



CRL RC(MD)No.1167 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 08.08.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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Kannan

... Petitioner

Vs.

State, Rep. by
The Inspector of Police,
Thogur Police Station,
Thanjavur District.
(Crime No.71/2016)

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the Judgment passed by the learned Principal Sessions Judge, Thanjavur, in C.A.No.127 of 2023 dated 09.08.2023 in confirming the judgment and sentence imposed by the learned Judicial Magistrate, Thiruvaiyaru, in C.C.No.124 of 2016 dated 05.04.2023 and set aside the same and acquit the petitioner.

For Petitioner : Mr.G.Thalaimutharasu

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

Amicus Curiae : Mr.Karuppasamy Pandian



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ORDER

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Preface:

This Criminal Revision challenges the concurrent findings of conviction for the offence under Section 304-A IPC, passed by the learned Judicial Magistrate, Thiruvaiyaru in C.C. No.124 of 2016 by Judgment dated 05.04.2023, as affirmed in Crl.A. No.127 of 2023 by the learned Principal Sessions Judge, Thanjavur, in Judgment dated 09.08.2023. While testing the conviction on the settled parameters of revisional scrutiny, this Court is also invited, on the strength of subsequent developments and legal submissions, to consider extension of probationary relief under the Probation of Offenders Act, 1958 (“hereinafter referred to PO Act”) in exercise of powers under Section 11 thereof.

2. Gist of the Trial Court Judgment in C.C. No.124 of 2016:

2.1. On 15.07.2016 at about 12.30 p.m., on the Kallanai-Thiruvaiyaru Main Road at Ambedkar Nagar, the accused drove a Maruti Omni van bearing registration No.TN-48-Z-1788 rashly and negligently, struck one Madhivanan standing near his house, causing his death on the spot. Thus, attracting Section 304-A IPC.



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2.2. Eleven witnesses were examined on the side of the prosecutions as P.W-1 to P.W-11, through whom exhibits Ex.P1 to Ex.P18 were marked. Among which P.W.2 to P.W5 were eye witnesses, who supported the occurrence. P.W.9, the Motor Vehicle Inspector, through Motor Vehicle Inspection report (Ex.P5) ruled out mechanical defect; Doctor (P.W-8) opined death due to shock/haemorrhage (Ex.P-4); P.W-10 is the Inspector who registered the FIR (Ex.P-6) and I.O. (P.W-11 / Ex.P-7 & Ex.P-8) proved investigation.

2.3. The learned Trial Court convicted the accused, found guilty u/s 304-A IPC and sentenced him to two years rigorous imprisonment and fine Rs.1,000/- (Rupees One Thousand only), in default to undergo simple imprisonment for a period of one month. Set-off under Section 428 Cr.P.C., 1973, if applicable.

3. *Gist of the learned First Appellate Judgment in C.A. No. 127 of 2023:*

All principal grounds such as delay, investigation by S.I., contradictions, interested witnesses, were rejected. The learned Appellate Court affirmed that the accident on the mud



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shoulder/housefront occurred due to rash and negligent driving of the accused; identification was consistent; no mechanical defect; medical and investigative materials corroborated ocular account. Conviction and sentence confirmed.

4. *Grounds in Criminal Revision:*

Concurrent findings are perverse/against evidence. Delay in FIR; non-examination of the S.I. who registered FIR is fatal. Investigation allegedly by Sub-Inspector contrary to “prescribed law.” Material contradictions like EB post/Ambekar board damage; discrepancy in registration number of the vehicle involved (TN-48-Z-1788 vs “1888”/“TN-45”) not considered. PW.6’s signature narrative contradicts mahazar; fabrication alleged. Witnesses are relatives/neighbours (interested witnesses). Negligence allegedly that of the deceased; presence of eye-witnesses doubtful. Prayed for acquittal; alternatively, extension of PO Act, 1958, benefit suggesting compensation to be paid to the victim's family.

5. *Submissions:*

5.1. The learned counsel for the petitioner pointed out the



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variations in vehicle number and impact points; “interested” witnesses; bus-stop not shown in mahazar; alleged defects in the timing and authorship of complaint; investigation by S.I. assailed. He further submitted to consider the clean antecedents of the revision petitioner and that offence under 304-A IPC attracts no *mens rea* and only prescribes maximum 2 years without any statutory minimum sentence. The learned counsel for the petitioner also submitted that the petitioner is now prepared to compensate the legal heirs of the deceased by paying a sum of Rs.1,00,000/- (Rupees One Lakh only) as *ex-gratia* payment, exclusive of other amount / compensation which they are entitled to receive under any law.

5.2. The learned Government Advocate (Crl.Side) submitted that, ocular account consistent and pointed out that in the presence of the medical/ Motor Vehicle Inspector corroboration; minor discrepancies are naturally immaterial. He further stated that there was no mechanical defect and that the FIR was registered on the same day. As far as the Sentence/PO Act, 1958, is concerned the learned Government Advocate insisted upon deterrence and road safety concerns and that in case of extension of any benefit, the same must be case-specific, with realistic compensation calibrated with MCOP (if any).



