

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.107 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 29.01.2008, passed by the Sessions Judge, Warangal, in CrI.A.No.24 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 304-A IPC, vide the judgment dated 30.01.2006 in C.C.No.182 of 2002 by the Judicial Magistrate of First Class, Jangaon, was confirmed.

2. The revision petitioner herein is the accused and respondent herein is the complainant in C.C.No.182 of 2002 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 11.03.2002 the deceased one Rampa Kistaiah went to his agricultural well on his cycle, situated at the outskirts of Nawabpet village and while he was returning at about 8.30 p.m. and when he reached the Nawabpet bus stand which is situated near Rampa Chandru Hotel, the accused who is the driver of the oil tanker bearing No.AP 5 U 8179 was proceeding from Suryapet to Jangaon drove the oil tanker in a rash and negligent manner and dashed against the cycle of the deceased in the opposite direction, the deceased fell down and received head injuries. P.W.2, P.W.4 and P.W.5 shifted the deceased to the area hospital, Jangaon and while undergoing treatment he died. P.W.1 gave a complaint in the police station and the same was registered as Crime No.16 of 2002 under Section 304-A IPC. The Sub-Inspector of Police recorded

the statements of P.W.1 and the witnesses, he conducted inquest over the dead body of the deceased in the presence of mediators and the dead body was sent to the Government Hospital, where post mortem examination was conducted by doctor. The Sub-Inspector of Police visited the scene of offence and recovered the trip sheets from the oil tanker under the cover of panchanama. On 14.03.2002 the accused surrendered before the Sub-Inspector in the police station and he was sent to judicial custody. After receiving the post-mortem examination report and after completing the investigation, the charge sheet has been filed under Section 304-A IPC.

4. The learned Judicial Magistrate of First Class, Jangaon, took cognizance of the case and framed a charge for the offence punishable under Section 304-A IPC against the accused. During trial, to prove the case of prosecution, PWs.1 to 9 were examined and Exs.P1 to P5 were marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

6. The trial Court, after hearing the arguments and after perusing the record, convicted the accused for the offence punishable under Section 304-A IPC and sentenced him to undergo Simple Imprisonment for a period of six months and to pay a fine of Rs.100/-, and in default of payment, to undergo Simple Imprisonment for a period of one month.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.24 of 2006 before the Sessions Judge, Warangal, where the Appellate Court after considering the evidence on record confirmed the conviction and

sentence and dismissed the appeal.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.24 of 2006, the accused preferred the present revision case.

9. Learned counsel appearing for the revision petitioner/accused argued that P.W.1 is not an eye witness. He is the son of the deceased, who gave complaint to the police. P.Ws.2 to 4 are alleged to be eye-witnesses who categorically stated that when they were taking tea in the tea stall of Chandru Hotel, the deceased was coming on a cycle from his agricultural well and at that time an oil tanker coming from Suryapet and proceeding towards Jangaon dashed against the deceased, due to which he fell down and sustained head injuries, and it was dark night and it is difficult to the witnesses to see the accident from about 30 to 32 feet distance from where they were taking tea. It is also argued that the driver is stranger to the prosecution witnesses. No test identification parade was conducted to identify the accused, further the trial was conducted after two years of the accident. Therefore, it is difficult to the witnesses to identify the accused and they never seen the accused (driver of the oil tanker) prior to the accident, therefore, the prosecution failed to prove that the accused is the driver of the oil tanker who committed the offence. Finally, the learned counsel argued that six months period of conviction may be reduced in view of old case and further the petitioner was already in jail about 5 to 10 days.

10. On the other hand, the learned Public Prosecutor appearing for the State argued that the finding of both the courts needs no interference as there are eye witnesses to the accident and the petitioner was rash and negligent while driving the vehicle and caused

the accident and prayed the Court to dismiss the revision.

11. Now, the point for determination is --

Whether the petitioner is entitled to set aside the judgment of the appellate Court in Criminal Appeal No.24 of 2006 dated 29.01.2008 as prayed for?

12. **POINT:**

A perusal of the evidence on record shows that P.W.1 gave a complaint to the police stating that on 11.03.2002 his father went to the agricultural well on his bicycle and on his return when he reached outskirts of Nawabpet village, the driver of the oil tanker bearing No.AP 5U 8179 drove the vehicle in a rash and negligent manner, dashed the cycle, due to which his father fell down and died while undergoing treatment. Ex.P1 is the complaint which was registered by the police under Section 304-A IPC. To prove the alleged accident, the prosecution examined P.Ws.1 to 9 out of which P.Ws.2 to 4 are the eyewitnesses. P.W.1 has not seen the accident, but P.W.3 informed him about the accident. P.Ws.2, 3 and 4 in their evidence categorically stated that on 11.03.2002 at about 8.30 p.m. when they were taking tea in the tea stall of one Chandru Hotel, at that time they have seen that the driver of the oil tanker drove the vehicle in a rash and negligent manner and dashed the deceased who died due to injuries. In the cross-examination, all the witnesses clearly stated that there was a curve near the place of the accident and it was dark at the place of accident.

13. Admittedly, the accident had taken place at about 8.30 p.m. on 11.03.2002. The evidence of P.Ws.2 to 4 clearly establishes that they have seen the accident that the accused is the driver of the tanker, who drove the vehicle in a rash and negligent manner. It is not the case of the accused that the lights of the tanker were not working and as such it is unable to see the person who is coming in

front of the vehicle. Therefore, the evidence of P.Ws.2 to 4 has to be believed with regard to the manner of accident. The other witnesses deposed with regard to the scene of offence panchanama, inquest report and the post-mortem examination conducted over the dead body of the deceased and also about the registration of case. As per the evidence of P.Ws.1 to 9, the finding of both the Courts below needs no interference as the prosecution able to prove the guilt of the accused beyond reasonable doubt. Therefore, the revision petition is to be dismissed. But, the learned counsel for the petitioner argued that the offence has taken place more than 12 years back and prayed to take a lenient view.

14. Considering the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the revision petitioner by reducing the sentence of imprisonment to one month from six months. Therefore, I am inclined to dispose of the revision as under.

15. The conviction recorded against the revision petitioner/Accused by the Judicial Magistrate of I Class, Jangaon in C.C.No.182 of 2002 as confirmed by Sessions Judge, Warangal in CrI.A.No.24 of 2006 is hereby confirmed. But, the sentence of imprisonment of six months Simple Imprisonment imposed by the trial Court is hereby modified and reduced to one month. The sentence of fine is not interfered with. The period of imprisonment already suffered by the revision petitioner/accused is directed to be given set off.

16. Accordingly, the Criminal Revision Case is disposed of.

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

ANIS, J

Date:11.02.2015

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