

## **THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

### **CRIMINAL REVISION CASE No.1792 of 2007**

#### **ORDER:**

This Criminal Revision Case is directed against the judgment in CrI.A.No.109/2007, dated 19.12.2007 on the file of the Principal Sessions Judge, West Godavari District at Eluru, by and under which, the conviction and sentence as imposed by the trial Court was confirmed.

2. Heard the learned counsel appearing for the revision petitioner and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution in brief is that on 17.04.2000 PWs 1 to 4, 6, 7, 11 and 3 others were traveling in Mini-Van bearing registration No.ABG-6335 and were proceeding to their native village Gonagudem of East Godavari District from Kothapattiseema and at about 3 a.m. when their van reached and proceeding on road-cum-rail bridge, the crime lorry, being driven by the accused, bearing registration No.AHH-3174, came in a rash and negligent manner at high speed, hit the mini-van and further hit parapet wall of the bridge, fell down and plunged into Godavari river, as a result of which, the mini van and crime vehicle were completely damaged, PWs 1 to 4, 6, 7, 11 and some other persons who were traveling in the mini van sustained multiple injuries, and three persons by name Bathina Peda Narasimha Murthy, Kathani Appa Rao and Kuche Rama Krishna, who were traveling in the mini van died, and one Regadi Kumari, who was traveling in the crime lorry also died. Basing on the report of PW 1-*de facto* complainant, a case in Cr.No.82/2000 was registered and during investigation, the Investigating Officers inspected the scene of offence, got photographed, recorded the statements of witnesses, conducted inquest over the dead bodies and sent them for autopsy, and after completion of investigation filed charge sheet against the accused in C.C.No.664/2000 on the file of the II Additional Judicial Magistrate of First Class, Kovvur for the offences under sections 304-A, 338 and 337 IPC .

4. The trial Court had taken the case on file for the offence alleged against the

petitioner/accused, and on appearance of the accused, he was examined under Sec.251 Cr.P.C, and the accused pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the petitioner/accused, the prosecution examined PWs 1 to 20 and got marked Exs.P1 to P31 on its behalf. After closure of the prosecution evidence, the petitioner/accused was examined under Section 313 Cr.P.C putting all incriminating material available against him, but the petitioner/accused denied the material evidence. No defence is produced.

6. On appreciation of oral and documentary evidence, the trial Court found the petitioner/accused guilty of the offences under sections 304-A, 338 and 337 IPC, convicted and sentenced him to undergo;

i. rigorous imprisonment for two years for the offence under section 304-A IPC;

ii. rigorous imprisonment for one year for the offence under section 338 IPC; and

iii. rigorous imprisonment for four months for the offence under section 337 IPC.

iv. It is ordered that all the sentences shall run concurrently;

7. The petitioner/accused challenged the conviction and sentence passed by the trial Court in CrI.A.109/2007. The criminal appeal was dismissed confirming the judgment of the trial Court. Aggrieved by the same, the petitioner/accused filed the present criminal revision case.

8 .Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/accused is legal and sustainable.

Point:

9 .The contention of the learned counsel appearing for the revision petitioner/accused is that there is no evidence whatsoever to connect the accused

with the unfortunate incident and in the absence of any evidence, the revision petitioner/accused cannot be held to have committed the offence alleged. The learned counsel further submits that merely on the basis of the evidence of PW 3, 4 and 16 and Ex.P21, both the Courts below came to the conclusion that the petitioner/accused is the driver of the crime vehicle and is responsible for the accident and erroneously convicted the petitioner/accused.

10. On the other hand, the learned Additional Public Prosecutor submits that the prosecution has placed voluminous oral and documentary evidence on record, which clearly establishes that the revision petitioner/accused was the driver of the crime vehicle at the time of accident and he drove the vehicle in rash and negligent manner and caused death of 4 persons and injuries to more than 7 persons, therefore, both the Courts below have concurrently found the revision petitioner/accused guilty of the offences alleged, convicted and sentenced him, as stated supra. The learned Additional Public Prosecutor submits that the judgments of the Courts below are based on proper appreciation of material on record, which does not warrant any interference.

11. PW 8, the Station House Officer of Rajahmundry, on receiving intimation from the Government Hospital, went and recorded the statement of PW 1, and on point of jurisdiction, forwarded the same to Kovvur Town P.S. In turn, PW 19 the S.I. of Police, Kovvuru P.S. basing on Ex.P1 statement of PW 1, registered a case in Cr.No.82/2000 for the offence under Section 304-A, 338 and 337 IPC. PW 20, the Inspector of Police conducted investigation in this matter. According to him, on 17.04.2000 at about 3 a.m. the accident took place over the road-cum-rail bridge near Kovvur and in that accident, 4 persons died and more than 7 persons sustained multiple injuries and the driver of the crime vehicle lorry bearing No.AHH-3174 is responsible for the accident.