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

6. Points for Determination:

(i) Do the concurrent findings calling for conviction u/s 304-A IPC suffer from perversity or patent illegality warranting interference in revision?

(ii) If conviction stands, should this Court exercise powers under Section 11 of PO Act to extend relief under Sections 3/4 of PO Act with appropriate Section 5 compensation directions and Section 12 of PO Act, 1958, consequence?

7. Analysis:

The testimony of P.W.1–P.W.5 speak about the occurrence at 12.30 p.m. on 15.07.2016, the van striking the deceased near his house, and the vehicle then hitting the EB post/Ambekar board. The depositions of P.W.8 establishes cause of death, P.W.9 excludes mechanical defect, P.W.11 proves scene-mahazar/rough sketch



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showing mud shoulder/housefront. Complaint lodged on the same day (about 7.30 p.m.) after moving the body and initial commotion. In road fatalities, the law recognises that immediate priority is removal of the body/alerting family and police; the interval here is not inordinate nor unexplained. P.W.10 (S.I.) who registered the FIR was examined; even assuming a nomenclature slip in argument, the FIR (Ex.P6) and complaint (Ex.P1) stand proved. No prejudice demonstrated. No statutory bar is shown disabling a competent S.I./In-charge officer from investigating Section 304-A IPC. Absent demonstrable prejudice or violation going to root of jurisdiction, investigation is not vitiated. Contradictions like TN-48-Z-1788 vs “1888”/“TN-45” etc., are minor transcriptional/typographical variations surfacing in depositions; core particulars type of vehicle, place, time, driver’s identity, manner of impact remain constant. Courts below rightly treated them as non-fatal. The allegation of “Interested” Witnesses / Bus-stop not in Mahazar is not sustainable as mere neighbourhood/relationship does not brand testimony as unreliable *per se*. Their presence is natural. A scene mahazar need not map vantage points of every witness; its purpose is to fix locus and physical features, which the scene mahazar in question does. On a holistic appraisal, no perversity or illegality is made out to interfere with the conviction. The finding of rash and negligent driving causing death on the mud shoulder in front of the house merits



affirmation. Hence, conviction under Section 304-A IPC is sustained.

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8. *The Probation of Offenders Act, 1958 - Statutory Scheme & Applicability:*

8.1. **Section 3 (Release after admonition):** Enables release, after due admonition, *inter alia* for offences punishable with imprisonment not exceeding two years, if expedient having regard to circumstances of the case, nature of the offence, and character of the offender, provided no previous conviction is proved.

8.2. **Section 4 (Probation of good conduct):** Permits release on probation (with/without sureties), on entering a bond to appear and receive sentence when called upon during a period not exceeding three years, and in the meantime to keep the peace and be of good behaviour.

8.3. **Section 5 (Compensation & costs):** When granting relief under Sections 3/4, the Court may direct payment of compensation to the victim and in fixing quantum, means of the offender and any other compensation (e.g., MCOP awards) ought to be factored to avoid onerous burdens.

8.4. **Section 6 (Offenders under 21 years):** Special protection to avoid imprisonment save for reasons recorded, however, in the instant



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case, it is not directly attracted here but underscores the reformatory thrust.

8.5. **Section 11 (Appellate/Revisional power):** Appellate or Revisional Court may make any order that the learned Trial Court could have made under Sections 3/4/5, thus enabling grant of probation even at the revisional stage.

8.6. **Section 12 (Removal of disqualification):** A person dealt with under Section 3 or 4 shall not suffer disqualification attached to conviction by any law subject to the statute/service-rules being harmoniously applied.

8.7. **Section 19 (Override vis-à-vis Cr.P.C., 1973):** Where PO Act is in force, Section 360 Cr.P.C., 1973, stands excluded; the PO Act is *lex specialis* for probation.

8.8. Section 304-A IPC carries maximum two years of imprisonment, no minimum sentence, and is negligence-based (no *mens rea*). No special statute here bars probation.

9. This Court in the case of ***Nithin vs. State, Rep. by its Inspector of Police, TIW (East) Police Station, Coimbatore***¹, has

¹ CDJ 2022 MHC 9499



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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. 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



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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:-

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

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(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. [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



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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 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.



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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 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)



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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: 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



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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 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)



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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 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)



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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 contains an inadvertent error, to the following effect: (SCC p. 185, para 26)



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“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 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



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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".

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



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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 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



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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.

24. These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift—from



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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 purposes of this section, previous conviction against a person shall include any previous order made against him under this



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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 Criminal Procedure Code in 2006 providing for a victim compensation scheme and for additional rights to the victim of a



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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



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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."

10. The Hon'ble Apex Court in the case of **Chellammal &**



Another V. State² 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.”

11. Based on the submission made by the learned counsel for the



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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.

