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**(2011) 06 MAD CK 0383**

**Madras High Court**

**Case No:** Criminal R.C. No. 319 of 2006

Chellakannan

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

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**Date of Decision:** June 9, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 431
- Penal Code, 1860 (IPC) - Section 279, 304A, 337

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

**Bench:** Single Bench

**Advocate:** M.N. Balakrishnan, for the Appellant; M.F. Shabana and C. Emalias, Govt. Advs. (Crl. Side), for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

R. Mala, J.

Criminal Revision Case is filed against the judgment dated 9.3.2006 in Crl.A. No. 243 of 2005 on the file of the Additional District Court, Fast Track Court No. 1, Coimbatore, against the judgment dated 11.5.2005 in C.C. No. 274 of 2004 on the file of the Judicial Magistrate No. 2, Udumalpet.

2. The trial Court convicted the revision Petitioner/accused for the offence u/s 279 IPC and sentenced him to undergo two weeks" simple imprisonment and to pay fine of Rs. 500/-, in default to undergo one week simple imprisonment; he was also convicted for the offence u/s 337 IPC and sentenced to undergo one month simple imprisonment and to pay fine of Rs. 500/-, in default to undergo one week simple imprisonment and he was also convicted for the offence u/s 304A IPC and sentenced to undergo six months" simple imprisonment and to pay fine of Rs. 4,500/-, in default to undergo two months" simple imprisonment.

3. The first appellate Court, while confirming the judgment of the trial Court in respect of the conviction and sentence and fine, for the offences under Sections 337 and 279 IPC, modified the sentence in respect of the conviction u/s 304A IPC, from six months to three months" simple imprisonment and confirmed the fine in respect of the conviction u/s 304A IPC.

4. The case of the prosecution is that on 4.10.2004 at about 3.45 p.m., in Pollachi Udumalpet Main Road, near Karpagavinayagar Mill, the revision Petitioner/accused drove the lorry bearing Registration No. KL-9-B-5599 in a rash and negligent manner and overtook the vehicle driven by P.W.1/complainant and dashed against the two-wheeler bearing Registration No. TN-41-2834, which was driven by the deceased Alagesan @ Alagarsamy, causing fatal injury to the deceased Alagesan @ Alagarsamy and simple injury to P.W.3 Chinnasamy and the said accident was witnessed by P.Ws.1 and 2. P.W.4 is the wife of the deceased. P.W.5 is the brother-in-law of the deceased. P.W.1 gave complaint Ex.P-1 and P.W.12 Sub-Inspector of Police registered a case in Crime No. 322 of 2004 for the offences under Sections 279, 337 and 304A IPC and took up the case for investigation and prepared Ex.P-8 and went to the place of occurrence and prepared observation mahazar Ex.P-2 in the presence of P.W.6 Thangavel and P.w.7 Chinnasamy and he drew Ex.P-9 rough sketch. P.Ws.1 and 2 took the deceased and P.W.3 to the hospital, where the deceased was declared dead. P.W.12 conducted inquest and prepared Ex.P-10 inquest report. P.W.3 was treated by P.W.8 Dr. Suresh Joseph and Ex.P-4 is the accident register. P.W.9 Dr. Kalaiselvi conducted post-mortem and issued Ex.P-5 post-mortem certificate. On the basis of the requisition given by P.W.11, P.W.10 Motor Vehicle Inspector inspected the vehicles and issued Exs.P-6 and P-7 reports. P.W.11 concluded the investigation and filed the charge sheet.

5. The trial Court, after framing charges, and after considering the oral evidence of P.Ws.1 to 12 and documentary evidence of Exs.P-1 to P-10, convicted and sentenced the accused as stated above, against which, the revision Petitioner/accused preferred appeal and the first appellate Court modified the sentence in respect of the conviction u/s 304A IPC and confirmed in other respects, against which, the present Crl.R.C. is preferred by the revision Petitioner/accused.

6. Challenging the judgment of the first appellate Court, learned Counsel appearing for the revision Petitioner/accused submitted that he is not canvassing the point for conviction of the revision Petitioner, and now the revision Petitioner/accused is aged about 55 years and he met with an accident and has been hospitalised. He prayed for leniency in the sentence imposed u/s 304A IPC. He further submitted that the revision Petitioner/accused is ready to pay compensation to the victim"s family.

7. Learned Government Advocates (Criminal Side) submitted that since, in respect of the conviction of the revision Petitioner/accused, the counsel has not canvassed any point, he left the matter to the discretion of the Court in respect of the leniency in sentence.

8. Considering the rival submissions made by both sides and on a perusal of the evidence of P.Ws.1 and 2 who are the eye-witnesses and the manner in which the accident occurred, the doctrine of "res-ipso-loquitor" applies, which shows that the revision Petitioner/accused himself has driven the vehicle in a rash and negligent manner and overtook P.W.1's two-wheeler and dashed against the vehicle driven by the deceased Alagarsamy and caused fatal injury to the deceased and simple injury to P.W.3 Chinnasamy. So, the documentary evidence as well as the oral evidence of P.Ws.1 and 2 clearly proved that the revision Petitioner/accused is guilty of the offences under Sections 304A, 279 and 337 IPC. Furthermore, the learned Counsel for the revision Petitioner/accused has not canvassed anything in respect of the validity of the conviction under Sections 304A, 279 and 337 IPC.

9. Considering the prayer in respect of leniency in sentence, it is seen that the revision Petitioner/accused is now aged about 55 years and his avocation is lorry driver and now he met with an accident and he has been in-patient and that he has already undergone imprisonment for a period of one month and the remaining period is only two months, and if he is committed to prison, his family will be put into peril and that he is ready to pay compensation to the victim's family. Considering these aspects and the age of the revision Petitioner/accused and his health condition, instead of sentencing the revision Petitioner/accused to jail, to meet out the ends of justice of both parties, i.e. the revision Petitioner and the victim's family, the fine amount shall be enhanced and the said fine amount has to be paid as compensation to the victim's family. Hence, I am of the view that the period of imprisonment already undergone by the revision Petitioner/accused is treated as sentence and the fine amount is enhanced to Rs. 29,500/- from Rs. 4,500/- and the same has to be paid as compensation to the victim's family, within six weeks from the date of receipt of a copy of this judgment, failing which, Section 431 Code of Criminal Procedure would be attracted, as laid down by the Apex Court in the decision reported in [Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee](#),

10. In the result:

(a) Crl.R.C. is disposed of.

(b) The conviction of the revision Petitioner/accused under Sections 304A, 279 and 337 IPC is confirmed.

(c) The period of imprisonment already undergone by the revision Petitioner/accused is treated as sentence.

(d) The fine amount is enhanced to Rs. 29,500/- from Rs. 4,500/-, out of which, Rs. 25,000/- (Rupees twenty five thousand only) has to be paid as compensation to the victim's family, within six weeks from the date of receipt of a copy of this judgment, failing which, Section 431 Code of Criminal Procedure would be attracted, as laid down by the Apex Court in the decision reported in [Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee](#),