

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CRIMINAL REVISION CASE No.1100 OF 2007

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ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioner/sole accused is directed against the judgment dated 23.07.2007 of the learned V Additional Sessions Judge (Judge, Fast Track Court), Eluru of West Godavari District passed in Criminal Appeal No.223/2006.

1. **(a)** By the judgment dated 02.11.2006 in C.C.No.283/2004 the learned II Additional Judicial Magistrate of First Class, Eluru had found the accused guilty of the offences punishable under Section 304A of the Indian Penal Code (for short, 'the IPC') and Sections 134(a) & (b) read with Section 187 of the Motor Vehicles Act and had convicted the accused of the said offences and sentenced the accused to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- and suffer simple imprisonment for three months in default in payment of fine amount under the first count and to pay a fine of Rs.1000/- and Rs.100/- respectively and to suffer simple imprisonment for three months and one week respectively in default of payments of the said fine amounts for the offences under the other two counts. The learned Additional Sessions Judge while dismissing the appeal of the accused had confirmed the judgment of the trial Court in all respects.

2. I have heard the submissions of the learned counsel for the petitioner/accused and also of the learned Public Prosecutor. I have carefully perused the material record.

2. **(a)** The learned counsel for the petitioner/accused would submit as follows: - 'The trial Court misread and misinterpreted the facts as well as the evidence and mis-applied the law. The trial court failed to appreciate discrepancies in the evidence of the witnesses with reference to

their earlier statements recorded by the police under Section 161(3) of the CrPC. The cycle was not damaged in the accident and the pillion rider on the cycle also did not sustain even a simple injury. Had the vehicle like a tractor trailer dashed the cycle, PW1 would have also sustained injuries and the cycle would have been damaged. Therefore, there is reason to accept that no accident as alleged in the prosecution had taken place and that at any rate PW1 did not accompany the deceased on the cycle at the time of the accident and that therefore, PW1 is not present at the scene of offence at the time of accident. The witnesses stated that the trailer ran over the deceased, whereas the investigation disclosed that the rear tyre of the tractor had run over the deceased. The evidence does not show that there is rashness and negligence on the part of the accused. The maximum speed limit of a tractor is very low when compared to other heavy motor vehicles; therefore, it cannot be said that the tractor was driven rashly or at a high speed. The court below was unduly harsh in awarding the sentence.'

2. (b) Per contra, the learned Additional Public Prosecutor had submitted that the accused was rash and grossly negligent in driving the crime vehicle; and, that his rash and negligent driving had resulted in the vehicle dashing against the deceased who was peddling the cycle; and, that the Courts below had appreciated the oral and documentary evidence in the right perspective; and, that there is no merit in any one of the contentions raised by the revision petitioner/accused and that the revision is devoid of merit and is liable to be dismissed.

3. Now the points for determination are: -

1. **Whether the prosecution had successfully brought home the guilt of the accused, beyond all reasonable doubt, for the offences punishable under Sections 304A of the IPC and under Sections 134(a) read with Section 187 and 134(b) read with Section 187 of the Motor Vehicles Act?**
2. **Whether the accused had made out valid and sufficient grounds for his acquittal of the said offences? And, if so, whether the judgment impugned is liable to be set**

aside?

4. POINTS:

4. (a) The case of the prosecution including the gravamen of the charge, in brief, is as follows: 'On 20.02.2004 at about 10.00 AM, the accused was driving the tractor trailer bearing registration No.AP 37T 7585 and No.APW 9112 respectively. While the said tractor, being driven by the accused, was proceeding from Pedapadu bridge road to Municipal Office, Eluru, the accused drove the said vehicle at a high speed and in a rash and negligent manner and dashed the cycle of Bobbadhi Venkateswararao (the deceased) from behind. As a result, S.Durgarao-PW1 who was traveling on the said bicycle fell on the left side and the deceased, who was peddling the cycle, fell on the right side. On that, the rear wheel of the tractor ran over the said deceased and the deceased had succumbed to severe head injuries while undergoing treatment in the hospital. Basing on the hospital intimation and the statement of PW1, the subject crime was registered by the Station House Officer, Eluru Traffic Police Station. On completion of investigation, a charge sheet was laid against the accused.'

