

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.422 OF 2008

ORDER:

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 herein challenging the judgment dated 05.03.2008, passed by the Sessions Judge, Warangal, in Criminal Appeal No.74 of 2007, whereunder and whereby the conviction and sentence 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 the judgment dated 24.07.2007 in C.C.No.747 of 2003 by the IV Additional Judicial Magistrate of First Class, Warangal, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in C.C.No.747 of 2003 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 05.08.2003 while one Banda Sadanandam (hereinafter referred to as 'the deceased') was returning after attending funeral rites of his relative at Madikonda in order to go to his village Narlapur at about 05:30 p.m, while he was crossing the road, accused who was driving the lorry bearing No.AP.28.U.7587 with a load of H.P gas cylinders and proceeding from Warangal to Hyderabad, drove the vehicle in a rash and negligent manner with high speed and dashed against the deceased. Due to the accident, the lorry ran over the deceased, resulting his death on the spot. PW.1 lodged a complaint on the same day and police, Madikonda Police Station, registered the same as a case in Cr.No.82 of 2003 against the accused for the offence punishable under Section 304-A I.P.C. During the course of investigation, the Investigating Officer conducted inquest panchanama in the presence of PWs.7 & 8,

conducted the scene of offence panchanama and also got photographed the scene of offence. The Motor Vehicle Inspector inspected the lorry on 12.08.2003 and gave a report that the vehicle is not having any mechanical defects. Further, the Investigating Officer after completing the investigation arrested the accused and filed the charge sheet.

4. The learned IV Additional Judicial Magistrate of First Class, Warangal, 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. During trial, on behalf of the prosecution, PWs.1 to 11 were examined and Exs.P1 to P13 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 same and reported no oral or documentary evidence on his behalf. After hearing arguments and after perusing the evidence available on record, the learned Magistrate convicted the accused and sentenced him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment to undergo Rigorous Imprisonment for three months for the offence punishable under Section 304-A I.P.C.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.74 of 2007 before the Sessions Judge, Warangal, where the Appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, held that the evidence of PWs.1 to 4 coupled with evidence of PWs.7 to 11 proved that the accident was caused due to the rash and negligent driving of the driver of the lorry i.e., accused; that non-conducting of Test Identification Parade, non-examining of Investigating Officer, who conducted investigation and the Medical Officer, who conducted

autopsy is not fatal to the case of prosecution in view of the cogent, convincing trust-worthy and natural evidence of PWs.1 to 4 and confirmed the judgment of the trial Court by dismissing the appeal.

7. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.74 of 2007 and C.C.No.747 of 2003, the accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused argued that PW.1 is not the eye witness, whereas PWs.2 to 5 are the eye witnesses to the accident; that wife of the deceased-PW.6 and other witnesses has not supported the case of prosecution; that prosecution has not examined the doctor, who issued the Post-mortem Certificate and also the Investigating Officer, who conducted investigation in this case, as such it is fatal to the case of prosecution and therefore, conviction cannot be given; that the rough sketch of scene of offence was not drawn and if it was drawn and filed into the Court, the nature of speed of the vehicle should have been known by observing the skid marks of the vehicle, but it was not done; that there is contributory negligence on the part of the driver of the lorry as well as the deceased; that the deceased must have been careful and diligent while crossing the road, likewise the driver also must have been careful and watched the persons, who are crossing the road; that the accused is not known to PWs.1 to 3 and as such, identifying the accused in the Court hall cannot be taken into consideration and prosecution failed to prove that death was occurred due to rash and negligent driving of the accused, therefore, prayed the Court to set aside the judgment of both the Courts below and finally argued that in case, this Court comes to a conclusion that accused committed the offence, the quantum of sentence may be reduced as he is the sole breadwinner having parents, wife and children.

9. On the other hand, the learned Public Prosecutor appearing for

the State of Telangana argued that the evidence produced by the prosecution proved that accident was caused due to rash and negligent driving of the accused and therefore, both the Courts below gave the concurrent finding on this aspect; that there is no irregularity committed by any of the Courts below in this case, therefore, the findings of both the Courts below needs no interference and prayed the Court to dismiss the revision case.

10. Now, the points for determination are --

Whether the revision petitioner is entitled to set aside the concurrent judgments passed by both the trial Court and Appellate Court below 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 evidence produced by the prosecution shows that PW.1 is the *de facto* complainant, who lodged the complaint-Ex.P1. PWs.2 & 3 are the independent witnesses, who clearly stated about the identity of the accused and also how the accused drove the vehicle in a rash and negligent manner and caused the accident. It is an admitted fact that the deceased was crossing the road near Madikonda bus stand at the time of accident. Though the evidence of PWs.5 & 6 has not supported the case of prosecution, the other evidence of prosecution has supported the evidence of eye-witnesses, who categorically stated that accused drove the vehicle in a rash and negligent manner. PWs.1 to 4 deposed that accused is the driver of the lorry on the date of accident and further, PWs.2 & 3 clearly stated that due to rash and negligent driving of the accused, the deceased sustained injuries and died.

12. A perusal of the judgment passed by the Appellate Court shows that after considering the evidence it opined that fleeing away from the scene of offence after the accident by the accused clearly reads his guilty mind and further, leaving the place of incident soon after the accident without informing the police also speaks volumes about the

guilty mind of the accused. Though the prosecution failed to examine the doctor and Investigating Officer, in view of the cogent and corroborated evidence of PWs.1 to 4, it is proved that the accident was caused due to rash and negligent driving of the lorry. Therefore, I am of the view that both the Courts below rightly convicted the accused and gave concurrent findings and the said findings needs no interference by this Court.

13. The other contention of the learned counsel for the revision petitioner/accused is that in case, this Court comes to a conclusion that accused has committed the offence, the quantum of sentence may be reduced as he is the sole breadwinner having parents, wife and children. Therefore, taking into consideration the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the accused by reducing the sentence of imprisonment to six months from one year. Therefore, I am inclined to dispose of the revision as under.

14. The conviction recorded against the revision petitioner/accused by the IV Additional Judicial Magistrate of First Class, Warangal, in C.C.No.747 of 2003 for the offence punishable under Section 304-A I.P.C as confirmed by Sessions Judge, Warangal in Crl.A.No.74 of 2007 is hereby confirmed. But, the sentence of imprisonment of one year imposed by both the Courts is hereby modified and reduced to six months. The sentence of fine is not interfered with. The period of imprisonment already suffered by the revision petitioner/ accused is directed to be given set off.

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

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

ANIS, J

Date: 18.02.2015
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