

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.78 of 2008

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ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) by the petitioner/accused is directed against the judgment dated 08.01.2008 in CrI.A.No.154 of 2006 passed by the learned Sessions Judge, Mahila Court, Vijayawada.

1. (b) By the judgment dated 02.08.2006 in CC.No.293 of 2001, the learned V Metropolitan Magistrate, Gannavaram had found the accused guilty. The offences for which the convictions were recorded and the sentences were imposed against the accused are sated in the table infra.

S. No.	Section/s of law of the Offence	Substantive sentence of Imprisonment	Fine with In default sentence
1.	304-A IPC	RI one year	--
2.	134 (a) r/w 187 of M V Act	---	Rs.500/-IDSI 1 month
3.	134 (b) r/w 187 of M V Act	---	Rs.500/-IDSI 1 month

While dismissing the aforementioned appeal of the accused, the learned Sessions Judge had confirmed the judgment of the trial court in all respects.

2 .I have heard the submissions of the learned counsel for the petitioner/accused and the learned Additional Public Prosecutor appearing for the respondent/State. I have perused the material record.

3. At the time of hearing, the learned counsel for the petitioner/accused had contended as under: "The Courts below had not properly appreciated the evidence on record. The courts below had failed to take note of the

contradictions in the prosecution evidence and the fact that the accident had taken place due to the contributory negligence of the driver of the crime vehicle and the deceased. The courts below ought to have observed that the accident is a result of *Vis majeure*. The courts below ought to have seen that the prosecution had failed to bring on record the necessary evidence to prove the rash and/or the negligent act of the accused and that the accused himself had lodged a complaint before the police regarding the accident and that PWs3 to 5 are planted witnesses and that there is no credible and legal evidence to record a conviction against the accused for the offences with which he was charged.”

4. Per contra, the learned Additional Public Prosecutor had submitted that the accused was grossly negligent in driving the crime vehicle; and, that his rash and negligent driving had resulted in the vehicle dashing against the deceased who was talking to PW1 while standing by the side of the cabin door of the lorry of PW1 and, that the Courts below had appreciated the oral and documentary evidence in the right perspective; and, that there is no merit in any one of the contentions raised by the revision petitioner/accused and that the revision is devoid of merit and is liable to be dismissed.

5. Now the points for consideration are: -

1. **Whether the prosecution could bring home the guilt of the accused, beyond all reasonable doubt, for the offences with which he was charged?**
2. **Whether the accused had made out valid and sufficient grounds for his acquittal? And, if so, whether the judgment impugned is liable to be set aside?**

6. POINTS:

6. (a) The case of the prosecution including the gravamen of the charge, in brief, is this: - ‘On 24.02.2001 at about 19.15 hours, the informant/PW1-Bolem Srinivasa Rao who was the driver of the lorry bearing registration No.AHH-3906 came to Vuyyuru from Darsi village of Bhimavaram and parked his lorry on the

Northern side of Vijayawada-Bandar road near Thandava Lakshmi Theatre, Vuyyuru. The cleaner of the lorry by name Bolem Srimannarayana (the deceased) was talking to PW1 by standing by the side of the cabin door at the seat of the driver and that in the meanwhile the accused who was the driver of the lorry bearing registration No.AHH-3389 while plying his lorry from Veerammatali Temple side to Akunuru, drove his lorry in a rash and negligent manner and dashed the said cleaner (the deceased). As a result, the deceased fell down at the rear tyre of the parked lorry and that on that the front tyre of the crime lorry, which was being driven by the accused, ran over the body of the deceased resulting in the instantaneous death of the deceased. PWs2 to 5 and one Rajulapati Ramachandra Rao had witnessed the accident. PW1 lodged a report with the Station House Officer, Vuyyuru Town Police Station. On registration of the crime, PW9 has taken up investigation. On the requisition of PW9, the Motor Vehicle Inspector/PW7 had inspected the vehicle and gave his report opining that the accident was not due to any mechanical defect of the vehicle. PW8 is the Doctor who conducted autopsy over the dead body of the deceased and had issued the post mortem report opining that the cause of death of the deceased was multiple injuries to vital organs on account of being run over by a moving heavy vehicle. After completion of the investigation, PW9 had laid the charge sheet.

6. (b) Now it is necessary to examine the evidence brought on record to find out whether the evidence on record is sufficient to record a finding that the prosecution had established the guilt of the accused as required under law.