4. (b) Before the trial Court, PWs 1 to 11 were examined and exhibits P1 to P11 were marked. No evidence was adduced on the side of the accused.

4. (c) Now it is necessary to examine the evidence on record to find out whether the prosecution was successful in bringing home the guilt of the accused for the charges levelled against him.

4. (d) PW1, who had traveled on the cycle of the deceased at the time of the accident had testified as follows: - 'On 20.02.2004 at about 10.00 AM while he and the deceased were going on the cycle from Hai Hotel centre, Eluru, the tractor came from behind at a high speed and dashed the cycle and that the deceased fell to the right side and he [PW1] fell to the left side and that the rear wheel of the tractor ran over the head of the deceased; and that the accused was the driver of the said tractor at the time of the

accident. After the accident, the crime vehicle was stopped at a distance. A traffic constable came to the spot. He and the traffic constable-PW2 had shifted the deceased to the hospital. The deceased had died after he was admitted in the hospital.' In his evidence, his statement which was recorded by the police was exhibited as P1. In his cross examination, he had stated that the tractor dashed the cycle, but not the trailer of the tractor and that the Centre at which the accident had taken place is a busy locality. When it was suggested to him that the tractor had not dashed the cycle and that the deceased had not died due to the fall from the cycle and on account of the injuries sustained in the accident, he had denied the said suggestions. He had further denied the suggestions that he, being the pillion rider on the cycle, moved while sitting on the cycle and that due to the imbalance caused, the cycle had fallen down under the trailer of the tractor and that therefore, the deceased died and that there is no negligence on the part of the accused, the driver.

4. (e) PW2, who was a Home Guard and who was on duty on that day at Hai Centre from 08.00 AM to 12.00 noon and who was regulating the traffic had testified in his evidence as follows: 'At about 10.00 AM the deceased and PW1 were coming from Pedapadu to Hai Centre. While so, the crime vehicle coming from behind at a high speed dashed the cycle and that on that the deceased fell to the right side and that PW1 fell to the left side and that the rear wheel of the tractor ran over the head of the deceased and that immediately he and PW1 had shifted the deceased to the Hospital. The accused was the driver of the crime vehicle at the time of the accident. He being on traffic duty on that day was controlling the traffic on the new bridge and the old bridge and that the scene of offence is a very busy locality with traffic and that it is difficult at that centre for one person to control the traffic. The accident had occurred opposite to Balaji Car travels. The road is a canal bund road and that the Cars of the travel office were parked on the tank bund road which is a single road. There is a bridge between Vasantha Mahal Centre and the car travels area.' When it was suggested to him that he has not witnessed the accident and that he came to the spot after the accident

and after people had gathered and that he does not know about the accident, he had denied the said suggestions. He had denied the further suggestion that the driver did not drive the tractor at a high speed.

4. **(f)** PW3 is another eye witness to the accident. He had also deposed about the manner of the accident. But, he had stated that he cannot say the number of the crime vehicle and he cannot identify the accused. However, his evidence would show that in the accident he had witnessed, two persons who were traveling on a cycle were hit by a tractor which was coming behind the cycle from Pedapadu side and that out of the two cyclists one has received injuries.

4. **(g)** PW4 who is said to be another eye witness had not supported the case of the prosecution.

4. **(h)** PW5 is the photographer who had taken photographs of the scene of offence.

4. **(i)** PW6 is the Investigating Officer who had observed the scene of accident and prepared exhibit P5-scene of offence observation report in the presence of a mediator. He had also conducted inquest over the dead body of the deceased at the hospital and examined the witnesses including the relations of the deceased present at the time of the inquest. In his evidence, exhibit P6-Inquest report was marked.

4. **(j)** PW7 is the Motor Vehicle Inspector who had inspected the crime vehicle on the requisition of the Police. He had testified that on the same day he had gone to the police station and had inspected the tractor trailer and found that there is no mechanical defect to the vehicle. His report is exhibited as P7. In his cross examination, it was elicited that he had examined the vehicle at 2 PM in the police station and he had deposed to the effect that the maximum speed of a tractor is 26 KM per hour even with load.

