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CRL RC No. 74 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2025

PRONOUNCED ON : 05.01.2026

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.74 of 2022

Sivakumar
S/o. Velu, No. 42/275, Sholayar
Estate, Sholayar, 3rd Division,
Valparai.

Petitioner/Accused

Vs

State Rep By
Inspector of Police,
Kinathukadavu Police Station,
(Crime No.143 of 2008).

Respondent(s)

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. praying to set aside the judgment dated 16.04.2021 made in Crl.A.No.306 of 2017 on the file of the III Additional Sessions Judge at Coimbatore modifying the judgment dated 15.09.2017 made in C.C.No.272 of 2008 on the file of learned Judicial Magistrate, Pollachi, Coimbatore District by allowing the above criminal revision.

For Petitioner : Mr.K.Sivabalan
For Ms.T.Lavanya Thirumalai

For Respondent : Mr.J.R.Archana
Government Advocate (Crl. Side)



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ORDER

The petitioner/accused in C.C.No.272 of 2008 was convicted by the trial Court by the judgment dated 15.09.2017 for offences under Sections 279, 337, 338, 304(A) of I.P.C. r/w Section 184 of Motor Vehicles Act (in short 'MV Act') and sentenced to undergo one month simple imprisonment for the offence under Section 279 of I.P.C., sentenced to undergo one month simple imprisonment for the offence under Section 337 of I.P.C., sentenced to undergo three months simple imprisonment for the offence under Section 338 of I.P.C., sentenced to undergo two years simple imprisonment and to pay a fine of Rs.9,000/-, in default, to undergo three months simple imprisonment for offence under Section 304(A) of I.P.C. and sentenced to undergo one month simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two weeks simple imprisonment for offence under Section 184 of M.V. Act. Aggrieved against his conviction, the petitioner, preferred an appeal in C.A.No.306 of 2017 before the learned III Additional District and Sessions Judge, Coimbatore. The learned Sessions Judge, by the judgment dated 16.04.2021, partly allowed the appeal confirming the conviction and sentence of the petitioner for offence under Sections 279, 337 (3 counts), 304(A) of I.P.C. r/w 184 of M.V. Act and setting aside the conviction and



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sentence for offence under Section 338 of I.P.C. against which, the present revision is filed.

2.The gist of the case is that on 01.05.2008, the de-facto complainant lodged a complaint to the Inspector of Police, Kinathukadavu Police Station stating that on 01.05.2008 at about 12.00 noon he was riding his TVS XL Super in Coimbatore to Pollachi road proceeding towards south to north side and when he came near Mappillai Gounder Thottam, a Maruti 800 car bearing Registration No.TN-38-AR-7175 was proceeding before him. At that time, a Mahindra Maxi cab van came from north to south direction in a rash and negligent manner and dashed against the Maruti 800 car and the Mahindra van dashed against another TVS 50 bearing registration No. TN-41-D-6139. The impact of accident was with force. The driver and the occupants of the Maruti 800 car were seriously injured. With the help of passersby, the driver of Maruti 800 car Vaitheeswaran, the co-occupants his wife Sivagami and children Priya and Sriram all rescued and were taken to Government Hospital, Pollachi, where the driver of the Maruti 800 car Vaitheeswaran declared brought dead. The injured initially took treatment at Government Hospital thereafter at Sakthi hospital. The petitioner is driver of Mahindra Maxi cab van bearing Registration No.TN-58-B-0308.



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PW1/de facto complainant lodged a complaint to PW12, who registered an F.I.R. in Crime No.143 of 2008 for offence under Sections 279, 337, 304(A) of I.P.C. r/w 184 of M.V. Act. PW14 took up investigation, examined the witnesses, visited the scene of occurrence, prepared observation mahazar, rough sketch, produced vehicle for Motor Vehicle inspection, conducted inquest, sent the body for post-mortem and on his transfer PW13 took up further investigation, examined the witnesses. In the meanwhile, on 06.05.2008, petitioner surrendered. The Motor Vehicle Inspector report obtained, post-mortem report and other reports received and thereafter charge sheet filed.

