A IPC.



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3. The learned Trial Court examined P.Ws.1 to 10, marked Exs.P1 to P8, and found the accused guilty under Sections 279 and 304-A IPC. The conviction was upheld by the learned Appellate Court. The present revision challenges those concurrent findings.

4. In this revision, the petitioner not only contests the findings of guilt but also alternatively pleads for application of the Probation of Offenders Act, 1958 (hereinafter referred to as “PO Act”), highlighting that he is a first-time offender and the occurrence is more than eleven years old.

Procedural History and Gist of Lower Court Judgments:

5. Trial Court Judgment in C.C. No. 44 of 2015, dated 19.11.2020:

5.1. The learned Trial Court found that the deceased, Yugandhan, riding Hero Honda Splendor TN-67-AV-0650, was proceeding north to south on the left/eastern side of the road when the accused, driving Maxicab 407 TN-67-AZ-3690 from the opposite direction, crossed to the wrong/eastern lane at high speed, hitting the motorcycle head-on.



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5.2. Based on the evidence of P.W.1 (father/complainant), P.W.2 (brother-in-law), and P.W.5 (auto driver), all eyewitnesses and corroborated by P.W.3, P.W.6 to P.W.10 and documents Exs.P1 to P8, the learned Trial Court concluded that the accused drove rashly and negligently. The defence argument that “speed alone is not rashness” was rejected because the accident occurred near a junction where heightened caution was required. The learned Trial Court convicted the accused under Sections 279 & 304-A IPC and sentenced him as stated in para No.1 supra.

6. *Appellate Court Judgment in C.A. No. 65 of 2020, dated 21.08.2023:*

6.1. The learned Additional District & Sessions Judge, Srivilliputhur, in appeal, reappraised the evidence and concurred with the learned Trial Court’s finding. It observed that the accused drove the van at high speed near a junction, veered onto the wrong side, and caused a head-on collision, resulting in the death of the victim.

6.2. The learned Appellate Court held that the inconsistencies suggested by the defence were trivial and that the version of P.Ws.1, 2,



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and 5 remained credible. It reiterated that “speed alone” may not establish rashness, but when coupled with the driver’s conduct in entering the wrong side at a junction, it constituted culpable negligence. The appeal was, therefore, dismissed.

Grounds of Revision :

7. Both the lower Courts have erroneously looked into the evidence and convicted the appellant, which is against the Principles of natural justice. The lower Courts have failed to appreciate the evidences in proper manner. Both the Courts erroneously concluded that the appellant drove his vehicle at speed. The lower Court cannot conclude, based on the assumption only because of the speed, the driver is plying the vehicle in a rash and negligent manner. The lower Court has failed to consider that it is not possible in the subject road to ply his vehicle with speed because the condition of the road is very bad and the vehicles are not in position to drive with speed. The lower Courts ought to have considered that PW-1 and PW-2 were not eye witnesses, and only based on the evidence of PW-5, both the lower Courts have concluded that the appellant has committed offences punishable u/s 279 and 304-A of IPC. There are conflicts among the depositions of PW-1, PW-2 and PW-5. The investigation agency has failed to prove the



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offences in a proper manner, and furthermore, bloodstained clothes have not been seized from the place of occurrence.

8. While reading the cross examination of PW-2, it is seen that he has not lodged a complaint because his uncle has seen the occurrence. Futher, he deposes that he has not seen the occurrence, and the same has been proved by the deposition of PW-1. The investigation has failed to collect the evidences and establish the case before the learned Trial Court. The deceased had not worn the helmet at the time of riding his bike/occurrence. Had he worn the helmet properly at the time of the accident, the occurrence would not have happened. Furthermore, both the lower Courts have failed to establish the offences u/s 304-A and 279 of IPC.

9. The Hon'ble Supreme Court in a case reported in AIR 2004 SC 1966 observed that, in order to encompass the protection under Section 304A, there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304-A has no application. In order to attract imposition of charge under Section 304-A IPC, *prima-facie* there has to be a close nexus between



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death and the negligent Act complained of. If the relationship between two as stated above is too remote, Section 304-A will have no application. The learned Trial Court as well as the learned Appellate Court failed to follow the dictum laid-down by the Hon'ble Apex Court in AIR 1972 SC 221. In the above case, the Hon'ble Supreme Court held that if a pedestrian suddenly crosses a road without noticing the bus, there is every possibility of dashing against the bus without the driver becoming aware of it, and the bus driver cannot save the accident however slowly he may be driving, and therefore the accused cannot be held for an alleged offence u./s 304-A of IPC.

