

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.1720 OF 2007

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ORDER:

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This Criminal Revision Case under Sections 397 and 401(a) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 05.12.2007, passed by the Sessions Judge, Mahila Court, Vijayawada, in Criminal Appeal No.52 of 2006, whereunder and whereby the conviction passed against the revision petitioner herein for the offence punishable under Section 304-A of the Indian Penal Code (for short, 'I.P.C') vide judgment dated 06.03.2006 in C.C.No.660 of 2005 by the learned III Metropolitan Magistrate (Municipal Mobile Court), Vijayawada, was confirmed and the sentence of imprisonment was modified by reducing from two years to six months.

2. The revision petitioner herein is the accused, whereas the respondent is the complainant in C.C.No.660 of 2005 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 case of the prosecution, in brief, is this: 'On 05.12.2003 at about 10.00 A.M. when the accused was driving an ambassador car bearing registration No.ATR 1104 going towards Kankipadu side, in his attempt to overtake a lorry going ahead, he dashed the motorcycle driven by one Kandena Tirumala Rao, which resulted in sustaining fatal injuries. Subsequently Tirumala Rao died while undergoing treatment in hospital. Basing on the complaint, a case in Crime No.354/2003 is registered for the offence punishable under Section 304-A of the I.P.C and Section 134(a) & (b) read with Section 187 of the Motor Vehicles Act. The Investigating Officer, after recording the statements of the witnesses and after receiving the relevant reports viz., Post Mortem Report and other reports from the Doctor and after completing the investigation, filed charge sheet into the Court.

4. The learned III Metropolitan Magistrate (Municipal Mobile Court) Vijayawada,

took cognizance of the case and examined the accused under Section 251 Cr.P.C for the offence punishable under Section 304-A I.P.C and Section 134(a) & (b) read with Section 187 of the Motor Vehicles Act. During trial, on behalf of the prosecution, PWs.1 to 9 were examined and Exs.P1 to P10 got marked.

5. After considering the evidence of P.Ws 1 to 9 and Exs.P1 to P10, the trial Court held that the accused committed the offence under Section 304-A of I.P.C. and convicted him and sentenced him to undergo Rigorous Imprisonment for a period of two years, and directed the accused to deposit the compensation of Rs.25,000/-, and in default of payment of the said compensation amount the accused has to undergo sentence of imprisonment for a period of three months.

6. Aggrieved by the judgment of the trial Court in C.C.No.660/2005, the accused preferred an appeal in Criminal Appeal No.52 of 2006 before the Sessions Judge, Mahila Court, Vijayawada. On 05.12.2007, after considering the evidence the appellate Court partly allowed the appeal, modifying the sentence of imprisonment by reducing from two years to six months by taking a lenient view.

7. Being aggrieved by the judgment of the appellate Court in Crl.A. No.52 of 2006 confirming the judgment of the trial Court in C.C. No.660/2005 and modifying the sentence by reducing from two years to six months, the petitioner/accused filed the present revision case.

8. The learned counsel appearing for the revision petitioner/accused argued that the trial Court erroneously believed the evidence of prosecution witnesses and convicted the accused and further argued that the evidence of prosecution witness is inconsistent regarding the manner of accident and therefore, prayed the Court to take a lenient view stating that the petitioner is aged about 34 years and is a married person and having children and he is the sole bread earner of the family.

9. On the other hand, the learned Public Prosecutor argued that due to the rash and negligent driving of the petitioner, one person died and others received injuries and therefore, after considering the evidence the trial Court as well as the appellate Court convicted the accused for the offence punishable under Section 304-A I.P.C. and the concurrent findings of the Courts below needs no interference and prayed the Court to dismiss the revision case.

10. Now, the point for determination is --

Whether the revision petitioner is entitled to set aside the judgment of the appellate Court in CrI.A.No.52/2006, partly allowing the judgment passed by the trial Court in C.C.No.660/2005 for the offence punishable under Section 304-A I.P.C, as prayed for or not?

11. **P O I N T:** A perusal of the record shows that P.Ws 1 and 2 are the eye witnesses to the accident and P.W.3 is the wife of the deceased. Both the witnesses in their evidence has categorically stated that on the date of accident they have witnessed the accident and according to them, the petitioner, who drove the ambassador car bearing registration No.ATR 1104 in rash and negligent manner, dashed the motorcycle, due to which the deceased sustained injuries in the said accident and while undergoing treatment he died in hospital. In the cross-examination of P.Ws 1 and 2, nothing has been elicited regarding the manner of accident and also the identity of the petitioner. A perusal of the evidence of P.W.s 1 and 2 clearly established the identity of the accused, categorically stated that the petitioner/accused is the person, who drove the vehicle in rash and negligent manner on the date of accident. Further, the evidence of other prosecution witnesses is formal in nature. Therefore, the petitioner/accused has not established any grounds to interfere with the concurrent findings of the Courts below. The learned counsel for the petitioner prayed this Court to take a lenient view in view of the age of the petitioner/accused and other circumstances as stated supra.

12. Thus, taking into consideration the facts and circumstances of the case, the judgment of the appellate Court in CrI.A.No.52/2006, confirming the judgment of the trial Court in C.C. No.660/2005, is confirmed and the revision case is dismissed. However, in the facts and circumstances of the case, the sentence of imprisonment of six months is reduced to four months and the sentence of compensation amount is unaltered.

13. The conviction recorded against the revision petitioner/accused by the III Metropolitan Magistrate (Municipal Mobile Court), Vijayawada in C.C.No.660 of 2005 for the offence punishable under Section 304-A I.P.C, as confirmed by the Sessions Judge, Mahila Court, Vijayawada, in CrI.A.No.52 of 2006 is hereby

confirmed. But, the sentence of imprisonment of six months imposed by the appellate Court for the offence punishable under Section 304-A I.P.C is hereby modified and reduced to four months. The sentence of compensation is not interfered with.

14. Accordingly, the Criminal Revision Case is disposed of.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 06.04.2015

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