

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.682 of 2007

ORDER:-

The revision is filed against the orders of the learned Sessions Judge, Nellore, in Criminal Appeal No.103 of 2006, dated 14-05-2007, by and under which the conviction of the petitioner/accused for the offence punishable under Section 304-A IPC., for a period of six months and fine of Rs.1,000/- as imposed by the learned Additional Judicial Magistrate of First Class, Kovvur, in C.C.No.221 of 2002, dated 04-09-2006, was confirmed.

2. The facts, in brief, are as under:-

The petitioner-accused was driving Tata Sumo bearing No.AP-13-D-4950 on 03-11-2001 and at about 07.30 a.m., after crossing Duvvuru bus-stand, on the Bombay National Highway, the said vehicle dashed against the deceased Uppala Subbaiah who sustained injuries and died. On the basis of the complaint of PW.1, who is the son of the deceased, Cr.No.105 of 2001 was registered and after completion of investigation, the charge sheet was filed. The learned Magistrate, during course of trial, examined PWs.1 to 8 and Exs.P.1 to Ex.P.6 were produced. The accused was examined under Section 313 Cr.P.C., where he denied the evidence on record and contended that the accident took place since the deceased, who was coming on a cycle, suddenly came on to the Highway. The learned Magistrate found the petitioner/accused guilty of the offence under Section 304-A IPC., and convicted and sentenced him as stated above which was confirmed in appeal.

3. The contention of the petitioner/accused is that there were no eye-witnesses to the incident since admittedly PW.1 is the son of the deceased who came to know about the accident subsequently and PWs.2 and 3 who claim to be the eye-witnesses are the close relations of the deceased and they are planted. It is further submitted that even if PWs.2 and 3 are to be believed, they are standing at a far away place, and they have not seen the accident proper. It is contended that except for the

evidence of PWs.1 to 3, there is no evidence on record to show that the accused was driving the vehicle in a rash or negligent manner. Admittedly, the accident took place on National Highway and there was a road divider. The deceased was coming on a cycle and the contention of the accused is that he suddenly came on to the road, due to which the accident took place. Learned Counsel further submits that in view of the nature of the accident, the accused cannot be held responsible and that apart the sentence of imprisonment is excessive.

4. On the other hand, learned Public Prosecutor submits that the evidence on record clinchingly establishes that the accused was driving the vehicle in a rash and negligent manner and caused the accident and that therefore there are no grounds to interfere with the said findings.

5. The point that arises for consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffer from any material illegality or irregularity warranting interference by the revisional Court?

6. **Point:-** Having perused the oral and documentary evidence on record and also the Judgments of the learned Magistrate and the learned Sessions Judge, what is noticed is that the factum of the accident having taken place on the date, time and place alleged is not in controversy. The specific case of the accused is that he was proceeding in his Tata Sumo at usual speed and the deceased, who was coming on a cycle from the fields, suddenly came on to the road and hit against the vehicle, fell down and sustained injuries and unfortunately he died. The Medical Officer-PW.5, who conducted post-mortem examination over the dead body of the deceased, has found a lacerated injuries on the forehead, fracture and deformity of right forearm, fracture right thigh and deformity and fracture right leg. From the nature of the injuries that is sustained, what appears is that there was an impact in between the cycle of the deceased and the Tata Sumo being driven by the accused, due to which the deceased, who was aged about 45 years, fell down, sustained injuries and died. The

accident took place on Bombay National Highway. It was at a distance of 100 to 150 metres from Duvvuru Bus Stand. PWs.2 and 3 claim themselves to be the eye-witnesses. The deceased was the maternal uncle of PWs.2 and 3. They are said to be the eye-witnesses. They claim to be standing at the Bus Stand and it is consistently spoken to them that while standing, they have noticed the crime vehicle going in high speed and immediately thereafter, they heard the sound of the accident, rushed there and found the deceased lying with injuries. The deceased was immediately shifted on to the crime vehicle and taken to hospital where he was declared dead. Therefore, even though PWs.2 and 3 did not see the accident proper, but it is in their evidence that they have noticed Tata Sumo vehicle proceeding in a high speed and within minutes thereafter, hitting against the cycle of the deceased. It is suggested to these witnesses that the deceased, who was coming on a cycle from the agricultural fields, suddenly came on to the road and hence the accident took place. It is no doubt true that the place of accident is a National Highway where the vehicles are certainly expected to go in speed. However, the speed of a vehicle is should be that the person at the steering wheel should be able to control in the event of exigencies that may arise on the road, more particularly, at the place, where there is a road divider. Even if the deceased suddenly came on to the road, had the accused been cautious in driving, he could have avoided the accident. Therefore, the evidence of PWs.2 and 3 coupled with the scene of offence panchanama and the nature of injuries sustained by the deceased. I have no hesitation in holding that the accused has driven the vehicle negligently and caused the accident, which resulted in the death of the cyclist.

7. Learned Counsel for the petitioner/accused however prays for lenient view in the matter of sentence and it is submitted that the petitioner/accused has undergone imprisonment for about three weeks. Considering the facts and circumstances of the case, the nature of evidence on record, the manner and method in which the accident took place, the plea of the accused and the fact that the accident took place as long back as on 03-11-2001, I feel that the ends of justice will be met if the

sentence is modified to certain extent. The point is accordingly answered.

8. In the result, the Criminal Revision Case is partly allowed confirming the conviction of the petitioner/accused for the offence punishable under Section 304-A IPC., and sentenced to undergo imprisonment already undergone and to further pay a fine of Rs.10,000/- (Rupees ten thousand only), within a period of three months from today over and above the fine already imposed by the Courts below. As and when the fine amount is paid, the same should be paid to PW.1. In default, to suffer simple imprisonment for six months. Trial Court to take steps accordingly.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

July, 2015

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