

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.1022 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/accused challenging the judgment dated 09.06.2008, passed by the Sessions Judge, Visakhapatnam, in Criminal Appeal No.9 of 2008, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Sections 304-A and 337 of the Indian Penal Code, 1860 (for short, 'IPC') vide the judgment dated 25.01.2008 in C.C.No.56 of 2004 by the Additional Judicial First Class Magistrate, Yellamanchili, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the State in C.C.No.56 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 26.01.2004 at 4.00 a.m. the accused driver drove the tanker lorry bearing No.AIL 5360 in a rash and negligent manner at high speed and when he reached near Kattupalem bridge, he lost control over the vehicle, due to which the lorry turned turtle on the extreme right side of the road and dashed one palmyrah tree. Then, the front portion of the tanker was badly damaged and one Nalli Nageswara Rao (hereinafter referred to as 'the first deceased') died on the spot and six others were injured. Immediately, all the persons were admitted in Government hospital, Yellamanchili for treatment and while undergoing treatment, one T.Srinu (hereinafter referred to as 'the second deceased') succumbed to injuries. On the strength of the statement of PW1, a case in Crime

No.4 of 2004 was registered by the police for the offence punishable under Sections 304-A and 337 IPC. During the course of investigation, the Investigating Officer recorded the statements of all the witnesses. After receiving the wound certificates, post-mortem reports and other reports and after completion of investigation, the Investigating Officer filed the Charge sheet into the Court.

4. The learned Additional Judicial First Class Magistrate, Yellamanchili took cognizance of the case and examined the accused under Section 251 Cr.P.C. for the offence punishable under Sections 304-A and 337 IPC against the accused. During trial, on behalf of the prosecution, PWs.1 to 11 were examined and Exs.P.1 to P.25 were got marked.

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 incriminatory material and reported no oral or documentary evidence on his behalf.

6. After considering the evidence of PW1 and PW4, the trial Court held that the prosecution was able to prove that the accused was the driver of the tanker lorry and he drove the vehicle in a rash and negligent manner, due to which the accident occurred, thereby both the deceased were died and PW1 and others sustained injuries. Therefore, the trial Court convicted the accused for the offence punishable under Sections 304-A and 337 IPC and sentenced him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1000/- for the offence punishable under Section 304-A IPC and also sentenced him to undergo Simple Imprisonment for three months for the offence punishable under Section 337 IPC.

7. Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred Criminal Appeal No.9 of 2008 before the Sessions Judge, Visakhapatnam, where the appellate Court after

hearing the arguments and considering the evidence on record, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

8. Being aggrieved by the judgment of the appellate Court passed in Criminal Appeal No.9 of 2008, the accused preferred the present revision case.

9. The learned counsel appearing for the revision petitioner/accused argued that the accused was innocent and he was not driving the vehicle in a rash and negligent manner at the time of accident, but due to mechanical defects and the vehicle is old one, the accident was occurred; that the eyewitness also stated that the accused applied brakes when he came across the road divider, as a result of which the vehicle dragged to the right side of the road and hit a palmyrah tree resulted in the death of one person; that the Motor Vehicle Inspector in his evidence categorically stated that the vehicle is a old one and there is a possibility of breaking of central bolt of the main spring while applying sudden brakes, and finally prayed the Court to take a lenient view in view of old vehicle.

10. On the other hand, the learned Public Prosecutor appearing for the State argued that the evidence of PWs 1 and 4 shows that the accused was the driver of the tanker on the date of accident and he drove the vehicle in a rash and negligent manner due to which two persons were died and several persons were injured; that the Motor Vehicle Inspector clearly stated that the accident was not occurred due to any mechanical defects; that both the Courts below concurrently gave a finding that the accused committed the offence punishable under Sections 304-A and 337 IPC, and finally prayed the Court to dismiss the revision case.

11. Now, the point for determination is --

Whether the revision petitioner/accused is entitled to set aside

the concurrent judgments passed by the trial Court and the appellate Court for the offence punishable under Sections 304-A and 337 IPC?

12. **Point:**

A perusal of the evidence shows that PW1, who is the *de facto* complainant and injured, deposed that after the lorry reached Bakkapalli the driver told them that a screw was got loose and he attended the repair work. PW1 further deposed that after the lorry reached near speed breaker at sugar cane weighing machine in between Yellamanchili and Gajuwaka, the driver dashed the lorry against a road side palmyrah tree, resulting which he received injuries, the first deceased died on the spot and the second deceased died in the hospital while undergoing treatment.

13. PWs 2 and 3 are not the direct eyewitness to the accident and they have not stated that the accused drove the crime vehicle in a rash and negligent manner.

14. PW4 in his evidence stated that after the lorry crossed Yellamanchili and going towards Atchutapuram, the accused applied sudden brake at the speed breakers, due to which the lorry went towards right side of the road and turned turtle. PW4 further deposed that about 11 persons were sitting in the cabin of the lorry at the time of accident and one person who was sitting by the side of the driver died on the spot and another person who shifted to KGH, Visakhapatnam succumbed to injuries.

15. The evidence of other prosecution witnesses is not much relevant to prove the rash and negligent driving of the accused.

16. The Motor Vehicle Inspector examined as PW9. According to him, there are no mechanical defects to the crime vehicle and filed Ex.P.12 - Motor Vehicle Inspector's report.

17. Admittedly, it is within the knowledge of the accused that the

vehicle is an old one and he himself got repaired the vehicle earlier to the accident. The accused should have been taken much care while driving the old vehicle. Further, the Investigating Officer, who received the wound certificates Exs.P.21 to P.25, stated about the injuries received by the injured persons. Admittedly, some of the injured persons are not examined in this case. Further, PW10 the doctor also stated that both the deceased were died due to fatal injuries received by them in the accident. The evidence of PW10 corroborates with the evidence of PW1. Therefore, both the Courts below rightly gave a finding that the accused drove the crime vehicle in a rash and negligent manner on the date of accident, due to which the crime vehicle turned turtle.

18. The learned counsel for the accused contended that the accused is having a family consisting of small children and old parents and he is the only breadwinner to maintain his family, and prayed the Court to take a lenient view. Considering the evidence on record, the order of conviction passed by both the Courts below is hereby confirmed. Insofar as sentence of imprisonment is concerned, in view of the facts and circumstances and considering the request of the leaned counsel for the petitioner to take a lenient view, I am of the view that if the sentence of imprisonment is reduced to some extent it would meet the ends of justice.

19. Accordingly, the conviction recorded against the revision petitioner/accused by the Additional Judicial First Class Magistrate, Yellamanchilli, in C.C.No.56 of 2004 for the offence punishable under Sections 304-A and 337 IPC as confirmed by the Sessions Judge, Visakhapatnam in Criminal Appeal No.9 of 2008, is hereby confirmed. But, the sentence of Rigorous Imprisonment of one year for the offence punishable under Section 304-A IPC is hereby modified and reduced to three (3) months and the sentence of Simple Imprisonment of three months for the offence punishable under

Section 337 IPC is hereby modified and reduced to one (1) month. The sentence of fine imposed for the offence punishable under Section 304-A IPC, is not interfered with. Both the sentences shall run concurrently. The period of imprisonment already suffered by the revision petitioner/ accused is directed to be given set off.

20. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous petitions pending if any, in this Criminal Revision Case, shall stand closed.

ANIS, J

Date: 19.03.2015

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