

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.1611 OF 2007

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 15.11.2007, passed by the II Additional Sessions Judge, Guntur, in Criminal Appeal No.254 of 2005, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offences punishable under Sections 337, 338 & 304-A of the Indian Penal Code, 1860, (for short 'I.P.C'), vide the judgment dated 17.06.2005 in C.C.No.129 of 2004 by the VII Additional Munsif Magistrate, Guntur, was confirmed.

2. The revision petitioner herein is the accused and respondent herein is the complainant in C.C.No.129 of 2004 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 the accused was the driver of the Lorry bearing No.AP.31.V.595. On 15.06.2002, when the lorry was carrying PWs.1 to 19 and two others, and when it was returning after completion of loading and unloading work, the driver of the lorry drove the vehicle in a rash and negligent manner without noticing the R.T.C Bus coming in opposite direction, tried to overtake the other lorry and applied sudden brakes. As such, the lorry turned turtle, wherein two persons died and 17 persons sustained grievous and simple injuries. All the injured persons were shifted to Government General Hospital, Guntur, for treatment. On information of the accident, Sub-Inspector of Police rushed to the Government General Hospital, Guntur, and recorded the statement of the witness PW.1 and registered the case in Cr.No.89 of 2002 for the offences punishable under Sections 337, 338

and 304-A of I.P.C. During the course of investigation, the Investigating Officer visited the scene of offence, drafted rough sketch and prepared observation report in the presence of the mediators. On requisition, the Motor Vehicle Inspector inspected the vehicle and gave information that the vehicle is free from mechanical defect at the time of accident. In the accident, two persons died and the Investigating Officer conducted inquest in the presence of mediators. Further, the doctor who treated the injured gave opinion that injured eye witnesses received grievous and simple injuries. After completing the investigation, the Investigating Officer arrested the accused and filed charge sheet into the Court.

4. On appearance of the accused, the learned VII Additional Munsif Magistrate took cognizance of the case and framed charges against the accused. During trial, on behalf of the complainant, PWs.1 to 25 were examined and Exs.P1 to P28 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C and after hearing the arguments and after perusing the record, the learned Magistrate convicted the accused and sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.500/-, and in default of payment, to undergo Simple Imprisonment for a period of three months for the offence punishable under Section 304-A I.P.C; to undergo Rigorous Imprisonment for a period of six months and to undergo Rigorous Imprisonment for a period of three months for the offences punishable under Sections 338 & 337 I.P.C respectively.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.254 of 2005 before the II Additional Sessions Judge, Guntur, where the Appellate Court after considering the oral and documentary evidence and after hearing both sides dismissed the appeal by confirming the judgment of the trial

Court.

7. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.254 of 2005, the accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/accused argued that the prosecution failed to prove that the accused was the driver of the lorry at the time of accident and he drove the vehicle in a rash and negligent manner; that in the absence of any oral and documentary evidence to that effect, both the courts erroneously passed the judgment; that some of the injured witnesses could not identify the accused and the said fact was not considered by the Court; that no Test Identification Parade was conducted to identify the accused by the eye witnesses; that the prosecution failed to file the trip sheet of the lorry to fix the identity of the accused as the driver of the offending vehicle at the time of accident; that the Investigating Officer also failed to examine the owner and cleaner of the lorry to establish the identity of the accused; that some of the eye witnesses and injured never stated that the accused was rash and negligent while driving the vehicle and this fact was not considered by both the Courts; that the Investigating Officer has not recorded the registered number of the R.T.C. bus and other tipper lorry; that even though the vehicle was damaged, the driver has not received any injuries and the said fact clearly established that the accused is not the driver of the offending vehicle and the Motor Vehicle Inspector has not conducted test drive of the offending vehicle and relied upon the case law reported in **Suruvu**

Parshaiah v. State of A.P.^[1], wherein it is held at para 34 as follows:

“..... I have already discussed about the evidence of PWs-1 to 3 and 14 and also discussed about the evidence of PW-13-Motor Vehicle Inspector. Their evidence do not in any way establish the rash and negligent driving on the part of the bus driver much-less beyond reasonable doubt. The learned appellate Judge also appears to have been prejudiced by the ghastly nature of the accident. He did not properly appreciate

the evidence on record. He also relied on the circumstances, which are not legally brought on record. The improper appreciation of legal evidence on record by the Courts below resulted in miscarriage of justice. Therefore, there is a need for Interference by this Court in this revision. Thus, this point is found in favour of the revision petitioner."

and finally prayed the Court to allow the revision case.

