

# **THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

## **CRIMINAL REVISION CASE No.1617 of 2007**

### **ORDER:**

This Criminal Revision Case is directed against the judgment in CrI.A.No.218/2005, dated 22.11.2007 on the file of the III Additional District & Sessions Judge, Tirupati, by and under which, the conviction and sentence as imposed by the trial Court was confirmed.

2. Heard the learned counsel appearing for the revision petitioner and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution in brief is that on 18.05.2000, the petitioner/accused being the driver of Rajesh Travels Bus bearing registration No.KA-01-B5999 was proceeding from Bangalore to Vijayawada and at about 5.30 a.m. when reached near Muslim Burial ground, on Renigunta-Tirupati Main Road, in front of Gangamma Temple opposite to Petrol Bunk, he drove the vehicle in rash and negligent manner and lost control over the vehicle and turned the vehicle towards right side and dashed APSRTC Bus bearing registration No.AP-9Z-1283 which was coming in opposite direction towards extreme left side of the road, as a result of which, the right side portion of the APSRTC Bus was damaged to a large extent and 4 passengers died on the spot and 14 passengers sustained multiple injuries. Three passengers succumbed to injuries thereafter. Basing on the report of PW 4-*de facto* complainant, a case in Cr.No.80/2000 was registered and during investigation, the Investigating Officers inspected the scene of offence, got photographed, recorded the statements of witnesses, conducted inquest over the dead bodies and sent them for autopsy, and after completion of investigation filed charge sheet against the accused in C.C.No.1216/2000 on the file of the III Additional Judicial Magistrate of First Class, Tirupathi for the offences under sections 304-A, 338 and 337 IPC .

4. The trial Court had taken the case on file for the offence alleged against the petitioner/accused, and on appearance of the accused, he was examined under Sec.251 Cr.P.C, and the accused pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the petitioner/accused, the prosecution examined PWs 1 to 32 and got marked Exs.P1 to P33 on its behalf. After closure of the prosecution evidence, the petitioner/accused was examined under Section 313 Cr.P.C putting all incriminating material available against him, but the petitioner/accused denied the material evidence. No defence is produced.

6. On appreciation of oral and documentary evidence, the trial Court found the petitioner/accused guilty of the offences under sections 304-A, 338 and 337 IPC, convicted and sentenced him to undergo;

- i. rigorous imprisonment for two years and to pay a fine of Rs.1,000/- for the offence under section 304-A IPC, in default to suffer simple imprisonment for one month;
- ii. rigorous imprisonment for one year and to pay a fine of Rs.1,000/- for the offence under section 338 IPC, in default to suffer simple imprisonment for one month; and
- iii. rigorous imprisonment for three months and to pay a fine of Rs.500/- for the offence under section 337 IPC, in default to suffer simple imprisonment for one week.
- iv. It is ordered that all the sentences shall run concurrently;

7. The petitioner/accused challenged the conviction and sentence passed by the trial Court in CrI.A.218/2005. The criminal appeal was dismissed confirming the judgment of the trial Court. Aggrieved by the same, the petitioner/accused filed the present criminal revision case.

8. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/accused is legal and sustainable.

Point:

9. The contention of the learned counsel appearing for the revision petitioner/accused is that there is no evidence whatsoever to connect the accused with the unfortunate incident and in the absence of any evidence, the revision

petitioner/accused cannot be held to have committed the offence alleged. The learned counsel further submits that merely on the basis of the evidence of PWs 2, 14, 8, 9, 12 and 13, both the Courts below came to the conclusion that the petitioner/accused is the driver of the crime vehicle and responsible for the accident and erroneously convicted the petitioner/accused.

10. On the other hand, the learned Additional Public Prosecutor submits that the prosecution has placed voluminous oral and documentary evidence on record, which clearly establishes that the revision petitioner/accused was the driver of the crime vehicle at the time of accident and he drove the vehicle in rash and negligent manner and caused death of 7 persons and injuries to 11 persons, therefore, both the Courts below have concurrently found the revision petitioner/accused guilty of the offences alleged, convicted and sentenced him, as stated supra. The learned Additional Public Prosecutor submits that the judgments of the Courts below are based on proper appreciation of material on record, which does not warrant any interference.

11. PW 4 is the *de facto* complainant. According to him, on 18.05.2000 at about 5 or 5.30 a.m. while he was sitting in the tea-stall the crime vehicle came in wrong direction in high speed and hit the RTC bus, and the driver of the crime vehicle bearing No.5999 is responsible for the accident. In the said accident four persons, viz., (1) E.Munirathnamma, (2) M.Srinivasulu Chetty, (3) Shaik Saheem Begum, and (4) B.Vijaya died on the spot. Three other persons, viz., (5) S.Subramanyam, (6) Shaik Shamshu Saheb, and (7) S.Humera Bhanu succumbed to injuries on 15.06.2000, 24.06.2000 and 11.7.2000 respectively. PWs 3, 5, 9, 10, 11, 13, 14, 16 and 6 others sustained injuries.