3.During trial, on the side of the prosecution PW1 to PW15 examined, Exs.P1 to P10 marked. On the side of the defence, no witnesses examined and no documents marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

4.The contention of the learned counsel for petitioner is that the prosecution failed to prove that the petitioner drove Mahindra Maxi cab van in a rash and negligent manner. PW1 in his complaint not stated the petitioner was driving the vehicle in a rash and negligent manner and he is the reason



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for the accident. In this case, all documents prepared in the police station. The investigating officer conducted only a tabletop investigation. In this case, F.I.R. reached the Court with inordinate delay, no reason given. Since one of the occupants of the Maruti 800 car died, cause for the accident shifted on the petitioner. In this case, the Motor Vehicle report of the Maruti 800 car driven by the deceased not filed.

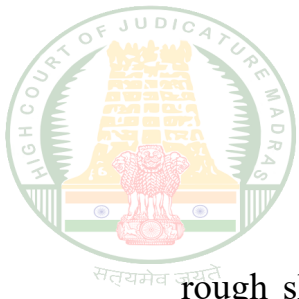
5.The petitioner's specific contention is that the driver of the Maruti 800 car is the reason for the accident, who had treaded to the other side of the road and caused the accident. The witnesses PW2/wife, PW3 and PW4/children of deceased all admit that in the early morning at 6.00 a.m. they left Coimbatore went to Palani temple, had Dharshan and they were returning from Palani to Coimbatore. Due to the strain and tiredness, the driver of the Maruti 800 car dozed off and caused the accident. In the absence of Motor Vehicle report for Maruti 800 car, it cannot be conclusively held that the petitioner is the cause for the accident. PW1 and other witnesses all admit that the accident spot was on a slop. The Maruti 800 car was climbing the slope and the Mahindra Maxi cab van was coming down on the opposite side. It is the Maruti 800 car which lost control and caused the accident. Further in



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this case PW2 not identified the petitioner. PW3 and PW4, the children though claimed to have identified, they admit that they were sitting in the rear side of the car, hence possibility of identifying the petitioner as driver of the Van is doubtful. PW1 though claims that he was behind the Maruti 800 car, riding his two-wheeler, not produced any document to show in which two wheeler he was riding behind the Maruti 800 car. Since PW1 happens to be a relative of deceased and PW2 to PW4, all related deposed against the petitioner.

6.He further submitted that in this case, PW8 the other projected eyewitness whose TVS 50 vehicle is said to have damaged in the accident and claims he sustained injury, no medical records produced. The Motor Vehicle Inspector/PW6, who examined TVS 50 two-wheeler, admits that no documents for the two-wheeler and the license of the rider/PW8 produced for inspection. One Ebinezer who is said to have travelled in the Mahindra Maxi Cab van sustained injury he was neither examined as witness nor any medical certificate produced. Though PW2, PW3 and PW4 claim that they sustained grievous injury, no x-ray, scan report or any medical records produced. In this case non production of the Maruti 800 car motor vehicle report is fatal to the case of the prosecution. The other witnesses, namely, observation mahazar,



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rough sketch witnesses all relatives to the deceased in this case. There are contradictions in the evidence between PW1, PW2, PW3 and PW4, which was not considered both by the trial Court and the Lower Appellate Court, prosecution miserably failed to prove the case beyond all reasonable doubt. Hence, prayed for allowing the revision case, setting aside the conviction.

7. In support of his contention, the petitioner relied upon the judgment of this Court in Crl.R.C.No.1137 of 2015 wherein it is held that in view of vital infirmities even if the conviction to be sustained the jail sentence alone can be set aside.