10. The prosecution has not explained properly how PW-5 came to know about the incident. Further, he deposed in cross examination that there was a bloodstain on his cloth and the deceased's cloth. But he admitted that both the bloodstained clothes have not been seized by the prosecution. There was a contravening statement recorded u/s 161(3) of Cr.P.C., 1973, by the PW-5 and LW-5. The same LW-5 has not stated about the bloodstains in the statement recorded u/s 161 (3) of Cr.P.C., 1973. Due to the pendency of the said cases, the appellant is unable to get married, and his parents are depending on his earnings. Section 304-A says, "*Whoever causes the death of any person by doing any rash*



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or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both". The requirements of this Section are that the death of any person must have been caused by the accused by doing any rash or negligent act.

11. In other words, there must be proof that the rash or negligent act of the accused was the proximate cause of the death. There must be a direct nexus between the death of a person and the rash or negligent act of the accused. As mentioned earlier, there is no evidence to show that it was a rash or the negligent act of the accused that caused the death of the deceased. Based on the said accident, the deceased's parents and sisters jointly filed MCOP No.48/2015 before the learned Motor Accident Claims Tribunal-cum-Sub Court, Sivakasi. The learned Tribunal has awarded a sum of Rs.14,83,380/- (Fourteen Lakhs Eighty Three Thousand Three Hundred and Eighty only) with interest of 7.5% from 10.07.2015 till the date of realisation. The appellant also deposed in that claim.



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Submissions before this Court:

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12. The learned counsel for the petitioner contended that the Courts below misappreciated evidence; P.Ws.1, 2, and 5 were all interested witnesses from the same refugee camp, and their evidence should have been treated with caution. P.W.5's cross-examination reveals that P.Ws.1 and 2 came two minutes after the accident, showing that they were not eyewitnesses. Since the road condition was poor, it was not possible to drive the van at high speed. The lower Courts wrongly assumed rashness merely because the vehicle was fast. The deceased did not wear a helmet, which contributed to his death, and hence, the causal link between the act and the death is broken. The investigation was defective, blood-stained clothes were not seized, and the Motor Vehicle Inspector did not conduct an inspection at the place of occurrence. The defence cited AIR 2004 SC 1966, AIR 1972 SC 221, and 2011 (1) MWN (Cr.) 74, arguing that mere speed does not establish rashness and that even a cautious driver might not avert a sudden collision. Finally, the learned counsel insisted that, considering that the petitioner is a first-time offender and has faced prolonged litigation, this Court may extend benefit under the Probation of Offenders Act, 1958.

13. He also submitted that the petitioner is now prepared to



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compensate the legal heirs of the deceased by paying a sum of Rs. 1,00,000/- (Rupees One Lakh only) as an *ex-gratia* payment, exclusive of other amounts / compensation which they are entitled to receive under any law.

14. 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.

15. Pursuant to the above direction, the legal heir of the deceased, viz, Thiru.Nalliyappan, S/o.Muthan, (Father of the deceased), appeared before this Court on 31.07.2025, and at their request, this Court appointed Mr.G.Karuppasamy Pandian, as *amicus curiae* to assist the Court and the legal heir of the deceased. He was also directed to address the Court with regard to the scope of invoking the provisions of 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



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petitioner and pardon him. It was also brought on record that the victim's family has received an amount of Rs.14,83,380/- with interest @ 7.5% as compensation as awarded by MACT in M.C.O.P.No.48 of 2015. On the willingness expressed by Thiru.Nalliyappan to receive the compensation offered by the revision petitioner, the revision petitioner had volunteered to pay a compensation of Rs.1,00,000/- (Rupees One Lakh only) vide demand draft in D.D.No.540691 dated 31.07.2025, Indian Bank, High Court Branch, Madurai, drawn in favour of the *defacto* complainant. On receipt of the same, Thiru.Nalliyappan 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.1183 of 2023

Against

C.A.No.65 of 2020

(On the file of the Additional District Sessions Judge, Srivilliputhur)
in

C.C.No.44/2015

(On the file of the learned Judicial Magistrate No.1, Srivilliputhur)

Saravanaperumal (age 32 years),

S/o.Murugan,

No.38/12, Iyyampatti Devar Street,

Srivilliputhur, Virudhunagar District.

... Petitioner / Sole Accused

Vs.

State Rep.by Inspector of Police,

Nathampatti Police Station

Virudhunagar District.

Crime No.20 of 2014

... Respondent / Complainant

AFFIDAVIT FILED BY THE DE-FACTO COMPLAINANT.

