

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.1719 OF 2007

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ORDER:

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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 07.12.2007 in CrI.A.No.20 of 2007, passed by the III Additional Sessions Judge (FTC-II), Khammam, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 304-A, 337 and 338 IPC, vide the judgment dated 05.01.2007 in C.C.No.19 of 2005 by the Judicial Magistrate of First Class, Special Mobile Court, Khammam, was confirmed.

2. The revision petitioner herein is the accused and respondent herein is the complainant in C.C.No.19 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 that on 31.03.2004 PW.1 along with her sister PW.5 went to Khammam and at 3:00 P.M. while they were returning in the auto bearing No.AP 20 V/6832 of LW.10 Rentala Ashok along with Marri Nagaiah (deceased) and others, the driver of the RTC bus No.AP 10 Z 9621, who came behind their auto in a rash and negligent manner, dashed the auto. Due to which the auto turned turtle and all the passengers travelling in the auto received bleeding injuries. They were shifted to Government Hospital, Khammam for treatment. While undergoing treatment Marri Nagaiah died in the hospital. After receiving the intimation about the accident the Head Constable, Kusumanchi Police Station registered a case in Cr.No.32 of 2004 under Sections 304-A, 337 and 338 IPC and took up investigation. During the course of investigation, he visited the scene of offence and got photographed the scene and drafted observation panchnama of the scene. He visited the Government Hospital, Khammam and examined the witnesses PWs 1 to 3 and

other witnesses and handed over the CD file to the Sub-Inspector of Police. The Sub-Inspector of Police verified the investigation, visited the Government Hospital on 01.04.2004 and he also examined and recorded the statements of witnesses. After receiving the information about the death of deceased, inquest was conducted in the presence of mediators and later dead body was sent for post-mortem examination. The Motor Vehicles Inspector inspected the crime vehicle and issued report. On 01.04.2004 at about 11:00 A.M. the petitioner/accused was arrested and sent for remand. After completing the investigation and after receiving the wound certificate and post-mortem certificate the Investigating Officer filed the charge sheet into the Court for the offences punishable under Sections 304-A, 337 and 338 IPC.

4. Learned Judicial Magistrate of First Class, Special Mobile Court, Khammam, took cognizance of the case and framed a charge for the offence punishable under Section 304-A, 337 and 338 IPC against the accused. During trial, to prove the case of prosecution, PWs.1 to 14 were examined and Exs.P1 to P23 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

6. The trial Court, after hearing the arguments and after perusing the record, convicted the accused for the offence punishable under Section 304-A IPC and sentenced him to undergo Rigorous Imprisonment for a period of one year, two months, four months for the offences punishable under Sections 304-A, 337 and 338 IPC respectively and shall pay a fine of Rs.4,000/-, Rs.500/- and Rs.1000/- respectively, and in default of payment to undergo Simple Imprisonment for a period of three months, one month and two months respectively.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.20 of 2007 before the III Additional Sessions Judge (FTC-II), Khammam, where the appellate Court, after considering the evidence on record, confirmed the conviction and sentence and dismissed the appeal.

8. Being aggrieved by the judgment of the appellate Court dated 07.12.2007 passed in Criminal Appeal No.20 of 2007, the accused preferred the present revision case.

9. Learned counsel appearing for the revision petitioner/accused argued that none of the witnesses of the prosecution deposed that the on the day of incident accused drove the RTC bus in a rash and negligent manner and dashed the auto from back side due to which the auto turned turtle and one person died and others received injuries. He further argued that PW.9 did not support the prosecution case. As such the petitioner is entitled for acquittal. It is also argued that a lenient view may be taken in favour of the petitioner since he is having old parents, wife and children and he is the sole bread winner of his family.

10. On the other hand, the learned Public Prosecutor appearing for the State argued that both the Courts gave concurrent finding that due to rash and negligent driving of the accused the accident was taken place in which the deceased died others received injuries. Therefore, the findings of the trial Court need no interference.

11. Now, the point for determination is --

Whether the petitioner is entitled to the relief of setting aside the judgment in CrI.A.No.20 of 2007 dated 07.12.2007 of III Additional Sessions Judge (FTC-II), Khammam as prayed for?

12. **POINT:**

A perusal of the record shows that the prosecution examined PWs 1 to 14 and got marked Exs.P.1 to P.23. The trial Court after considering the evidence held that the accused was the driver of the crime vehicle at the time of accident and he drove the vehicle in a rash and negligent manner and dashed the auto from back side, due to which, the auto turned turtle and one person died and others received injuries. Accused was convicted for the offence under Sections 304-A, 337 and 338 IPC. A perusal of evidence of PWs 1, 2, 3, 5 and 8 clearly establishes that the crime vehicle RTC bus dashed the auto from behind due to which the auto turned turtle resulting in death of a person besides injuries to several persons. Thus the prosecution proved the

guilt of the accused for the offence under Sections 304-A, 337 and 338 IPC beyond all reasonable doubts. Hence, the conviction imposed on the accused by the trial Court and confirmed by the appellate Court is hereby confirmed.

13. However, considering the facts and circumstances of the case, I am of the view that a lenient view can be taken in favour of the accused-revision petitioner by reducing the sentence of imprisonment imposed on him. Therefore, I am inclined to dispose of the revision as under:

The conviction recorded against the revision petitioner by the Judicial Magistrate of First Class, Special Mobile Court, Khammam in C.C.No.19 of 2005 as confirmed by III Additional Sessions Judge (FTC-II) Khammam in CrI.A.No.20 of 2007 is hereby confirmed. However, the sentence of rigorous imprisonment of one year imposed by the trial Court for the offence under Section 304-A IPC is hereby modified and reduced to six months. Sentence of imprisonment imposed on the accused for the offence under Sections 338 and 337 IPC is not interfered with. All the sentences shall run concurrently. The sentence of fine is also not interfered with. The period of imprisonment already suffered by the revision petitioner is directed to be given set off.

14. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous petitions pending, if any, in this Revision Case shall stand closed.

ANIS, J

Date:30.03.2015

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