6. (c) PW1 the informant and who was the driver of the lorry bearing No.AHH-3906 deposed as under: - 'He was the driver of lorry bearing No.AHH 3906. About four years prior to his giving evidence, at about 07:30 PM the accident had occurred. He and the deceased were proceeding on that lorry from Maharashtra to Vendra of Bhimavaram. On the way, when the lorry had reached Vuyyuru, which is the native place of the owner, he had stopped the lorry opposite to Thandava Lakshmi Theatre and made a telephone call to the owner and then returned to the lorry and sat in the driver's seat. The deceased who is the son of his paternal uncle and also the cleaner of the lorry was standing on the ground at the driver's seat and was talking to him. At the same time, the lorry bearing registration No.AHH 3389 coming from Vijayawada at a

high speed came to its wrong side and dashed the deceased and ran over him. The driver of the said lorry did not sound horn. After hitting the deceased, the driver had taken the lorry into left margin and stopped the lorry and fled away. Then he (PW1) had telephoned to his owner and also the police. Police had come to the spot of the accident. He had lodged exhibit P1 report. The accused is the driver of the crime vehicle.' In his cross examination, the following points were elicited: 'By-pass road, Vuyyuru is situated even before the Thandavalakshmi Theatre. It is a cane crushing season. The vehicles are permitted to go through Vuyyuru main road. His lorry is coming from Maharashtra with sugarcane waste. His lorry was going on the road towards Vuyyuru centre. When it was suggested to him that while driving his lorry he had suddenly stopped his lorry on seeing the deceased and called him and that on that the deceased had suddenly crossed towards the vehicle and that in the meantime the crime lorry came and the accident had occurred, he had denied the said suggestion as 'not true'. He had denied the further suggestions that the deceased is not the cleaner on his lorry and that he is deposing falsehood and that the accused is no way responsible for the accident. **PW2** is the owner of the lorry which PW1 was said to have parked at the scene of accident just before the accident. He testified that the accident had occurred on 24.02.2001 at about 07:30 PM at Thandavalakshmi Theatre, Vuyyuru and that after his driver rang him up from Vijayawada, he was coming towards his lorry and that when he was at a distance of 10 or 15 yards, he had noticed that PW1 who was sitting in his seat in the lorry was talking to the deceased-cleaner who was standing on the ground by the side of the driver's seat and that in the meantime the lorry came from Machilipatnam side and dashed the cleaner and ran over him and that as a result he had died on the spot and that the lorry which dashed the deceased is the lorry bearing registration No.AHH 3389 and that the driver of that lorry stopped it after it had travelled some distance. He had also stated in his evidence that while he was coming towards the lorry PWs3 and 4 were also coming along with him at that time. PW2 had identified the accused as the driver of the crime lorry. In his cross examination, the following points were elicited. 'I came to Vuyyuru at about 07:00 PM. The lorry just came to Vuyyuru and was stopped there at about 07:20 PM. I came to Vuyyuru from my village on a motorcycle and stopped the motorcycle at the centre and was coming on foot. The driver informed that he stopped the lorry near Thandavalakshmi

Theatre. The accused had stopped the lorry at a distance of 100 meters after dashing a board and had then run away and that by then it was dark.' When it was suggested to him that he did not come to the spot and that he did not see the driver of the crime lorry and that he is deposing falsehood he had denied the said suggestions. He had stated that since the deceased had died on the spot, they did not try to shift the deceased to the hospital and that he did not go to the police station to prefer a complaint. **PW3** had testified that while he, another person and PW2 were coming towards the lorry, which was parked opposite to Thandavalakshmi Theatre, and when they were at a distance of about 100 or 125 meters, one lorry came at a high speed from Machilipatnam side and dashed the lorry cleaner/the deceased at a time when the deceased was tapping the tyres of the lorry. According to him, after the crime lorry dashed the deceased, it ran over the deceased and went to some distance and then it was stopped on the left side and that thereafter the driver ran away. PW3 had also identified the accused as the driver of the crime lorry. In his cross examination, he had stated that by the time they came to Thandavalakshmi Theatre, the lorry bearing registration No.3906 was there and that they were taking tea and that they saw the crime vehicle only after the accident and that the crime vehicle went to a distance of about 175 meters from the scene of offence and stopped after dashing a board and that the driver ran away after stopping the vehicle and that immediately after dashing they went to the scene of offence to see the dead body. When it was suggested to him that he did not witness the accident and that he is deposing falsehood he had denied the said suggestions. **PW4** had also testified to the effect that the accident had occurred on 24.02.2001 at about 07:00 PM at Vuyyuru Thandavalakshmi Theatre and that at that time he was at a distance of 50 or 60 feet from the accident spot and was talking to LW6-R.Ramachandra Rao and that in the meanwhile the lorry came from Vijayawada side and stopped at Thandavalakshmi Theatre and that at that time the cleaner was talking with the driver at the driver's seat and that in the meantime a lorry came from Machilipatnam side and dashed the said cleaner and went ahead and dashed a board and stopped at a distance of 100 feet and that afterwards the driver of the lorry got down from the lorry and had run away. This witness had also identified the accused as the driver of the crime lorry. In his cross examination, the following points were elicited. 'At the time of accident, the spot was busy with

