

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Criminal Revision Case No.1718 of 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure ('the CrPC', for brevity) by the petitioner/sole accused is directed against the judgment dated 06.12.2007 of the learned Sessions Judge, Mahila Court at Vijayawada passed in Criminal Appeal No.57 of 2006.

2. By judgment dated 13.03.2006 in C.C.No.1081 of 2004 passed by the learned III Additional Chief Metropolitan Magistrate, Vijayawada, the accused was found guilty of the offence punishable under Section 304-A of the IPC and was sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs.5,000/- and suffer simple imprisonment for three months in default of payment of fine. The accused was also convicted of the offence punishable under Section 134(b) read with 187 of the Motor Vehicles Act and was sentenced to pay a fine of Rs.100/- and suffer simple imprisonment for one week in default of payment of the said fine amount. The appeal preferred by the petitioner/accused was partly allowed and while confirming the convictions against the accused for the said two offences, the sentence of rigorous imprisonment for one year imposed for the offence punishable under Section 304-A of the IPC was reduced to six months, while maintaining the fine amounts imposed by the trial Court for both the offences.

3. The case of the prosecution including the gravamen of the charge, in brief, is this: "On 09.08.2004 morning hours, PW1-P.Ramesh and his father- Padavala Ramachandra Rao (the deceased) left their house and went to Lakshmi Biscuits Company of the deceased situate opposite to Jagapathi Hotel at Gandhi Nagar, Vijayawada. At about 10.30 hours, the deceased proceeded on a Hero Honda Motor Cycle bearing No. AP 16 AH 192 to go to his house. While the deceased was going on the motor cycle, the accused drove his auto bearing registration No.AP16X 1318 in a rash and negligent

manner and dashed the motor cycle of the deceased, while overtaking the said motor cycle. The accused did not sound horn; and while overtaking, the motor cycle was dragged to a distance by its handle tangled with the iron rod situate near the meter, on the left side of the auto. As a result, the deceased fell down on his back and sustained bleeding injuries on the back side of his head. The accused had shifted the injured to the Government Hospital. At about 12.05 hours the deceased succumbed to the injuries sustained in the accident. LW2-Chintala Hanumanthu informed PW1 about the accident. PW1 had then rushed to the Government Hospital, Vijayawada. On intimation, PW8, the Assistant Sub Inspector of Police, S.N.Puram (Law & Order) Police Station, went to the hospital and recorded the statement of PW1 and had registered the subject crime and issued the FIR. PW9 took up further investigation and had laid the charge sheet after due investigation.”

4. I have heard the submissions of the learned counsel for the petitioner/Accused and the learned Additional Public Prosecutor. I have perused the material record.

5. (a) At the time of hearing, the learned counsel for A1 and A2, while reiterating the grounds of revision, had further contended as follows: “The learned Judges of the courts below had failed to see that the prosecution had failed to prove the charges respectively leveled against A1 and A2 and that the evidence adduced is not sufficient to hold that the ingredients constituting the said offences were proved to record convictions against A1 and A2 for the offences with which they are respectively charged. The Courts below had erred in placing reliance on the highly interested and discrepant testimonies of PWs 1 and 2 and thereby, erred in holding that the medical evidence corroborated the version of PW1. The courts below had failed to take note of the fact that PW3 who is examined as an independent witness to the occurrence, did not support the case of the prosecution. The courts below had also failed to see that PWs 5 and 9 who are independent witnesses also did not support the case of the prosecution and that the prosecution case is based only on the interested testimonies of PWs 1 and 2 and that no independent witness had supported the case of the prosecution. According

to the version of the prosecution, the parents of A1 were living in the gas go-down as watch-keepers; and the said watch keepers were neither listed nor examined as witnesses. The courts below ought to have seen that PW1 has given different versions in his cross-examination. He had initially deposed that A2 caught hold of his hands from the back side and then A1 had beaten him with an iron rod on his head; but, again, he had deposed that some unknown persons beat him on his head and caused fracture to his hand; at that stage, the Public Prosecutor sought permission to cross examine PW1; thus, PW1 gave self-contradictory evidence. The trial court ought to have seen that PW8, the scribe of exhibit P7, seizure report, where under, the alleged weapon of offence was allegedly seized, had categorically deposed that identification slip was affixed to the iron rod, the MO1, but, no such slip is found attached to MO1. Therefore, the courts below ought to have held that the recovery of weapon of offence was not proved. The courts below ought to have seen that no confession was recorded from the 2nd petitioner/A2 and nothing was seized from him. There is absolutely no material on record to record a conviction against the accused for the offences with which they are charged.”

5. (b) The learned counsel for the petitioner/accused had contended that the ingredients of the offence with which the accused was charged are not proved by adducing necessary and relevant evidence and that the courts below came to a wrong conclusion that the prosecution proved that the death of the deceased was caused on account of the injuries sustained by him in the accident though there is nothing in the prosecution evidence in that regard and that the courts below had also erroneously held that the accident was due to rashness and negligence of the driver of the auto in driving the auto though there is nothing in the prosecution evidence to show culpable negligence and rashness on the part of the accused and that there is no evidence on record to show that the accused drove the auto at a high speed and that the prosecution had failed to discharge the legal burden which is upon it in proving its case and that the courts below ought to have seen that no local witness was examined and that the sole testimony of PW2, who is a

friend of the deceased and a practicing advocate ought not to have been accepted by the courts below for recording a conviction against the accused.

5 (c) On the other hand the learned public prosecutor had submitted that the evidence brought on record sufficiently established the guilt of the accused and the Courts below have properly appreciated the facts and the evidence and have recorded concurrent finds of facts and that the well reasoned findings in the well considered judgments of the courts below do not call for any interference and that the revision is devoid of merit and is liable to be dismissed.