9. On the other hand, the learned Public Prosecutor appearing for the State argued that the evidence of PWs.1 to 14 clearly established that the accused was the driver and he drove the vehicle in a rash and negligent manner and due to his rash and negligent driving, the accident was caused in which two persons died and several other persons received simple and grievous injuries and there is no dispute about the identification of the accused; that non-examining the owner and cleaner of the lorry is not fatal to the prosecution case, likewise non-seizure of the trip sheet to fix the identity of the accused is also not fatal to the prosecution case as the evidence of the eye witnesses clearly established that the accused was the driver, who drove the vehicle in a rash and negligent manner and due to his negligence the accident was caused; and that some of the witnesses have stated that accused was the driver of the vehicle at the time of accident and finally prayed the Court to dismiss the revision petition.

10. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the accused for the offence punishable under Sections 337, 338 and 304-A of I.P.C, with which he is charged?

11. **P O I N T**: A perusal of the oral and documentary evidence shows that PWs.1 to 19 are the eye witnesses to the accident and also injured persons. As per their evidence, they are working in G.S.S Company for construction of a road. Daily, they use to go in the lorry to attend their coolie work and on the date of incident i.e., on 15.06.2002, after attending the work, they were returning in the lorry driven by the accused and when the lorry reached the cross-road of

Paladugu, the driver of the lorry drove the vehicle in a rash and negligent manner, lost control over the lorry and dashed against one tree resulting the turtle of the lorry, in which two persons died and others received simple and grievous injuries. PWs.1 to 14 in their evidence clearly stated that at the time of accident, the driver was rash and negligent while driving the vehicle, due to which the accident occurred.

12. The learned counsel appearing for the revision petitioner/accused stated that PWs.15 to 17 has not stated that the driver was rash and negligent at the time of accident, and therefore, their evidence has to be believed. As per the evidence of PWs.1 to 14, who are the eye witnesses and injured, it is proved that on the date of accident, the accused was rash and negligent while driving the lorry. In the cross-examination of witnesses, it was suggested that accused was not the driver of the lorry. But, the same was denied. Therefore, the contention of the learned counsel for the revision petitioner/accused that accused is not the driver of the lorry cannot be accepted. Further, the accused was engaged by the company and daily, he used to take the coolies from their village to the work place and from the work place to their village. Admittedly, all the witnesses and deceased are employees of E.S.S Company for construction of the road and they have an opportunity to observe the accused, who was driving the vehicle on that day. Therefore, the contention of the learned counsel for revision petitioner that the accused is not the driver cannot be accepted in view of the evidence of PWs.1 to 14, which is consistent and corroborated with each other. Admittedly, the Investigating Officer failed to examine the owner and cleaner of the lorry and also failed to seize the trip sheet of the lorry and the non-examining and not collecting the documentary evidence is not at all fatal in this case in view of the consistent and trustworthy evidence of PWs.1 to 14.

13. The other contention of the learned counsel for revision petitioner/accused is that accused was not rash and negligent while driving the lorry at the time of accident. If this contention of learned counsel is accepted that the accused is driving the lorry slowly, he should have been avoided the accident by applying brakes in time. If a vehicle driven by a person dashes against anything or other person, *prima facie* it proves his rash and negligence.

14. Further, the other evidence of doctor, Investigating Officer and Motor Vehicle Inspector also strengthens the case of prosecution and the case law relied upon by the learned counsel for revision petitioner/accused as stated supra has no application to the facts of the present case. Thus, the prosecution has succeeded to prove that the accused was rash and negligent, due to which the accident was occurred and the trial Court and Appellate Court rightly held that the prosecution proved the guilt of the accused for the offences punishable under Sections 337, 338 & 304-A of I.P.C beyond all reasonable doubt and therefore, the findings of the trial Court and Appellate Court needs no interference.

15. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 15.11.2007, passed by the
II Additional Sessions Judge, Guntur, in Criminal Appeal No.254 of 2005.

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

ANIS, J

Date: 02.02.2015
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[\[1\]](#) 2006 (1) ALT (CrI.) 182 (A.P.)