I, Nalliappan, son of Muthan, aged about 71 years, residing at No. 78, Sevalur Mugam, Sivakasi Taluk, Sevalur, Pudukottai, Virudhunagar District, has come down to Madurai and do hereby solemnly affirm and sincerely state as follows:

1. I respectfully submit that the petitioner herein has preferred revision petition against the order passed by the learned Judicial Magistrate No.1, Srivilliputhur, in C.C.No.44/2015 dated 17.11.2020 and the same



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was concurrently confirmed by the learned Additional District Sessions Judge, Srivilliputhur, in C.A.No.65/2020 dated 21.08.2023.

2. I respectfully submit that the petitioner was convicted for offences under Section 279, 304A I.P.C and sentenced him to undergo Rigorous imprisonment for 6 months with fine amount of Rs.500/- in default of one month imprisonment under Section 279 of IPC and simple imprisonment for one year with fine amount of Rs.1000/- in default to undergo 3 months imprisonment under section 304A IPC.

3. I respectfully submit that now owing to good will and my old age, I have decided to settle this issue by obtaining Rs.1,00,000/- (One Lakh Rupees) vide D.D.No.540691 dated 31.07.2025 drawn at INDIAN BANK, HIGH COURT BRANCH, MADURAI, in favour of "Mr.N.NALLIYAPPAN S/o.MUTHAN" from the petitioner as a compensation in the case registered in Crime No.1371 of 2016 on the file of the respondent police and consequent conviction order passed by the learned Judicial Magistrate, Thiruvaiyaru in C.C.No.44/2015 dated 19.11.2020 and the same was concurrently confirmed by the learned Principal Sessions Judge, Thanjavur in C.A.No.65/2020 dated 21.08.2024.

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 31.07.2025 and this Court was pleased to enlighten and enquire us in this regard.

5. I most respectfully state that though I lost my son 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

M. 13.09.25 W. 10.07
De-Facto Complainant



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16. The learned Government Advocate (Criminal side) opposed the revision and submitted that the evidence of P.Ws.1, 2, and 5 is consistent and credible; all have clearly identified the accused as the driver of the offending vehicle. The Motor Vehicle Inspection Report corroborates the head-on collision. The occurrence at a junction shows clear negligence; had the accused exercised care, the accident could have been averted. Delay and compensation do not erase culpability, especially where loss of life has occurred. Routine application of the PO Act, 1958, in fatal accident cases would dilute deterrence. However, if this Court is inclined to grant probation, it should impose reasonable conditions.

Submissions of the Amicus Curiae:

17. The learned *Amicus Curiae*, Mr.G.Karuppasamypandian, elaborated on the legislative scheme of the Probation of Offenders Act, 1958, emphasizing its benevolent purpose to reform rather than punish. He relied on the judgment of Hon'ble Apex Court in ***Rattan Lal v. State of Punjab***¹, the judgment of this Hon'ble Court in ***Nithin vs. State, Rep. by its Inspector of Police, TIW (East) Police Station, Coimbatore***², and *Thulasidas v. State*, 2021 (1) MWN (Cr.) 4, and

¹ AIR 1965 SC 444

² CDJ 2022 MHC 9499



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submitted that Section 304-A IPC offences, being devoid of *mens rea*, are paradigmatically fit for probationary treatment. The Court's power under Section 11 of PO Act, 1958, allows substitution of sentence with probation at the appellate or revisional stage. Sections 3, 4, and 5 of PO Act, 1958, enable release after admonition, probation of good conduct, and compensation, respectively, while Section 12 of the PO Act, 1958, ensures removal of disqualification. Given that the petitioner has paid Rs.1,00,000/- (Rupees One Lakh only) to the complainant in addition to MACT compensation, this Court may release him on probation of good conduct under Section 4 of PO Act, 1958.

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

Points for Determination:

19. The questions that arise are:

- (i) Whether the concurrent conviction suffers from perversity or illegality warranting interference?
- (ii) Whether the petitioner is entitled to the benefit of probation



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under the Probation of Offenders Act, 1958?

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Analysis:

20. Findings on Conviction:

Upon a limited revisional scrutiny, this Court finds no illegality in the appreciation of evidence by the Courts below. The consistent testimonies of P.Ws.1, 2, and 5, corroborated by documentary evidence Exs.P1 to P8, prove that the accident occurred because the accused drove the van on the wrong/eastern lane at a junction at high speed, causing a head-on collision. The plea that “speed alone” does not establish rashness is true in isolation; however, the facts here show recklessness and lane violation near a junction, amounting to culpable negligence. The helmet argument may reduce civil liability but does not exonerate criminal negligence. The alleged lapses in investigation, such as non-seizure of clothes, are not material enough to overturn well-corroborated ocular evidence. Hence, the conviction under Sections 279 and 304-A IPC stands affirmed.