6. Now, the points for determination are:

Whether the prosecution had established the guilt of the accused for the offences punishable under Sections 304-A of the IPC and Section 134(b) read with 187 of the Motor Vehicles Act as required under law and beyond all reasonable doubt? And, if so, whether the convictions recorded and the sentences imposed are sustainable under facts and in law? Whether the accused has made out valid and sufficient grounds for his acquittal?

7. **POINTS:**

7. (a) Now, the evidence that was brought on record by the prosecution, during the course of trial, to bring home the guilt of the accused is to be examined.

7. (b) PW1 is the Son of the deceased. He went to the hospital on receipt of information that his father was involved in the accident. PW2, who is the said to be an eye-witness is an Advocate. He had categorically deposed about the manner of the accident. His evidence is to the following effect: 'He is resident of Ramalingeswara Peta. On 09.08.2004, between 10.30 and 10.40 AM, he reached Rythubazar while going to the court on his motorbike. At that time, the deceased was coming on a two wheeler from the

opposite direction; and that by that time, one auto was coming behind the vehicle of the deceased at a high speed and in a rash and negligent manner. The auto dashed against the backside of the motorbike of the deceased; and as a result, the deceased fell on his back and sustained injuries including a bleeding injury on his head. Then, the auto was stopped. Then, PW2 had stopped his vehicle and shifted the injured in the same auto bearing registration No.AP16X 1318 to the Government Hospital. The accused was the driver of the auto. He had informed PW1 about the accident and then went away to Court. After completing his work, he had visited the Government Hospital and came to know that the deceased had died. On the next day morning, the police held inquest over the dead body and examined him.' When it was suggested to him in the cross-examination that the deceased was his colleague and he is deposing falsehood and that the accused did not drive the auto at a high speed and in a rash and negligent manner, he had denied the said suggestions as 'not true'. He had denied the further suggestion that he was not present at the scene at the time of the accident as 'not true'. PW-3, who is a relative of the deceased, is also not an eyewitness to the accident. On receipt of the telephonic message he had proceeded to the Government Hospital and found that the deceased had died. PW4 is the inquest panch witness. He had deposed about the inquest held over the dead body of the deceased in his presence. According to his evidence, he was also a panch witness said to be present at the time of observation of the scene of offence. In his evidence, the exhibit P2, the scene of offence observation report and the exhibit P3, inquest report, were marked. PW5 is the Motor Vehicle Inspector. According to him, he had inspected the crime vehicles on a requisition received by him and had conducted road tests and had found that both the vehicles were in good condition. He had opined that the accident did not occur due to any mechanical defects of either of the vehicles. Exhibit P4, the certificate issued by him, was exhibited in his evidence. PW6 is the Medical Officer, who had conducted post mortem examination on the dead body of the deceased. The doctor had opined that the cause of death is head injury. In her evidence,

exhibit P5, the Post Mortem Certificate of the deceased was exhibited. PW7 is the photographer who had taken photographs of the scene of offence. Exhibits P6 to P8 are the photographs. PW8 is the Police Officer, who had proceeded to the Government Hospital after receiving a wireless message. He had deposed that he had recorded the statement of PW1, who is the son of the deceased and registered the crime. PW9 is the investigating officer who had conducted further investigation and laid the charge sheet. The above evidence on record sufficiently establishes that the deceased died on account of the injuries sustained by him in the subject accident and that the accident had occurred due to the rash and negligent act of the accused, who was driving his auto.

7. (c) No doubt, PW1, the son of the deceased, had admitted in his evidence that PW2 is the friend of the deceased. For that reason, the evidence of PW2 cannot be discarded. At best, his evidence requires a closer scrutiny. The involvement of the auto driven by the accused in the accident is not in dispute. After the auto had dashed the motor cycle of the deceased and the deceased had sustained injuries in the accident, the deceased was admittedly shifted in the same auto to the Government Hospital, Vijayawada. Coming to the rashness and negligence, PW2 had categorically deposed that the accused drove the crime vehicle at a high speed and in a rash and negligent manner and also did not sound horn while overtaking the motorbike and that the accused dashed his auto behind the motorbike of the deceased and that the deceased fell on his back and had sustained a head injury. The evidence of PW2 further shows that he stopped his motor cycle and shifted the injured (since died) to the Government Hospital in the same auto. The courts below had recorded concurrent findings by placing reliance on the evidence of PW2. In the facts and circumstances of the case, the presence of PW2 at the time of the accident cannot be doubted. Therefore, this Court finds no acceptable merit in any one of the contentions of the learned counsel for the petitioner/accused. Viewed thus, this court finds that the prosecution successfully proved the guilt of the accused for the two offences with which he was charged.

7 (d) Coming to the quantum of sentence, the learned counsel for the petitioner/accused would alternately urge that the accused was about 40 years of age and he is having wife and children who are dependent upon him and that therefore, a lenient view may be taken. He placed reliance on the fact that the accused did not flee away from the scene after the accident and that the accused had shifted the injured (deceased) to the hospital in his auto and had submitted that the above conduct of the accused may be taken into consideration and the sentence may be reduced to one already undergone. Having regard to the facts and taking into consideration the extenuating and mitigating circumstances and the explanatory statement offered on behalf of the accused, this court is of the well-considered view that the sentence can be modified and reduced to one month while confirming the fine amount imposed for both the offences by the court below.

8. Accordingly, the Criminal Revision Case is dismissed. However, the substantive sentence of imprisonment of six months imposed on the petitioner is modified and reduced to one month while maintaining the fine amounts imposed by the Courts below. The accused is entitled to the benefit of set off. It is submitted 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 revision shall stand closed.

M. SEETHARAMA MURTI, J

19th January 2015
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