12. Pursuant to the above direction, the legal heir of the deceased, viz, Thiru.M.Selvam, son of Mathivanan, (Father of the deceased), appeared before this Court on 26.08.2025 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. It was also brought on record that the victim's family has received an amount of Rs.6,49,204/- (Rupees Six Lakhs Forty Nine Thousand Two Hundred and Four only) with interest @ 7.5% as compensation as awarded by MACT in M.C.O.P.No.394 of 2017. On the willingness expressed by Thiru.M.Selvam 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



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Lakh only) vide demand draft in D.D.No.540736 dated 26.08.2025, Indian Bank, High Court Branch, Madurai, drawn in favour of the *defacto* complainant. On receipt of the same, Thiru.M.Selvam had filed an affidavit in this regard and the relevant portion of the same is extracted as follows:



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AFFIDAVIT FILED BY THE DE-FACTO COMPLAINANT

I, Selvam, son of Muthivanan, aged about () years, residing at Amberkar Street, Thiruchennampundi, Thiruvaiyaru Taluk, Thanjavur 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, Thiruvaiyaru in C.C.No.124/2016 dated 05.04.2023 and the same was concurrently confirmed by the learned Principal Sessions Judge, Thanjavur in C.A.No.127/2023 dated 09.08.2023.
2. I respectfully submit that the petitioner was convicted for offences under Section 304A I.P.C and sentenced him to undergo Rigorous imprisonment for 2 years with fine amount of Rs.1000/- in default of one month 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 Rupees One Lakh vide D.D.No.540736 dated 26.08.2025 drawn at INDIAN BANK, HIGH COURT BRANCH, MADURAI, in favour of "Mr.M.SELVAM" 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.124/2016 dated 05.04.2023 and the same was concurrently confirmed by the learned Principal Sessions Judge, Thanjavur in C.A.No.127/2023 dated 09.08.2024.

M. Selvam



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4. I humbly submit that pending revision, the petitioner had pleaded before this Honourable Court to extend the benefit of the Probation of Offenders Act 1958 and he has volunteered to pay adequate and just compensation to the victims of the crime. I most respectfully state that I appeared in person before this Honourable Court on 26.08.2025 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 29th day of August 2025.

De-Facto Complainant

M. G. S. S. S.



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13. Now that a voluntary compensation of Rs.1,00,000/- (Rupees One Lakh only) is paid, considering the fact that the petitioner has no prior convictions on record and there is co-operation and no aggravating features like intoxication/hit-and-run. Deterrence is addressed by structured supervision, bond conditions, and targeted compensation, without exposing the offender to the deleterious effects of incarceration.

14. Having affirmed the conviction, this Court turns to sentence. The offence, though grave in consequence, is negligence-based. The revision petitioner has compensated the *de facto* complainant by Rs. 1,00,000/- (Rupees One Lakh only).

15. There is nothing to suggest previous convictions or contumacious post-occurrence conduct. Balancing reformation, victim interests, and road-safety deterrence, this Court considers it expedient to invoke Section 4 PO Act (rather than a bare admonition under Section 3), with conditions and an additional calibrated compensation direction under Section 5, without adjusting the same in / against MCOP proceedings, if any. The report of the jurisdictional Probation officer dated 14.11.2025 in this regard has been received in this regard



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by this Court and the same shall form part of this order.

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161. In fine, the conviction of the revision petitioner for the offence under Section 304-A IPC as recorded in C.C. No.124 of 2016 (05.04.2023) and confirmed in C.A. No.127 of 2023 (09.08.2023) is affirmed.

16.2. The substantive sentence of imprisonment is set aside.

17. The revision petitioner is released on probation of good conduct for a period of one (1) year on his executing a personal bond for Rs.10,000/- with one surety for like sum to the satisfaction of the trial Court, undertaking:

(a) to keep the peace and be of good behaviour;

(b) to appear and receive sentence if called upon during the probation period; and

(c) to report once in a calendar quarter to the Probation Officer concerned, who shall file half-yearly reports before the trial Court.



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17.1. The amount of Rs.1,00,000/- (Rupees One Lakh only) already paid by D.D. No.540736 dated 26.08.2025 shall enure to the legal heirs of the deceased and shall be taken into account/adjusted in any MCOP award or settlement (present or future).

17.2. Consequent upon release under Section 4, the operation of Section 12 shall follow; any statutory/service disqualification attaching to the conviction shall not operate, subject to the applicable statute/service rules being applied in harmony with Section 12.

17.3. The jurisdictional Probation Officer, Namakkal, shall monitor compliance and file a concluding report after one year. Breach of any condition or adverse report will entitle the trial Court to issue notice, cancel probation, and require the petitioner to undergo sentence as per law.

17.4. The learned Trial Court is directed to secure the bond/surety within four (4) weeks; receive the supplementary compensation; keep a separate compliance file for probation supervision reports; on successful completion, record satisfactory closure, from the date of



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receipt of copy of this order.

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18. The Criminal Revision is partly allowed to the extent of sentence.

19. Conviction under Section 304-A IPC is maintained; the sentence is modified by extending Section 4 benefit under the Probation of Offenders Act, 1958, together with directions under Section 5 and the declaration regarding Section 12 as above. All miscellaneous petitions, if any, stand closed.

27.11.2025

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

To

1.The Principal Sessions Judge,
Thanjavur.

2.The Judicial Magistrate,
Thiruvaiyaru.

3.The Inspector of Police,
Thogur Police Station,
Thanjavur District.

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L.VICTORIA GOWRI, J.,

Sml

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27.11.2025