traffic and public. He saw the accident after it was over and that at that time it was dark. He and others came to the spot just ten minutes prior to the accident. He is one of the leaders of TDP. He saw the driver of the crime vehicle while he was running away.' When it was suggested to him that he did not witness the accident, he denied the said suggestion. **PW5** who is doing business in milk testified that he knows the deceased who had died in the lorry accident. He had further deposed that on 24.02.2001 between 07:00 and 07:30 PM, the deceased was having conversation with the driver of another lorry which was stopped on the road and that the lorry coming from Bandar dashed the deceased and also an iron sign board and that the registration number of the said lorry is AHH 3389 and the deceased died on the spot. According to him, the lorry came in rash and negligent manner. He had identified the accused as the driver of the crime lorry. In his cross examination, he had stated that he came there at that time to supply milk and that he knows PWs1 and 2 who are residents of his village and that at the time the accident had taken place it was dark as it was a time in between sunset and darkness. He had also stated that the accident took place when he had reached near the place of accident and that he had seen the crime vehicle being driven by the accused at the time of accident and that he has no prior acquaintance with the accused. When it was suggested to him that PWs1 to 3 are his relatives and that he was not present at the time of accident and that he was deposing falsehood, he denied the said suggestions as 'not true'. **PW6** had testified that in his presence the police have observed the scene of offence. Exhibit P2 is the observation report which contains his signature. He had also acted as an inquest panch witness at the time of inquest that was held over the dead body of the deceased. In his evidence, exhibit P3-the inquest report is also exhibited. **PW7** is the motor vehicle inspector. On the requisition of the police he had inspected the crime vehicle and gave exhibit P4 report opining that the accident had not occurred due to any mechanical defect of the vehicle. **PW8** is the Doctor who had conducted the autopsy over the dead body of the deceased. He gave exhibit P5-post mortem report opining that the cause of death is multiple injuries to vital organs due to running over by a moving heavy vehicle. **PW9** is the Investigating Officer who had investigated into the crime and filed the charge sheet.

6. (d) I have thus carefully gone through the entire evidence on record. The evidence of other witnesses apart, the evidence of PW1 whose presence cannot be doubted is by itself sufficient to establish the manner of accident. He had categorically deposed about the manner of accident in which the lorry driven by the accused in a rash and negligent manner dashed the deceased and ran over him and went ahead and stopped at a distance on the left side of the road. Though an argument was sought to be advanced that the accused is not the driver of the crime lorry, this defence was not suggested to PW1. Moreover, the other witnesses particularly PW2 had also identified the accused as the driver of the crime lorry. The investigating officer had also testified that he reached the scene of offence at 09:00 PM and that the driver of the vehicle came to the station and surrendered and that the police station is at a distance of half a kilometre from the scene of accident. Therefore, there is sufficient material on record to come to a safe conclusion that the accused is the driver of the crime lorry at the relevant time. The theory of contributory negligence is also not suggested to any of the witnesses examined on the side of the prosecution. Contributory negligence is a matter of proof; and, contrary to the evidence on record, there cannot be any assumption that the accident was due to the contributory negligence of the deceased. The evidence on record shows that after the accident the accused did not stay at the spot and had run away after stopping his lorry at a distance and that later he had surrendered in the police station.

6. (e) On a conspectus of the entire evidence on record, this court finds that the evidence brought on record is sufficient to hold that the prosecution had successfully established the guilt of the accused for the offences with which he is charged. Points are accordingly answered in favour of the prosecution and against the accused.

7 . Coming to the measure of sentence, the learned counsel for the petitioner/accused alternately contended that the manner of accident itself is suggestive of the fact that the deceased was standing by the side of the driver's seat and was talking to the driver of the lorry, which was parked partly on the road at the time of accident, and that therefore, it is possible to conclude

that the deceased was standing on the road during night time without taking proper care and that therefore, the deceased is also negligent. He had further submitted that the accused is a poor lorry driver and that he is having wife and children and that he is the sole bread winner of the family and that if he is sentenced to a long term of imprisonment not only his future but also the future prospects of his family members would be ruined and that the accused is by now aged 58 years and that therefore, a lenient view may be taken.

8. Having regard to the mitigating and extenuating circumstances and the explanatory statement offered on behalf of the accused, this court is satisfied that the sentence can be modified and reduced from RI for one year to RI for one month while maintaining the sentences for the other offences as imposed by the trial Court.

9. In the result, the Criminal Revision Case is dismissed. However, the sentence of rigorous imprisonment for the offence under Section 304A is reduced from one year to one month while maintaining the sentences imposed by the trial Court for the other offences. The accused shall be entitled to the benefit of set-off. It is stated that the accused is at large being on bail; therefore, the accused is directed to surrender before the trial Court within two weeks from the date of the receipt of a copy of this order. On failure of the accused to do so, the trial Court shall take steps for his apprehension and send him to prison for serving the remaining period of sentence.

Miscellaneous petitions pending, if any, in this CrIRC shall also stand dismissed.

M.SEETHARAMA MURTI, J

19th January 2015

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