

HON'BLE SMT JUSTICE ANIS

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CRIMINAL REVISION CASE No.1319 of 2007

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ORDER:

This Criminal Revision Case is directed against the judgment of the learned V Additional Sessions Judge (Fast Track Court), Khammam at Kothagudem, in CrI.A.No.120 of 2003 dated 11.09.2007, confirming the conviction and sentence to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- in default simple imprisonment for three months for the offence under Section 304-A IPC; to undergo rigorous imprisonment for two months and to pay a fine of Rs.500/- in default simple imprisonment for fifteen days for the offence under Section 337 IPC; to pay a fine of Rs.500/- each for the offence under Section 134(a)(b) read with 187 of the Motor Vehicles Act, in default simple imprisonment for fifteen days, imposed against the revision petitioner-accused by the learned Additional Judicial Magistrate of First Class, Kothagudem in C.C.No.734 of 1999 dated 15.09.2003.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Trial Court.

The facts, in brief, are that, on 08.09.1999, one Kamalamma, along with Aruna, was proceeding in an auto bearing No.AP 13 U 5751 from railway station to 7th Incline and, when it reached near Dhanbad, a tipper bearing No.AP 20 U 1044 driven at high speed in a rash and negligent manner, came in an opposite direction, dashed the auto resulting the auto turning upside down driven by one Sri Boda Ramchander, as a consequence, the said Kamalamma and Aruna received injuries; and they were shifted to Singareni Collieries Hospital, Kothagudem but the said Kamalamma succumbed to injuries while undergoing treatment. The concerned police also registered a case in Crime No.78 of 1999 against the driver of the tipper on the basis of the complaint of PW.1, the driver of the auto. During the course of investigation, the investigating officer recorded the statements of witnesses. After completing investigation, the investigating officer filed charge sheet into the court against the accused.

The learned Magistrate took cognizance of the case against the accused and, on appearance of accused, the learned Magistrate framed charges against the accused for the offences punishable under Sections 304-A, 338 and 337 IPC, for which, accused pleaded not guilty. During the course of trial, the prosecution examined PWs.1 to 10 and got marked Exs.P.1 to P.8.

After closure of the prosecution evidence, the accused was examined under Section 342 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no defence evidence on his behalf.

The Trial Court, after hearing on either side and after considering the oral and documentary evidence, found the accused guilty of the offences punishable under Sections 304-A, 337 read with Section 134(a)(b) read with 187 of the MV Act and convicted and sentenced him as stated supra.

Aggrieved by the conviction and sentence passed by the Trial Court, the accused preferred Criminal Appeal No.120 of 2003 on the file of V Additional Sessions Judge (FTC), Khammam at Kothagudem, where the Appellate Court, after reappraisal of the evidence and material on record, dismissed the appeal confirming the conviction and sentence passed by the trial Court.

Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.120 of 2003, the petitioner - accused preferred the present revision case.

Learned counsel for the revision petitioner argued that the prosecution witnesses had not identified the accused to be the driver of the tipper; even the tipper does not have any scratches which throws any amount of doubt on the prosecution case; the crime vehicle was not seized; and, since the petitioner is the sole bread-winner of the family, a lenient view may be taken to reduce the sentence of imprisonment to that of already undergone.

On the other hand, learned Public Prosecutor appearing for the State argued that, as per the evidence of PWs.1 and 2, the accused drove the tipper in a rash and negligent manner and dashed the auto of PW.1, resultantly, the deceased succumbed to injuries while undergoing treatment and PW.1 received simple injuries; that the evidence of the Motor Vehicle Inspector that the

accident did not occur due to mechanical defects as per Ex.A.7, and occurred only due to the hit of the tipper to the auto; and that the Trial Court as well as the Appellate Court rightly convicted the accused and the same does not warrant interference.

Now the point that arises for consideration is whether the petitioner is entitled to set aside the judgment of the Appellate Court dated 11.09.2007, passed in CrI.A.No.120 of 2003, as well as the judgment of the trial Court dated 15.09.2003 in C.C.No.734 of 1999.

Point:

A perusal of evidence of PW.1, the auto driver, would go to show that the tipper, coming in opposite direction in high speed, dashed the auto. PW.2, an independent witness, supported the version of PW.1 and stated that the accused was driver of the crime vehicle. PW.3, the doctor, who examined Smt G.Aruna, injured, deposed that she sustained injuries while travelling in an auto. PW.6, in his evidence, deposed that he examined PW.1 and found simple injuries, and Ex.P.5 is the certificate issued by him. PW.7, the doctor, conducted post-mortem examination over the dead body of the deceased and issued Ex.P.6, post-mortem report, wherein he opined that the cause of death was due to shock and hemorrhage. Based on the evidence let in by both sides, the Trial Court convicted and sentenced the petitioner as stated supra.

The contention of the petitioner that the accused was not identified to be the driver of the crime vehicle cannot be accepted in view of the evidence of PW.1. The other contention that the tipper did not have any scratches also cannot be stated to be false since the tipper is a heavy vehicle and, naturally, it would not have any impact when hit the auto. The prosecution proved the guilt of the accused for the offences under Sections 304-A, 337 IPC and 134(a)(b) read with 187 of the Motor Vehicles Act.

The contention of the petitioner that, since the petitioner is the sole bread-winner of the family, the period of sentence of imprisonment imposed on the appellant-accused by the trial Court may be reduced to that of period already undergone.

In the circumstances and in the interest of justice, the conviction passed

by the Trial Court against the petitioner – accused is confirmed while reducing the sentence of rigorous imprisonment from one year to six months for the offence under Section 304-A IPC; and the sentence imposed, under Sections 337 IPC and 134(a)(b) read with 187 of the Motor Vehicles Act, shall remain unaltered.

With the above modification, the Criminal Revision Case is disposed of. Miscellaneous petitions pending, if any, shall stand dismissed.

ANIS, J

Date:27.03.2015

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