8. The learned Government Advocate appearing for the respondent police opposed the petitioner's contention and submitted that in this case PW1 was riding a two-wheeler following the Maruti 800 car near Pollachi, travelling in Coimbatore-Pollachi road from south to north. As the car and the two-wheeler were nearing Mappillai Goundar Thottam, the Mahindra Maxi cab van with Registration No.TN-58-B-0308 came in the opposite direction from north to south, dashed against the Maruti 800 car and another two-wheeler bearing Registration No.TN-41-B-6139. The driver of the Maruti 800 car Vaitheeswaran was travelling with his wife Sivagami and children



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Priya and Sriram, all sustained injury and the petitioner, driver of Mahindra Maxi cab van. The accident took place during bright day light at 12.00 noon, all injured rushed to Pollachi Government Hospital. In the hospital, Vaitheeswaran was declared brought dead. The others took treatment and thereafter they took treatment at Sakthi Hospital. PW1 lodged a complaint to PW12, who registered a case in Crime No.143 of 2008. PW14 took up investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch, recorded the statement of witnesses, conducted inquest, sent the body for post-mortem and thereafter the vehicles were sent to Motor Vehicle Inspector for inspection. The Doctor/PW11, who conducted post-mortem, gave a report confirming the injury sustained by the deceased and witnesses PW2 to PW4. The Motor Vehicle Inspector/PW5 confirms accident was not due to any mechanical defect. The damage caused to the TVS 50 also reported.

9.The learned Government Advocate further submitted that in this case PW1 is a eyewitness, who saw the accident and along with passersby took the injured to the Government Hospital, Pollachi and thereafter lodged a complaint to PW12. The presence of PW1 cannot be doubted. Further, in this case PW2, PW3 and PW4 travelling in the car got injured. PW2 clearly



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narrated the accident, but unable to identify the accused for the reason she fainted. PW3 and PW4, sitting in the car sustained injury both identified the petitioner. All the four deposed the manner in which the accident took place. The admitted position is that the accident spot was a steep gradient. The Maruti 800 car was climbing the gradient and could not have approached the spot in a rash and negligent manner. On the other hand, the petitioner's Mahindra Maxi cab van was coming down the gradient and it came in a rash and negligent manner and caused the accident. The Motor Vehicle Inspector report confirms the damage to the vehicles. The damage to the Mahindra vehicle confirms that the vehicle sustained damages on the right side confirming that it had treaded and crossed the middle of the road and caused the accident. The observation mahazar and rough sketch prove that it is the Mahindra van driven by the petitioner moved to the right side and caused the accident. In this case the Lower Appellate Court rightly observed that the Additional Public Prosecutor, who conducted trial before the Magistrate Court failed to produce the motor vehicle report of the Maruti 800 car but for his mistake the victim cannot be penalised and the petitioner cannot derive any benefit since the eyewitnesses to the case deposed about the accident and identified the petitioner.



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WEB COPY10. Further, in this case, PW2 to PW4 are injured eyewitnesses. The motor vehicle inspection report confirms the damage on the right side to the vehicle. The Lower Appellate Court further finding that x-ray and scan report confirming fracture and injuries of PW2 to PW4 not produced, altered the conviction from Section 338 to Section 337 of I.P.C. He further submitted that during trial, on the side of the prosecution PW1 to PW15 examined, Exs.P1 to P10 marked. On the side of the defence, no witnesses examined and no documents marked. Thus the Lower Appellate Court independently assessed the evidence and materials and rightly confirmed the conviction of the petitioner, hence, needs no interference. Therefore, prayed for dismissal of the revision.

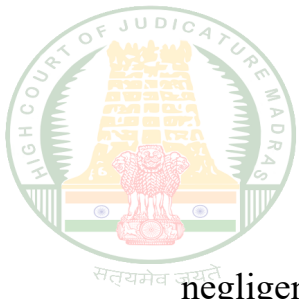
11. Considering the submissions made on either side and on perusal of the material, it is seen that in this case PW1/de facto complainant is a eyewitness. He was travelling behind following the Maruti 800 car saw the accident. The Mahindra Maxi cab van driven by the petitioner was coming in the opposite direction from north to south direction. The Maruti 800 car was proceeding from south to north near Mappillai Goundar Thottam. In this case, the driver of the Maruti 800 car and his wife/PW2 and two children/PW3 and



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PW4 all travelling in the car. Immediately after the accident, PW1 with the help of passersby sent the injured by Ambulance to the Government Hospital, Pollachi. PW1 went to the hospital along with the injured. In the hospital, the driver of the Maruti 800 car declared brought dead. PW1 lodged a complaint to PW12/Sub Inspector of Police about the accident and a case registered. PW14 took up investigation, visited the scene of occurrence, prepared observation mahazar, rough sketch, recorded the statement of witnesses. All the witnesses in this case supported the case of the prosecution.

