

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.338 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 23-02-2002 in Criminal Appeal No.112 of 2005, passed by II Additional District and Sessions Judge, East Godavari District at Amalapuram, whereunder and whereby the conviction of the accused was confirmed for the offence punishable under Section 304-A of the Indian Penal Code (for short, 'I.P.C')

2. The revision petitioner herein is accused in C.C.No.429 of 2002, whereas respondent is the State. 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 case of the prosecution in brief is that on 16.10.2002 at about 11.00 a.m. one Byrisetti Venkanna was answering calls of nature on the western side of road margin in Kamujuvarilanka Village, the accused drove the car bearing No.AP 5U 5781 in a rash and negligent manner, dashed him, caused bleeding injuries and he was shifted to Area Hospital, Amalapuram and while undergoing treatment, he died at about 3.45 p.m. on the same day. As per the statement given by P.W.1, a case in crime No.406 of 2002 of Ambajipeta Police Station was registered for the offence punishable under Section 338 I.P.C. and after death intimation, section of law was altered to 304-A I.P.C. The investigating officer recorded the statements of the witnesses, conducted inquest panchanama in the presence of mediators and

after receiving a report of Motor Vehicle Inspector and Post Mortem Report, he filed charge sheet into the Court.

4. The learned Judicial Magistrate of First Class took cognizance of the case and framed charges for the offence punishable under Section 304-A of I.P.C against the accused. During the trial, on behalf of the prosecution, PWs.1 to 13 were examined and Exs.P1 to P11 were marked.

5. After closure of prosecution evidence, accused was examined under Section 313 Cr.P.C putting the incriminatory material deposed against him. The Accused denied the incriminatory material and reported no oral or documentary evidence.

6. The trial Court after considering the oral and documentary evidence, convicted the accused for the offence punishable under Section 304-A I.P.C. and sentenced him to suffer Rigorous Imprisonment for one year and a fine of Rs.500/- in default Simple Imprisonment for one month.

7. Aggrieved by the judgment of the trial Court, the accused preferred Criminal Appeal No.112 of 2005 on the file of II Additional District and Sessions Judge, East Godavari District at Amalapuram. The appellate Court after considering the evidence on record, dismissed the appeal and confirmed the judgment of the trial Court vide its judgment dated 23.02.2007.

8. Aggrieved by the judgment of the appellate Court, the accused preferred the present revision.

9. The learned counsel appearing for the revision petitioner/accused argued that the prosecution failed to prove that

the petitioner drove the car in rash and negligent manner at the time of accident; prosecution also failed to prove that the accused was the driver of the vehicle; the evidence produced by the prosecution is inconsistent and finally prayed the Court to take a lenient view as the case is of the year 2002.

10. On the other hand, learned Public Prosecutor argued that the prosecution is able to prove that the petitioner was driven his car in rash and negligent manner at the time of accident. Therefore, the concurrent findings of both the Courts need no interference and prayed to dismiss the revision.

11. Now, the point for determination is “Whether the petitioner is entitled to set aside the judgment in Criminal Appeal No.112 of 2005 passed by II Additional District and Sessions Judge, East Godavari District at Amalapuram, as prayed for?”

12. **P O I N T**: A perusal of the evidence produced by the prosecution shows that on 16.10.2002 at about 11.00 a.m. when the deceased was answering calls of nature on the western side of road margin in Kamujuvarilanka Village, at that time the accused driven the car bearing No.AP 5U 5781 in a rash and negligent manner, dashed the deceased, due to which the deceased received bleeding injuries and while undergoing treatment in the hospital, he died on the same day. P.W.1 gave a complaint, Ex.P1 to the police and the same was initially registered under Section 338 I.P.C. and after the death of the deceased, it was altered to 304-A I.P.C. P.Ws 2 and 3, who are eye witnesses stated in their evidence about noticing the accident and also identified the accused who drove the car at the time of accident. P.W.2 specifically stated this aspect in his evidence. Further, Ex.P11, rough sketch also clearly shows the skid marks on the road

margin. Further, the accident took place at the edge of the road. The Motor Vehicles Inspector also in his evidence clearly stated all these facts and issued Ex.P4, Motor Vehicles Inspector report. P.W.4, who is running a coffee hotel near panchayat office deposed that on the date and time of accident the accused was proceeding in his car and dashed the deceased while he was attending the calls of nature and he rushed to the spot. Immediately, after the accident the deceased was taken to the hospital in the car of the accused itself. A perusal of the evidence of P.W.4 clearly established that the petitioner/accused drove the vehicle in a rash and negligent manner and due to his rash and negligent driving, one person died. Therefore, the prosecution able to prove the ingredients under Section 304-A I.P.C. Therefore, the concurrent findings of both the Courts needs no interference.

13. The learned counsel for the petitioner prayed this Court to reduce the sentence on the ground that it is an old case; that the petitioner himself took the deceased to the hospital for treatment; that the petitioner is having small kids and he is the sole bread winner to his family and hence, a lenient view may be taken. This fact is not disputed by the prosecution.

14. In view of the facts and circumstances of the case, the sentence of Rigorous Imprisonment is modified by reducing the same from one year to three months. The fine amount remains unaltered. The period of imprisonment already suffered by the revision petitioner is directed to be set off under Section 428 Cr.P.C.

15. Accordingly, the Criminal Revision Case is allowed in part.

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

ANIS,
J

20-03-2015
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