12. PW 24 is the M.V.Inspector who inspected the crime vehicle and opined that the accident was not occurred due to any mechanical defect. PW 27 is the photographer who took photographs of the scene of offence. PW 25 is the Doctor who treated the injured. PW 23 is the Doctor who conducted autopsy over the dead bodies of the deceased. PWs 27, 29, 30 and 31 conducted inquest over the dead bodies of the deceased in the presence of PWs 17, 18, 20, 21, 22 and 29. PWs 28, 30 and 32 are the Investigating Officers.

13. PW 24, the M.V.Inspector was not cross examined. PW 14, who is the driver of APSRTC Bus and who stated that the petitioner/accused is the driver of the

crime vehicle and is responsible for the accident was also not cross examined. PWs 8 & 13, who were the passengers of the RTC Bus, and PW 12, who was the conductor of the RTC Bus, categorically stated that the petitioner/accused is the driver of the crime vehicle at the time of accident. PW 9 stated that he saw the accused in the hospital, who also sustained injuries. Though PWs 8, 9, 12 & 13 cross examined, nothing was elicited contrary to their chief evidence.

14. From the above evidence of the injured witnesses and eyewitnesses, it is conclusively established that it is the accused who was driving the private bus, which had a head-on collision with an RTC bus, due to which seven persons died and 11 others sustained injuries.

15. The contention of the petitioner/accused is that his identity is not properly established. What is noticed from the suggestions put to the eyewitnesses is that at the relevant point of time, the accused was also travelling in the crime bus, but according to the suggestion, he is not the driver but was only a second driver of the said bus. His presence in the bus is not disputed. It is also fact that he also sustained injuries in the said accident. As against the consistent statement of the eyewitnesses that it is the accused who was driving the crime bus, nothing is brought on record to disbelieve that claim and to show that the person other than the accused was driving the bus at the relevant point of time.

16. With regard to rashness or negligence on the part of the accused, the eyewitnesses clearly deposed that the bus being driven by the accused came on to the wrong side of the road and dashed against the RTC bus which was proceeding on the left side of the road. The width of the road at the place where the accident took place was sufficient for the two vehicles to pass. Only because the bus driven by the accused went towards right side, it hit against the RTC bus. The time of accident was at about 5.00 or 05.30 a.m., in the morning. The prosecution has produced the photographs and negatives. Ex.P.31 is the '19' positive photos and Ex.P.32 is its corresponding negatives. A perusal thereof clearly show that the bus being driven by the accused was going at such a high speed that it has completely torn apart the right side portion of the RTC Bus. Had the driver of the crime bus was bit cautious and careful and if he was not going in high speed, which he could not control, that would not have been the nature of damage caused to the RTC Bus. The report of the Motor Vehicle Inspector shows that there was nothing wrong

mechanically with the bus. In a case of this nature, the rashness or negligence on the part of driver of a mechanically propelled vehicle can be gauged from noticing the scene of offence. The photographs, as already stated, clearly show that the petitioner/accused was driving the bus not only in high speed but also went towards the other half of the road which is meant for the vehicles to pass in the opposite direction.

17. Both the Courts below have carefully perused the evidence on record and after proper appreciation thereof held that the petitioner/accused is guilty of having driven the vehicle in a rash and negligent manner which resulted in the accident. Upon perusing the voluminous oral and documentary evidence on record, I feel no reason to take any view other than the view that has been taken by both the Courts below. The Judgments of both the Courts below do not suffer from any irregularity or illegality warranting any interference.

18. With regard to quantum of sentence, on behalf of the petitioner/accused it is submitted that a lenient view in the matter may be taken, since as at present the petitioner/accused is more than 60 year old. It is submitted that in the accident he too sustained grievous injuries and was not even able to do any work ever since there from.

19. As stated above, the Courts below have sentenced the petitioner/accused to undergo rigorous imprisonment for two years for the offence under Section 304-A I.P.C., one year for Section 338 I.P.C., and three months for Section 337 I.P.C., with a total fine of Rs.2,500/-. The sentences were directed to run concurrently.

20. Taking into consideration the submissions made by the learned Counsel appearing for the petitioner/accused and the totality of the facts and circumstances of the case, I feel that ends of justice will be met if the sentence of one year rigorous imprisonment is imposed for the offence punishable under Section 304-A I.P.C. Rest of the sentences and fine shall be sustained. Subject to this modification, the revision is liable to be dismissed.

21. In the result, the Criminal Revision Case is dismissed, confirming the conviction recorded by the Courts against the petitioner/accused, however, the sentence of imprisonment recorded by both the Courts below for the offence under

Section 304-A IPC is reduced from two years rigorous imprisonment to one year rigorous imprisonment. Rest of the sentences, fine and the direction to run the sentences concurrently shall stand sustained. The trial Court shall take steps, in accordance with law, for apprehending the revision petitioner/accused for serving the sentence.

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

---

**M.S.K.JAISWAL,J**

Date: 06.11.2015

Dsr/Smr