

THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

TUESDAY THIS THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE MRS JUSTICE ANIS

CRIMINAL REVISION CASE No.894 of 2008

Between:
Shaik Baji

.....
PETITIONER

AND
State of A.P. rep.by the Public Prosecutor,
High Court, Hyderabad

.....**RESPONDENT**

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The Court made the following:

HON'BLE MRS JUSTICE ANIS

CRIMINAL REVISION CASE No.894 of 2008

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ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 18.06.2008, passed by the IV Additional District & Sessions Judge, Visakhapatnam, in Criminal Appeal No.109 of 2006, whereunder

and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 338 of Indian Penal Code, vide the judgment dated 06.09.2006 in C.C.No.832 of 2005 by the Special Judicial Magistrate of First Class (Prohibition & Excise, Visakhapatnam, was confirmed.

2. The revision petitioner herein is sole accused in Calendar Case No.832 of 2005 before the trial Court. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Calendar Case before the trial Court.

3. The case of the prosecution in brief is that PW 1 is the auto driver in Radha Enterprises, Dabagardens, Visakhapatnam. On 17.09.2005 at about 8.40 p.m, the accused, being the driver of a lorry bearing registration No.AP30-T1089 came at high speed and in negligent manner and dashed PW 1 while he was pushing his auto at Centre Point Hotel, Dabagardens and caused fracture to his right leg. Immediately, PW 1 was shifted to Sagardurga Nursing Home and on intimation PW 5 recorded Ex.P1 statement from PW 1 and registered the same as a case in cr.No.68/2005 under Section 338 IPC against the accused. During course of investigation, the investigating officer recorded the statements of all the witnesses and on 29.09.2005 PW 6 arrested the accused. After receiving Ex.P2 wound certificate and after completing the investigation, the investigating officer filed charge sheet into the court.

4. The learned Magistrate took cognizance of the case against the accused for the offence under Section 338 of IPC and examined the accused under Section 251 Cr.P.C, for which, accused pleaded not guilty. During course of trial, the prosecution examined PWs 1 to 6 and got marked Exs.P1 to P5.

5. After closure of the prosecution evidence, the accused was

examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no defence evidence on his behalf.

6. The trial Court, after hearing on either side and after considering the oral and documentary evidence, found the accused guilty of the offence punishable under Section 338 of IPC, convicted him for the said offence and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month.

7. Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred Criminal Appeal No.109 of 2006 on the file of the VI Additional District & Sessions Judge, Visakhapatnam, where the Appellate Court after reappraisal of the evidence and material on record, dismissed the appeal, vide judgment dated 18.06.2008 while confirming the conviction and sentence passed by the trial Court, dated 06.09.2006.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.109 of 2006, the petitioner/accused preferred the present revision case.

9. The learned counsel for the revision petitioner/accused argued that the accused is innocent and did not commit any offence, further, there is delay of 3 days in lodging the report. The learned counsel also argued that the accused is aged about 31 years and he is very young and he has to maintain his family and therefore, prayed this Court to take lenient view.

10. On the other hand, the learned Public Prosecutor argued that the prosecution is able to prove that the accused was rash and

negligent while driving the crime lorry and caused grievous injury to PW 1, as such, both the courts below gave concurrent finding that the accused is liable for punishment under section 338 of IPC and those findings does not warrant interference, and prayed this Court to dismiss the revision.

11. Now the point that arises for consideration is whether the petitioner is entitled to set aside the judgment of the appellate Court dated 18.06.2008, passed in CrI.A.No.109/2006, as well as the judgment of the trial Court dated 06.09.2006, passed in C.C.No.832/2005.

12. Point:

A perusal of the evidence produced by the prosecution shows that on 17.09.2005 at 8.30 p.m. the accused drove the crime vehicle-lorry bearing registration No.AP30-T1089 in rash and negligent manner at high speed and dashed PW 1 and caused fracture to his right leg. PWs.2 and 3 shifted PW 1 to Sagardurga Nursing Home. On intimation, PW 5 rushed to the hospital, recorded the statement of PW 1 and registered a case in Cr.No.68/2005 under Section 338 of IPC against the accused. PWs 1 and 2 in their evidence clearly stated that the accused drove the crime vehicle in rash and negligent manner. A perusal of Ex.P2 wound certificate issued by PW 4 clearly shows that PW 1 received grievous injury. Further, PWs 2 and 3 identified the accused who drove the crime vehicle in rash and negligent manner on the date of accident. The other witnesses i.e. PWs 5 and 6 are concerned, PW 5 registered Ex.P1 report and issued FIR in Cr.No.68/2005, and PW 6 after completing the investigation, arrested the accused and filed charge sheet into the court.

13. The evidence of PWs 1 to 3 regarding the manner of the

accident and receiving the grievous injury by PW 1 is consistent and cogent, therefore, both the courts below rightly gave a concurrent finding that the accused was rash and negligent while driving the crime lorry, due to which, PW 1 sustained grievous injury to his right leg. The findings of both the courts below needs no interference.

14. At this stage, the learned counsel for the petitioner/accused submitted that the accused is the sole breadwinner to his entire family and hence prayed this Court to take a lenient view.

15. Taking into consideration the facts and circumstances of the case, this Criminal Revision Case is dismissed, confirming the conviction recorded by the Courts below against the petitioner/accused for the offence punishable under Section 338 I.P.C, but the sentence of six months rigorous imprisonment is modified and converted into fine of Rs.5,000/- (Rupees five thousand only), in default, the accused shall undergo simple imprisonment for a period of three months. The trial Court shall take steps, in accordance with law, for apprehending the accused for serving the modified sentence.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

ANIS, J

Date: 24.03.2015

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