

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.297 OF 2008

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ORDER:
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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 14.06.2007, passed by the I Additional Judicial Magistrate of First Class, FAC II Additional Judicial Magistrate of First Class, Tenali, in C.C.No.21 of 2006.

2. The revision petitioner herein is the *de facto* complainant and respondent Nos.1 & 2 are accused and complainant in C.C.No.21 of 2006 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that on 03.10.2005 at about 04:00 p.m, one Nallamothu Tejo Bhargava (hereinafter referred to as 'the deceased') and his sister Nallamothu Tejaswini accompanied their father-*de facto* complainant and boarded an Auto at Duggirala, to go to Tenali, for purchase of crackers in connection with Deepavali festival. While the auto was proceeding and when reached Kattevaram bridge on Tenali – Vijayawada road, the accused who was driving the R.T.C bus bearing No.AP.11.Z.4311, drove the bus in a rash and negligent manner and while overtaking another auto, dashed the deceased in opposite direction. Initially, the injured was shifted to Dr.Chadalawada Krishnaiah's hospital and from there on the advice of the doctor, taken to Peoples' Trauma Hospital, Guntur, for treatment. After receiving the hospital intimation, the Assistant Sub-Inspector of Police, Kothapet, L&O Police Station, Guntur, visited the hospital and recorded the statement of the *de facto* complainant as Ex.P1, registered the same as a case in Cr.No.174 of 2005 for the offence

punishable under Section 337 I.P.C and issued Ex.P4 First Information Report. During the course of investigation, the Investigating Officer received the death intimation of the deceased, on the basis of which he altered the Section of law from 337 to 304-A I.P.C and issued altered First Information Report. He conducted inquest in the presence of mediators and got drafted the inquest panchanama. After recording the statement of all the witnesses and after receiving the post-mortem report, he filed the charge sheet into the Court.

4. The learned Judicial Magistrate of First Class, Tenali, took cognizance of the case and framed a charge for the offence punishable under Section 304-A I.P.C against the accused. During trial, on behalf of prosecution, PWs.1 to 6 were examined and Exs.P1 to P8 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C, putting the incriminatory material deposed against him. The Accused denied the same and reported no oral or documentary evidence on his behalf. After hearing the arguments and after perusing the record, the learned I Additional Judicial Magistrate of First Class acquitted the accused for the offence punishable under Section 304-A I.P.C.

6. Aggrieved by the said judgment passed by the trial Court, the complainant preferred the present revision case.

7. The learned counsel appearing for the revision petitioner/ complainant argued that there is no evidence on record to show that the deceased was peeping from the auto at the time of accident; that the trial Court has not examined the Medical Officer, who conducted post-mortem examination; that the prosecution had not conducted inspection of R.T.C bus and auto by the Motor Vehicle Inspector; and that the driver of the auto was not examined by the prosecution and it

is a fit case for remand and prayed the Court to allow the revision by remanding back the case to the trial Court.

8. On the other hand, the learned counsel appearing for respondent No.1/accused argued that there is no infirmity in the prosecution case; that the evidence of PWs.1 & 2 is interested one and there is no independent evidence to prove that the accused was rash and negligent while driving the bus; that there is no perversity of findings in this case and after proper appreciation of the evidence only, the trial Court acquitted the accused and therefore, prayed the Court to dismiss the revision case.

9. Now, the point for determination is --

Whether the revision petitioner is entitled to set aside the judgment dated 14.06.2007 passed by the
I Additional Judicial Magistrate of First Class, Tenali, as prayed for or not?

10. **POINT:** PWs.1 & 2 are the father and sister of the deceased, who died in the road accident. The evidence of these witnesses is relevant to prove that whether the accused was rash and negligent while driving the R.T.C bus and due to his negligence only, the accident occurred and deceased died. PW.3 is the direct witness to the accident. As per the evidence of PWs.1 to 3, the identity of the driver of the bus is not in dispute and they have identified that the accused drove the R.T.C bus on the date of accident. According to these witnesses, on the date of accident, they have boarded the auto at Duggirala to go to Tenali for purchase of crackers in connection with Deepavali festival and when the auto reached Kattevaram bridge on Tenali – Vijayawada road, the driver of the bus in order to overtake another auto, dashed the auto in which the deceased, PWs.1 and 2 were travelling in the opposite direction. If the said fact is taken into consideration, the auto in which the deceased, PWs.1 and 2 were travelling should have been damaged and inmates of the auto must

have sustained injuries.

11. As per the evidence of PWs.1 to 3, the passengers in the auto including the driver had not sustained any injuries except the deceased. PW.1, who gave Ex.P1, could not able to say the extent of damage caused to the auto and whether the glasses of the auto were broken or not. The trial Court after considering the evidence of PWs.1 to 3, held that if really, a heavy vehicle comes into contact with a light vehicle that too, an auto at high speed, not sustaining injuries by any one of the passengers, except the deceased is beyond once own comprehension and the said finding of the trial Court needs no interference.

12. The case of the learned counsel for respondent No.1/accused is that at the time of accident, the deceased was peeping his head outside the vehicle, as such the deceased alone sustained head injury and other passengers did not sustain any injury including the driver of the auto. This contention of the learned counsel for respondent No.1 probablised the plea of the accused and admittedly, the Medical Officer and the driver of the auto were not examined by the prosecution. Basing on the evidence of PWs.1 to 3, the trial Court rightly held that the deceased died not due to rash and negligent driving of the accused and further, held that the prosecution failed to prove the guilt of the accused for the offence punishable under Section 304-A I.P.C beyond reasonable doubt and acquitted the accused.

13. The prosecution in this case failed to explain when the driver of the bus drove the vehicle in a rash and negligent manner and dashed the auto in which the deceased, PWs.1 and 2 were travelling, how PWs.1 & 2 had not sustained injuries. Naturally, the auto should have been damaged completely due to the accident. But in this case it was not damaged. It is also an admitted fact that on the date of accident, the auto was filled with passengers and none of them received even a

scratch injury. Therefore, I am of the view that the trial Court after considering the evidence on record, rightly acquitted the accused, the finding of the trial Court needs no interference and the revision petitioner has not made out any case for remanding the matter to the trial Court.

14. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 14.06.2007, passed by the I Additional Judicial Magistrate of First Class, FAC II Additional Judicial Magistrate of First Class, Tenali, in C.C.No.21 of 2006.

15. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 10.03.2015

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