4. **(k)** PW8 is an Auto-driver and a cousin of the accused. He testified that the accused is a tractor driver on a tractor of Jayapuram village and that one Arjunaraju is the owner of the said tractor on which the accused

is a driver. According to him, the accused had disclosed to him that he had caused an accident with his tractor and that, therefore, he took him to the police and produced before the Police. When it was suggested to him that he does not know anything about the accident, and that he did not produce the accused before the Police, he had denied the said suggestions.

4. (l) PW9 is an Inquest Panch witness.

4. (m) PW10 is the Doctor who had conducted Post Mortem over the dead body of the deceased. He gave exhibit P8-Post Mortem certificate; and in his evidence he had stated that he had opined that the deceased would appear to have died of shock due to head injury and skull fracture.

4. (n) PW11 is the Investigating Officer who had registered the subject crime on receipt of exhibit P9-the hospital intimation and on recording of the exhibit P1-statement of PW1. He had also issued exhibit P10-FIR. According to him, he had conducted the investigation and filed the charge sheet.

5. Thus, I have carefully gone through the entire evidence. A plain reading of the evidence would show that the accused was driving the tractor trailer at the time of accident and that the accident had occurred due to his rash and negligent driving resulting in the death of the deceased who was peddling the cycle at the time of accident. The contentions like the trial court did not bestow its attention to the facts, evidence and the law and that the maximum speed of the vehicle like tractor trailer is a very low speed when compared to other heavy vehicles and that the cycle was not damaged and PW1 did not sustain injuries in the accident are no circumstances to brush aside the direct evidence showing the rashness and negligence on the part of the accused while driving the tractor trailer at the time of accident. PW1's evidence is very clear that after the tractor hit the cycle from behind he fell to the left side and that the deceased fell to the right side and that therefore, the deceased came under the wheels of the vehicle. Therefore, there is explanation for the cycle not getting damaged and PW1 not sustaining

injuries in the subject accident. It is not the case of the accused that he has rendered necessary assistance to the victims after the accident in due discharge of his legal obligation under the provisions of the Motor Vehicles Act. His case is one of total denial. Therefore, it follows that he is liable to be punished for the offences with which he was charged.

6. Viewed thus, this court finds that there is no merit in any one of the contentions urged before this court on behalf of the petitioner/accused and hence, this court finds that there is no merit in the revision and the revision is devoid of merit and is liable to be dismissed.

7. On the measure of sentence, the learned counsel for the accused alternately contended that while imposing fines for the offences under Sections 134(a) and 134(b) read with Section 187 of the Act coupled with in default simple imprisonments, the trial court was harsh in imposing a sentence of one year RI so far as the offence punishable under Section 304A of the IPC is concerned and that the said sentence is disproportionate to the gravity of the offence and that the accused is having wife and children and that the trial court did not consider his plea of mercy and that the accused in the facts and circumstances of the case may be shown some mercy and considering the mitigating and extenuating circumstances, the sentence may be reduced to one already undergone.

8. Considering the peculiar facts of the case this court is not inclined to accept the submission that the sentence can be reduced to one already undergone which is a bare minimum period. However, in view of the explanatory statement offered on behalf of the accused, this court finds that the sentence can be reduced to RI for two months while maintaining the fine amount imposed for the offence punishable under Section 304A of the IPC and the other sentences of fine for other offences under Sections 134(a) and 134(b) read with Section 187 of the MV Act.

9. In the result, the Criminal Revision Case is dismissed. However, the sentence of rigorous imprisonment for the offence punishable under Section 304A of the IPC is reduced from one year to two months while

maintaining the fine amount and the sentences of fine imposed by the trial Court for the other two offences. The accused shall be entitled to the benefit of set-off. It is stated that the accused is at large being on bail; therefore, the accused is directed to surrender before the trial Court within two weeks from the date of the receipt of a copy of this order. On failure of the accused to do so, the trial Court shall take steps for his apprehension and send him to prison for serving the remaining period of sentence.

Miscellaneous petitions pending, if any, in this CrIIRC shall also stand dismissed.

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**M. SEETHARAMA
MURTI, J**

30th January 2015

Note: LR Copy to be
marked
(B/o)

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