

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

CRIMINAL REVISION CASE No.123 of 2007

ORDER:

This Criminal Revision Case is filed against the judgment in CrI.A.No.185/2006, dated 23.01.2007 on the file of the V Additional District & Sessions Judge (III FTC), Nalgonda at Miryalaguda, by and under which, the learned Sessions Judge has confirmed the conviction and sentence of the petitioner/accused for the offence punishable under Section 304-A IPC as imposed by the trial Court, namely, the learned Judicial Magistrate of First Class, Huzurnagar in CC.No.176/2004 vide judgment dated 10.11.2006, under which, the learned Magistrate has convicted the petitioner/accused and sentenced him to undergo rigorous imprisonment for a period of 6 (six) months and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month.

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

The allegations in brief are as under:

On 12.06.2004 at 06.30 hours the deceased Pidamarthy Latchaiah went to the haystack bundle and while returning with bundle of fodder (grass) and when crossing the road leading from Miryalaguda-Huzurnagar, in the mean time the accused drove his bus bearing No.AP-11/Z-2975 while returning from Kakinada to Miryalaguda in a negligent manner and dashed to the deceased Latchaiah from backside. As a result, the deceased sustained severe injuries, shifted to Community Health Centre, Huzurnagar. After first aid, while shifting to Hyderabad at 09.30 hours after passing Miryalaguda the deceased lost his breath. The above accident was witnessed by PW 2, PW 3 and PW 4. On receipt of the complaint from PW 2, the police registered the case in Cr.No.60/2004 under Section 304-A IPC.

The prosecution in order to prove its case examined PWs 1 to 10 and produced Exs.P1 to P7. No defence is produced.

Both the Courts below found that the evidence of PWs 1 to 4, particularly, PWs 2, 3 and 4 who are said to be the eyewitnesses proved that it is the accused who committed the offence and hence convicted and sentenced the petitioner/accused, as stated above.

The learned counsel for the petitioner/accused submits that from the evidence of the material witnesses, namely, PWs 2, 3 and 4 what is noticed is that none of them have seen the accident and even in their evidence they did not say that the accident was due to any rash and negligent act on the part of the driver. PWs 2 and 4 are completely silent as to the manner in which the accident took place and even in the evidence of PW 3 what is all that is spoken by him is that the bus went towards right side of the road and hit the deceased, who fell down and sustained injuries, but succumbed nearly 3 hours thereafter. Learned counsel submits that as a matter of fact, none of the witnesses are eyewitnesses as admitted in their cross examination and therefore, both the Courts below have erred in placing reliance on the testimony of PWs 2 to 4 holding that it is the petitioner/accused who has caused the accident.

The learned Public Prosecutor submits that the evidence of material witnesses has been properly appreciated by both the Courts below and there are no merits to interfere with the said findings.

The point that arises for consideration is as to whether the prosecution proved its case against the accused beyond reasonable doubt so as to sustain the conviction and sentence or whether it need to be modified, set aside or varied?

Point:

Even though a feeble attempt is made by the accused that the prosecution failed to prove that petitioner/accused has driven the bus at the relevant point of time, the evidence on record shows that the petitioner/accused drove the bus bearing No.AP-11/Z-2975 which was coming from Kakinada side and proceeding towards Miryalaguda. The deceased Latchaiah, who is said to be aged about 45 years, was admittedly carrying a heap of grass on his head and in the rain that was falling, the deceased was crossing the road, and at that time, the accident took place.

PW 1 is the wife of the deceased and from her evidence it is evident that she was informed about the accident and thereafter she went and shifted the injured husband to the hospital. The other material witnesses are PWs 2, 3 and 4.

PW 2 in his evidence stated that on the date of accident, RTC bus was proceeding from Huzurnagar to Miryalaguda, that the deceased sustained injuries on his head and on his spinal cord, that he went to the house of the deceased and informed the same to the wife of deceased and his son PW 5, that the deceased was shifted to hospital, that the accused was driving the vehicle and that he came to know that the deceased died on the way to hospital. From what is spoken to by PW 2, who is said to be the eyewitness, it is noticed that he did not say as to the manner in which the petitioner/accused was driving the crime bus, whether he was driving the vehicle in rash or negligent manner at the relevant point of time and that he alone is responsible for the accident.

PW 3 is another eyewitness. It is in his evidence that the crime vehicle which was proceeding on one side of the road, moved towards another side and hit the deceased, that the deceased sustained injuries on his head and chest, that the driver of the crime vehicle is responsible for the accident and that the bus hit the deceased when he was crossing the road with a heap of grass.

From the evidence of PW 3, what is all that is apparent is that the deceased was crossing the road with heap of grass, that at that time, there is drizzling and the bus instead of proceeding towards left side, moved towards right side and hit the deceased. That part of statement do not clinchingly establish as to whether the said act of the petitioner/accused in taking the bus towards right side was result of any rash and negligent act or that he moved the bus towards right side in order to save the deceased.

The place of accident is a road, which is straight. Therefore, in the absence of any categorical statement from the eyewitnesses that the alleged act of the petitioner/accused in taking the bus towards right side was the result of rash and negligent act, it cannot be said that it is the petitioner/accused who is responsible for the accident.

The other witness is PW 4, who deposed that on the date of the accident, the deceased was crossing the road with grass bundle on his head, that the bus driven by the accused hit the deceased, he went and informed the incident to PW 1 and others, the injured was shifted to the hospital and on the way, he died.

From the evidence of PW 4 also, nothing is established as to how the accused was

driving the bus at the relevant point of time. Rest of the witnesses are not relevant in so far as the material aspect of the offence punishable under Section 304-A IPC is concerned.

In order to bring home the guilt of the accused for the offence under Section 304-A IPC, it is incumbent on the part of the prosecution to place on record cogent, convincing and consistent evidence to show that at the relevant point of time, it is the petitioner/accused who drove the bus in such a manner which amounts to rash and negligent act. No such evidence was produced by the prosecution. PWs 2, 3 and 4 stated that when the deceased was crossing the road with heap of grass in drizzling morning and at that time, the bus hit the deceased. Basing on such evidence, finding the petitioner/accused guilty of criminal offence, cannot be sustained. Both the Courts below have not properly appreciated the evidence on this aspect. It cannot be said that the prosecution has proved its case beyond reasonable doubt and therefore, the petitioner/accused is entitled for acquittal.

For the reasons stated above, the Criminal Revision Case is allowed. Consequently, the judgment of the appellate Court dated 23.01.2007 in CrI.A.No.185 of 2006 as well as the judgment of the trial Court dated 10.11.2006 in C.C.No.176 of 2004 are set aside and the petitioner/accused is acquitted of the offence for which he was found guilty and convicted. The bail bonds of the petitioner/accused shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioner/accused.

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

M.S.K.JAISWAL,J

Date: 26.11.2015

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