

HONOURABLE SRI JUSTICE M.S.K.JAISWAL

CRL.R.C.No.1144 of 2008

JUDGMENT:

This Criminal Revision Case is directed against the judgment of the learned I-Additional District and Sessions Judge, West Godavari District at Eluru, in Crl.A.No.222 of 2006 dated 25.07.2008, confirming the conviction and sentence of rigorous imprisonment for one year and fine of Rs.2,000/-, in default, simple imprisonment for three months, for the offence under Section 304-A I.P.C. imposed against the revision petitioner-accused by the learned II-Additional Judicial Magistrate of First Class, Eluru, in C.C.No.820 of 2004 dated 17.11.2006.

It is the case of the prosecution that, on 02.02.2004, the accused, who is the revision petitioner herein, along with one Butham Appa Rao, the cleaner of the lorry, were proceeding in the lorry bearing No.A.P.16-TU-3569 from Madras to Calcutta with a load of paper bundles and when it reached near K.M. Stone No.20 at Surappagudem on State Highway road on 03.02.2004 at about 11.00 P.M. the accused drove the lorry in a rash and negligent manner and dashed against a stationed lorry bearing No.A.P.16-W-7126 on its back side and as a result of which the left side cabin of the lorry bearing No.A.P.16-TU-3569 was damaged and the cleaner of the lorry sustained multiple injuries all over his

body and died instantaneously. The accused was tried for the offence punishable under Section 304-A I.P.C.

The prosecution has examined P.Ws.1 to 7 and got marked Exs.P1 to P10 to prove the guilt of the accused. On a perusal of the entire evidence, both oral and documentary, the trial Court, found the revision petitioner-accused guilty of the offence under Section 304-A I.P.C. and accordingly convicted and sentenced him as stated supra. Questioning the said conviction and sentence, the revision petitioner-accused preferred CrI.A.No.222 of 2006 and the learned I-Additional District and Sessions Judge, Eluru, by judgment dated 25.07.2008, dismissed the appeal confirming the conviction and sentence recorded by the trial Court. Aggrieved by the same, the revision petitioner-accused preferred this criminal revision.

Learned Counsel for the revision petitioner submits that the Courts below have not appreciated the evidence on record in proper perspective and have erroneously found the revision petitioner-accused guilty of the offence under Section 304-A I.P.C. He further submits that the revision petitioner-accused was not the driver of the crime vehicle at the time of accident and except vague reference in the chief-examination of P.W.1, which in fact could not sustain in cross-examination, absolutely there is no other evidence to show that the crime vehicle was driven by the revision petitioner in a rash and negligent manner at the relevant point of time and, therefore, the

conviction and sentence imposed against the revision petitioner are liable to be set aside.

Stoutly refuting the aforesaid submissions, the learned Public Prosecutor representing the State contended that there is sufficient material to show that the revision petitioner-accused was responsible for the commission of offence and, therefore, the Courts below have rightly convicted and sentenced the revision petitioner-accused for the offence under Section 304-A I.P.C. and the said findings recorded by both the Courts below do not warrant any interference by this Court.

Now, the points that arise for determination are whether the prosecution is able to bring home the guilt of the revision petitioner-accused for the charge levelled against him beyond all reasonable doubt and whether the conviction and sentence recorded by the trial Court as well as the appellate Court are liable to be confirmed or modified or reversed?

I have perused the impugned judgments of the Courts below and also the evidence on record. The entire case rests on the evidence of P.W.1, who is the alleged eyewitness to the accident. P.W.1 has deposed in his chief-examination that on the date of accident he was at his house and on hearing the sound, he came out of his house and found that a stationed lorry was hit by the crime vehicle on its back; that the accused was the driver of the crime vehicle; that the person who boarded the

crime lorry died; that the accused, who was the driver of the crime vehicle, came to his Telephone Booth and informed about the accident to his owner on phone. However, in the cross-examination, P.W.1 has given a go-bye to his earlier version in the chief-examination and stated that he has not stated before the police that the driver of the crime vehicle came to his Telephone Booth and telephoned about the incident to his owner and when he observed, none found in both the vehicles in the driver seat and that nobody informed to him about the driver at the time of accident. He further deposed in his cross-examination that he has not seen the accused driving the vehicle at the relevant point of time and on the assumption he stated that the accused is the driver. Therefore, it is clear that P.W.1 has neither witnessed the accident nor seen the accused at the relevant point of time. Further, there is absolutely no evidence to establish the fact that the revision petitioner-accused was the driver of the crime vehicle at the relevant time of accident and that he drove the crime vehicle in a rash and negligent manner and caused the accident and in the absence of any proof it is not safe to base a conviction. None of the witnesses have witnessed the occurrence. It is not as though the descriptive particulars of the revision petitioner-accused were given by the so-called eyewitness and on the strength of the said descriptive particulars the said witness has identified the revision petitioner-accused. Similarly it

is not the case of the prosecution that immediately after the arrest of the revision petitioner-accused there was a Test Identification Parade, during the course of which the alleged eyewitness has identified the revision petitioner-accused. In the absence of mentioning of the descriptive particulars of the revision petitioner-accused and also the Test Identification Parade, it is not at all possible for any individual to remember the face of the revision petitioner-accused when he is totally a stranger. In fact, time and again the Courts have held that in the absence of any positive proof, it is not safe to convict the accused on the strength of the evidence of the witnesses spoken to for the first time in the Court hall during the course of their evidence.

For the aforementioned reasons, this Court is of the view that the Courts below erred in convicting the revision petitioner-accused for the offence under Section 304-A I.P.C.

The Criminal Revision Case is accordingly allowed. The conviction and sentence imposed by the trial Court as confirmed by the appellate Court for the offence under Section 304-A I.P.C. are hereby set aside and the revision petitioner-accused is acquitted of the said charge. Fine amount, if any, paid by the revision petitioner-accused shall be refunded to him.

M.S.K.JAISWAL, J

08-12-2015
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