21. Sentencing and Applicability of the Probation of Offenders Act, 1958:



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This Court in the case of ***Nithin vs. State, Rep. by its Inspector of Police, TIW (East) Police Station, Coimbatore***³, 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 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 *Supra* 2



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"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."

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:-



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"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 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.



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[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 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



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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 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*



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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 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:



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*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 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



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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, 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



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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.

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



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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.”

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



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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 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”.



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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 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



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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 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.



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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 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



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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 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



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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) 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;

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."



22. The Hon'ble Apex Court in the case of **Chellammal & Another V. State**⁴ 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 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.”

⁴ 2025 INSC 540



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22. In the present case, the petitioner is a first-time offender, aged about 29 years at the time of offence. The accident occurred more than eleven years ago. He has already compensated the victim's family by paying Rs.1,00,000/- (Rupees One Lakh only) in addition to the MACT award. There are no aggravating factors such as intoxication, hit-and-run, or repeated offences. The petitioner has cooperated throughout the proceedings and exhibited remorse. An affidavit is also filed by Thiru.Nalliyappan, father of the deceased, acknowledging the receipt of compensation from the revision petitioner.

23. The offence under Section 304-A IPC carries a maximum imprisonment of two years without any minimum term. The absence of *mens rea* and the compensatory steps taken render this case fit for reformatory treatment.

24. Accordingly, this Court finds that the conditions of Section 4 of the Probation of Offenders Act, 1958, are satisfied, and this is a fit case to substitute the sentence with probation of good conduct, ensuring both justice to the victim and opportunity for rehabilitation of the offender. The report of the jurisdictional probation officer dated



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

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

25.1. The conviction of the petitioner under Sections 279 and 304-A IPC is upheld.

25.2. In exercise of powers under Section 11 of the Probation of Offenders Act, 1958, the substantive sentence of imprisonment is set aside. The petitioner is released on probation of good conduct under Section 4(1) of the said Act upon executing a bond for Rs.10,000/- (Rupees Ten Thousand only) with one surety for a like sum, to the satisfaction of the learned Judicial Magistrate No.I, Srivilliputhur, for a period of one (1) year, subject to the following conditions.

26. *Conditions under Section 4(3) PO Act, 1958:*

26.1. The petitioner shall maintain peace and good behaviour and



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shall not commit any offence during the probation period.

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26.2. The petitioner shall report once every quarter to the jurisdictional probation officer, Srivilliputhur.

26.3. The petitioner shall undergo supervision by the Probation Officer for the said period of one year.

26.4. In the event of any violation of conditions or commission of an offence during the probation period, the learned Trial Court is at liberty to cancel the probation under Section 9 PO Act, 1958, and direct the petitioner to undergo the original sentence.

26.5. The fines imposed by the learned Trial Court Rs.500/- (Rupees Five Hundred only) (Section 279 IPC) and Rs.1,000/- (Rupees One Thousand only) (Section 304-A IPC) are maintained and shall be paid within four (4) weeks, if not already paid.

27. Pursuant to probation under Section 4, the petitioner shall not suffer any disqualification attached to conviction, as per Section 12 of the PO Act, 1958, subject to exceptions in special laws. Service authorities shall honour this statutory protection in accordance with law.

28. The Probation Officer shall monitor compliance and file a concluding report after one year. Breach of any condition or adverse



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report will entitle the learned Trial Court to issue notice, cancel probation, and require the petitioner to undergo sentence as per law.

29. The learned Judicial Magistrate No.I, Srivilliputhur shall accept the bond/surety, monitor compliance with all conditions, ensure payment verification, and forward any report of breach for appropriate orders. Connected miscellaneous petition is closed.

30. This Court records a special note of appreciation to the *Amicus Curiae* Mr.Karuppusamy Pandiyan for effectively assisting this Court.

Epilogue

31. 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.



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

Consequently, connected miscellaneous petition is allowed.

27.11.2025

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

To

- 1.The Additional District & Sessions Judge,
Srivilliputhur.
- 2.The Judicial Magistrate No.I,
Srivilliputhur.
- 3.The Sub-Inspector of Police,
Nathampatti Police Station.
- 4.The Probation Officer,
Virudhunagar District.
- 5.The Member Secretary,
Tamil Nadu State Legal Services Authority.
- 6.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