

**(2011) 04 MAD CK 0374**

**Madras High Court**

**Case No:** Criminal R.C. No. 608 of 2009

Anthony Samy

APPELLANT

Vs

State by Inspector of Police,  
Salem District

RESPONDENT

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**Date of Decision:** April 28, 2011

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 279, 304A

**Citation:** (2011) 3 Crimes 332

**Hon'ble Judges:** R. Mala, J

**Bench:** Single Bench

**Advocate:** M.R. Jothimanian, for the Appellant; S. Rajendiran, Govt. Advocate (Crl. Side), for the Respondent

**Final Decision:** Allowed

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### **Judgement**

R. Mala, J.

The Crl.R.C. is filed against the judgment dated 23.10.2008 in Crl. A. No. 79 of 2007 on the file of 1st Additional Sessions Judge, Salem, confirming the order dated 7.5.2007 in C.C. No. 164 of 2004 on the file of the Judicial Magistrate No. 1, Mettur, Salem District, whereby the revision petitioner/accused was convicted for the offence u/s 279 IPC and sentenced to undergo three months" rigorous imprisonment and also convicted for the offence u/s 304-A IPC and sentenced to undergo one year rigorous imprisonment and to pay fine of Rs. 500/-, in default, to undergo two months" simple imprisonment.

2. The case of the prosecution is as follows:

On 16.5.2003 at 2 p.m., while one Sengammal was walking on the Mettur to Bhavani Main Road, near ITI, the revision petitioner-accused who was driving Mini Tempo vehicle bearing Registration No. TN-33-Q-6311, drove the same in a rash and negligent manner from Bhavani on the Bhavani to Mettur Main Road, and dashed

against the said Sengammal. She sustained head injury. P.Ws. 1 to 3 are the close relatives. She was taken to hospital by P.W. 1, where she died. He has given complaint Ex.P-1. P.W. 2 is the other witness. P.W. 3 is the husband of the deceased Sengammal. One Sukumaran, who was in-charge of the Police Station, received the complaint from P.W. 1 and registered a case in Cr.No. 224 of 2003 for the offence u/s 304-A IPC and he prepared the printed FIR Ex.P-5. P.W. 9 Inspector of Police took up the matter for investigation and he went to the place of occurrence and in the presence of Jayaseelan and Ramesh P.W.5 and prepared observation mahazar Ex.P-2 and drew rough sketch Ex.P-6. He went to the Mettur Government Hospital and conducted inquest in the presence of the Panchayatdars and witnesses. Ex.P-7 is the inquest report. He also gave requisition to the Motor Vehicle Inspector for inspection of the vehicle and P.W. 7 Motor Vehicle Inspector received the same and issued Ex.P-4 report. Then, P.W.6 Dr. Chandra received the requisition for conducting the autopsy and the autopsy was conducted and the Doctor issued Ex.P-3 post-mortem report. P.W. 9 examined the witnesses and concluded the investigation and filed the charge sheet against the revision petitioner/accused for the offences under Sections 304-A and 279 IPC.

3. The trial Court, after considering the oral and documentary evidence, i.e. P.Ws. 1 to 9 and Exs.P-1 to P-7, convicted and sentenced the accused as stated above, against which, the revision petitioner/accused preferred appeal before the appellate Court, which after hearing the arguments of both sides, confirmed the conviction and sentence passed by the trial Court, against which, the present Crl. R.C. is preferred by the revision petitioner/accused.

4. Challenging the conviction and sentence passed by both the Courts below, learned counsel appearing for the revision petitioner/accused submitted that the petitioner/accused was in prison for about 8 months from 23.10.2008 to 10.7.2009 and so, he is not canvassing the validity of the conviction imposed on the revision petitioner/accused. But he prayed for leniency in the sentence imposed on him under Sections 304-A IPC and 279 IPC. He further submitted that the revision petitioner/accused is having wife and two children and that he was already in prison for about 8 months and if he is sent to jail, his family will be put into peril and therefore prayed for leniency in sentence.

5. Learned Government Advocate (Crl. Side) appearing for the respondent-Police, left the matter for the discretion of the Court in respect of the leniency in the sentence.

6. Considering the submissions made by learned counsel on either side, as already stated, learned counsel appearing for the revision petitioner/accused did not question the conviction imposed on the revision petitioner/accused. So, the conviction under Sections 279 and 304-A IPC, is hereby confirmed. The learned counsel appearing for the revision petitioner/accused pleaded leniency in the sentence. It is stated that he was in jail from 23.10.2008 to 10.7.2009 and already he

was in prison for about 8 months. Considering the age of the revision petitioner/accused who was about 37 years at the time of trial, and his family circumstances, I am of the view that the period of sentence already undergone by the revision petitioner/accused would be sufficient to meet the ends of justice. It is stated that the fine amount has already been paid.

7. Hence:

(a) Crl. R.C. is partly allowed.

(b) The conviction of the revision petitioner/accused for the offence under Sections 279 and 304-A IPC, passed by both the Courts below, is confirmed.

(c) The period of sentence already undergone by the revision petitioner/accused, shall be treated as sentence.

(d) The fine amount imposed is confirmed,-which is paid by the revision petitioner/accused.