

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.469 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 13.03.2008, passed by the VI Additional District Judge, (Fast Track Court), Nizamabad at Kamareddy, in Criminal Appeal No.3 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offences punishable under Sections 304-A & 337 of the Indian Penal Code (for short, 'I.P.C') vide the judgment dated 22.12.2006 in C.C.No.80 of 2004 by the Special Judicial Magistrate of First Class, (Mobile), Kamareddy, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in C.C.No.80 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 on 25.01.2004 while the accused was driving the lorry bearing No.AP.28.V.3782 and proceeding from Toopran to Nizamabad along with PWs.3, 4, 6, 7 and two others sitting in the cabin, and at about 4:15 p.m when it reached the limits of Adloor Yellareddy village on National Highway No.7, the accused tried to overtake a R.T.C. bus by driving the lorry at high speed in a rash and negligent manner and without observing that one tractor bearing No.AP.25.G.6145 and trolley bearing No.ATJ.5266 coming in opposite direction, dashed against it. As a result of impact, the accident was caused causing injuries to PWs.3, 4, 6, 7 & 9 and two others and death of one Sathaiah on the spot. PWs.1, 2 & 5 witnessed the accident from nearby, rushed to the spot and shifted the injured to Government

Hospital, Kamareddy. PW.1 lodged the complaint Ex.P1 with the police. PW.15 after receiving the complaint Ex.P1, registered the case in Cr.No.07 of 2004 and issued the First Information Report. PW.13 took up investigation and during the course of investigation he recorded the statements of the complainant, injured persons and other eye witnesses. On 26.01.2004, he visited the Government Hospital, Kamareddy, recorded the statements of the injured, prepared the rough sketch of the scene of offence and conducted the inquest panchanama in the presence of mediators of PW.12 & 13. After the inquest, he sent the dead body for post-mortem examination. PW.14, who treated the injured issued Exs.P7 to P12 wound certificates stating that the injuries received by them are simple in nature. Motor Vehicle Inspector inspected the crime lorry and he could not take the vehicle to road test as the vehicle was majorly damaged. On 27.01.2004, the accused surrendered before the police and therefore, he was arrested and sent to Court for remand. PW.16 took up investigation, verified the investigation done by PW.15, found it on proper lines and then filed the charge sheet.

4. The learned Special Judicial Magistrate of First Class, Kamareddy, took cognizance of the case and examined the accused under Section 251 Cr.P.C for the offences punishable under Sections 304-A & 337 I.P.C. During trial, on behalf of the prosecution, PWs.1 to 16 were examined and Exs.P1 to P15 got marked. Exs.D1 to D3 got marked during the cross-examination of PWs.6 to 8.

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 arguments and after perusing the evidence available on record, the learned Magistrate convicted the accused and sentenced him to undergo

Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo Simple Imprisonment for three months; and also to pay a fine of Rs.500/- and in default of payment of fine to undergo Simple Imprisonment for one month for the offences punishable under Sections 304-A & 337 I.P.C respectively.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.3 of 2007 before the VI Additional District Judge, (Fast Track Court), Nizamabad at Kamareddy, where the Appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, held that the oral evidence produced by the prosecution is supported by the medical evidence and all the witnesses have stated about the rash and negligent driving of the accused; that non-examination of the medical officer is not fatal to the prosecution case; that Ex.P4 scene of offence panchanama and Ex.P5 rough sketch clearly shows the description of the place of impact and they also reveals that the lorry after giving impact to the tractor and trolley, went off the road and it shows the speed with which the lorry was, and also proves the rash and negligence on the part of the accused and dismissed the appeal.

7. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.3 of 2007 and C.C.No.80 of 2004, the accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused argued that the Courts below have not considered the evidence of PW.5 as he stated in his evidence that the tyre of the tractor was burst and that is the reason why the tractor hit the crime lorry; that there is a curve at the sight of the accident and the road is congested between small hillock and therefore, the accused is not rash and negligent while driving the lorry and the trial Court has not

considered this aspect; that the Motor Vehicle Inspector, who is competent to speak about the condition of the vehicle, was not examined by the trial Court, and the Courts below failed to note the material contradictions and omissions in the evidence of the witnesses and the Courts below based on assumptions and presumptions have not properly scrutinised the evidence; that there may be a contributory negligence by the driver of the tractor and the accused finally argued that in case, this Court comes to a conclusion that accused committed the offence, this Court may take a lenient view as the case is of ten years old and reduce the quantum of sentence to the period undergone by the accused.