12. In this case, apart from PW1, PW2 to PW4 are the injured eyewitnesses, who all deposed about the accident. It is not in dispute that the accident spot was a steep gradient and Maruti 800 car was climbing the gradient and Mahindra Maxi cab was coming down the gradient, naturally gaining speed with poor visibility. The Mahindra van lost control, dashed against the Maruti 800 car. The observation mahazar, rough sketch confirm Mahindra Maxi Cab van crossed the middle of the road treaded to right and caused the accident. The Motor Vehicle inspector report confirm the damage to the van is on the right side. The injuries sustained by the deceased, causing fracture and bones protruding out through the skin, all recorded, confirm the impact and force of the accident related to high speed, rashness and

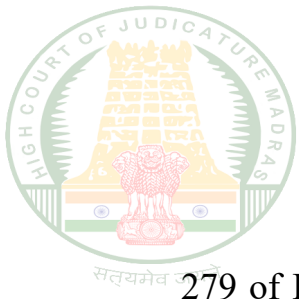


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negligence of the petitioner. In this case, the eyewitnesses, post-mortem report, medical records, Motor Vehicle Inspection report all confirm that petitioner driven the vehicle in a rash and negligent manner and he is the reason for the accident and caused death of the driver of the Maruti 800 car and caused injuries to PW2 to PW4. In this case, the Lower Appellate Court had observed, non production of marking of the motor vehicle inspection report of Maruti 800 car is a mistake committed by the Additional Public Prosecutor, for which the victim cannot be penalised, may not be proper. Further, the petitioner questioned non-production of the document, whether there was any mechanical defect in Maruti 800 car, not ruled out. The non-production of the Motor Vehicle report of the Maruti 800 car would cause some doubt in the prosecution case. Both the Courts below after analysing the evidence and materials in detail had convicted the petitioner. In this case, admittedly the Motor Vehicle Report for Maruti 800 car driven by the deceased not produced. Further the place of accident is a steep gradient having some difficulty in approach and visibility. Hence, there is semblance of doubt the manner in which accident had taken place.

13. In view of the above, while confirming the conviction, the term of sentence of one month simple imprisonment for the offence under Section



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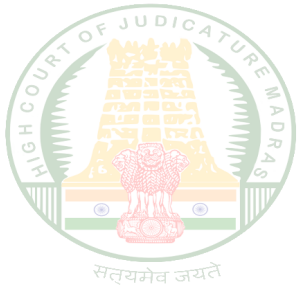
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279 of I.P.C., one month simple imprisonment for the offence under Section 337 of I.P.C. (3 counts), two years simple imprisonment for offence under Section 304(A) of I.P.C. and one month simple imprisonment for offence under Section 184 of M.V. Act, all set aside. The fine portion of conviction under Sections 279, 337 (3 counts), 304(A) of I.P.C. r/w 184 of M.V. Act shall stand confirmed.

14. In the result, the Criminal Revision Case is partly allowed.

05.01.2026

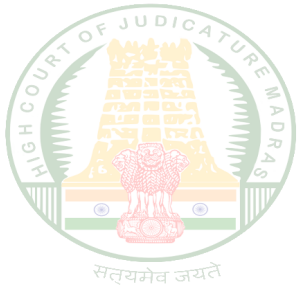
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- 1.The III Additional Sessions Judge
Coimbatore.
- 2.The Judicial Magistrate,
Pollachi, Coimbatore District.
- 3.The Inspector of Police,
Kinathukadavu Police Station.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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**Pre-delivery order in
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