12. PW 15 is the M.V. Inspector who inspected the crime vehicle on 29.04.2000 and opined that the accident was not occurred due to any mechanical defect. PW 20, the Inspector of Police inspected the scene of offence, got inquest conducted by PW 19 over the dead bodies, got scene of offence photographed and arrested the accused on his surrender. PWs 13, 14 and one Dr.K.Syamala conducted autopsy over the dead bodies of 3 persons and PW 17 conducted autopsy over the dead body of deceased Regadi Kumari. PW 16 treated the injured and issued wound certificates.

13. The injured persons viz., PWs 1 to 4, 6, 7 and 11 categorically deposed that on the date of accident, themselves along with others were going to their native village and when they reached the place of offence, the lorry came in high speed and dashed their mini van and in the said accident, 3 persons traveling in mini van and one person traveling in the lorry died and themselves and others sustained multiple injuries. PWs 3 and 4 stated that the accused is the driver of the crime lorry at the time of accident and they deposed that in the said accident, the accused also sustained injuries. The other injured persons stated that they did not see the driver of the lorry at the time of accident.

14. From the above evidence of the injured witnesses and eyewitnesses, it is conclusively established that it is the accused who was driving the crime lorry, who drove the crime lorry in rash and negligent manner and lost control over the vehicle, due to which four persons died and others sustained injuries.

15. The contention of the petitioner/accused is that his identity is not properly established. There is no chance for the injured persons to identify and saw the accused driver at the time of accident as it happened at 3 a.m.

16. The evidence of PWs 1 to 20 clearly established that the accused is responsible for the unfortunate accident and he drove the vehicle in rash and negligent manner at high speed at the time of accident. There are no discrepancies and inconsistencies in their evidence to doubt their veracity.

17. The prosecution has produced the photographs and negatives of the scene of offence. A perusal thereof clearly show that at the time of accident the accused driver drove the crime lorry in rash and negligent manner at high speed and lost control over it, due which, it hit the mini van and then bridge wall and turned turtle into Godavari river. Had the driver of the crime lorry was bit cautious and careful and if he was not going in high speed, which he could not control, that would not have been the nature of damage caused to his vehicle and mini van. The report of the Motor Vehicle Inspector shows that there was nothing wrong mechanically with the crime vehicle. In a case of this nature, the rashness or negligence on the part of driver of a mechanically propelled vehicle can be gauged from noticing the scene of offence.

18. Both the Courts below have carefully perused the evidence on record and after

proper appreciation thereof held that the petitioner/accused is guilty of having driven the vehicle in a rash and negligent manner, which resulted in the accident. Upon perusing the voluminous oral and documentary evidence on record, I feel no reason to take any view other than the view that has been taken by both the Courts below. The Judgments of both the Courts below do not suffer from any irregularity or illegality warranting any interference.

19. With regard to quantum of sentence, on behalf of the petitioner/accused it is submitted that a lenient view in the matter may be taken, since the accused is having dependent family and he is the sole bread winner to his entire family. It is also submitted that in the accident he too sustained grievous injuries and was not even able to do any work ever since there from.

20. As stated above, the Courts below have sentenced the petitioner/accused to undergo rigorous imprisonment for two years for the offence under Section 304-A I.P.C., one year for Section 338 I.P.C., and four months for Section 337 I.P.C. The sentences were directed to run concurrently.

21. Taking into consideration the submissions made by the learned Counsel appearing for the petitioner/accused and the totality of the facts and circumstances of the case, I feel that ends of justice will be met if the sentence of one year rigorous imprisonment is imposed for the offence punishable under Section 304-A I.P.C. Rest of the sentences shall be sustained. Subject to this modification, the revision is liable to be dismissed.

22. In the result, the Criminal Revision Case is dismissed, confirming the conviction recorded by the Courts below against the petitioner/accused, however, the sentence of imprisonment recorded by both the Courts below for the offence under Section 304-A IPC is reduced from two years rigorous imprisonment to one year rigorous imprisonment. Rest of the sentences and the direction to run the sentences concurrently shall stand sustained. The trial Court shall take steps, in accordance with law, for apprehending the revision petitioner/accused for serving the sentence.

Pending miscellaneous applications, if any, shall stand closed in consequence.

---

**M.S.K.JAISWAL,J**

Date:12.11.2015

Dsr