9. On the other hand, the learned Public Prosecutor appearing for the State of Telangana argued that the evidence of eye witnesses i.e., PWs.2 to 6 clearly shows that the driver of the lorry drove the vehicle in a rash and negligent manner; that the driver of the lorry tried to overtake the R.T.C bus not seeing the tractor coming from opposite direction and due to his negligence, he dashed the lorry to the tractor, due to which many people injured and one person died; that the Courts below gave a concurrent finding about the rash and negligent driving of the accused and that finding needs no interference. It is also argued that non-examination of the Motor Vehicle Inspector is not fatal to the prosecution case as the vehicle was completely damaged and not road worthy and this aspect was already considered by the appellate Court and finally prayed the Court to dismiss the revision case.

10. Now, the points for determination are --

Whether the revision petitioner is entitled to set aside the concurrent judgments passed by both the trial Court and Appellate Court below for the offences punishable under Sections 304-A & 337 I.P.C, as prayed for or not?

11. **P O I N T:** A perusal of the oral and documentary evidence produced by the prosecution witnesses i.e., PWs.3, 4, 6 & 7, who are

the injured persons, eye witnesses to the accident and who were travelling in the crime vehicle along with the deceased shows that they clearly stated in their evidence that the accused was the driver of the crime vehicle at the time of accident. They had identified him. One of the witnesses PW.3 also stated that accused is resident of Pothurajupally.

12. On 25.01.2004 at about 4:15 p.m, the accused is the driver of the lorry bearing No.AP.28.V.3782 and he was proceeding towards Armour side from Hyderabad side on that day. Thus, as per the evidence of the above witnesses PWs.3, 4, 6 & 7, it is evident that while overtaking a bus, accused has not seen the tractor bearing No.AP.25.G.6145, which was coming from opposite direction and as a result, he dashed the lorry to the tractor, in which one C. Sathaiah died and PWs.3, 4, 6 & 7 received injuries. PW.1 along with others came to the spot and shifted the injured to the Government Hospital and PW.1 gave a complaint Ex.P1 to the police. As per Ex.P1, the driver of the lorry disclosed his name as Lakshman, resident of Pothurajupally village and apart from that PWs.1, 2 & 5, who are also eye witnesses to the accident also categorically stated that the driver of the lorry was rash and negligent while driving the vehicle. Therefore, the contention of the revision petitioner/accused that none of the witnesses gave evidence about the rash and negligent driving of the accused is not correct and unbelievable. If really the accused has not drove the vehicle negligently, there may not be any accident and he ought to have applied brakes and averted the accident.

13. The next contention of the learned counsel for revision petitioner/accused is regarding the identification of the accused by the witnesses before the trial Court. The said contention is also not proper and cannot be accepted as PWs.3, 4, 6 & 7 and the deceased Sattaiah were travelling in the lorry and they have seen the accused driving the lorry. Therefore, question of identification for the first time in the court

hall as contended by the learned counsel for revision petitioner cannot be accepted.

14. The other contention of the learned counsel for revision petitioner/accused is that the tyre of the tractor bursted on the spot, as such the accident was happened; that it is not the fault of the driver of the lorry, as such there is contributory negligence on the part of both the drivers. PW.15 nodoubt in his evidence stated that the tyre of the tractor was bursted and the driver unable to control the tractor, hit the lorry, as such there is no negligence on the part of the driver of the lorry i.e., accused, but his evidence is not corroborated with any other evidence. As per the evidence available on record, the prosecution able to prove that the accused was rash and negligent while driving the vehicle, due to which the accident occurred resulting the death of one person by name C. Sattaiah and receiving of injuries by PWs.3, 4, 6, 7 & 9. Further, all the injured persons clearly stated in their evidence about the rash and negligent driving of the accused. Therefore, the contention of the learned counsel for revision petitioner that due to tyre burst of the tractor, the accident occurred cannot be accepted. The learned counsel for the revision petitioner/accused contended that in view of the contributory negligence, this Court can take a lenient view and reduce the sentence imposed by both the Courts. It is also argued that accused is the sole bread winner of the family, he is a poor person and he has to maintain his family. Thus, taking into consideration the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the accused by reducing the sentence of imprisonment to six months from one year for the offence punishable under Section 304-A I.P.C. Therefore, I am inclined to dispose of the revision as under.

15. The conviction recorded against the revision petitioner/accused by the Special Judicial Magistrate of First Class, (Mobile), Kamareddy,

in C.C.No.80 of 2004 for the offences punishable under Sections 304-A & 337 I.P.C as confirmed by VI Additional District Judge, Nizamabad at Kamareddy in CrI.A.No.3 of 2007 is hereby confirmed. But, the sentence of imprisonment of one year imposed by both the Courts for the offence punishable under Section 304-A I.P.C is hereby modified and reduced to six months. The sentence of fine for the offences punishable under Sections 304-A & 337 I.P.C 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: 19.02.2015
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