

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

CRIMINAL REVISION CASE NO.1317 of 2007

ORDER:

The revision petitioner/appellant/accused filed this Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') challenging the judgment dated 07.06.2007, passed by the V Additional District and Sessions Judge, Nellore, in CrI.Appeal.No.137 of 2004 confirming the conviction and sentence passed by the learned IV Additional Judicial First Class Magistrate, Nellore dated 17.09.2004 in C.C.No.144 of 2001. The learned Magistrate found the revision petitioner-accused guilty of the charge punishable under Section 304-A IPC and convicted and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for six months.

Briefly stated, the case of the prosecution is that on 25.02.2001 at about 15-00 hours at 4th Mile, Navalakgardens, Nellore, when the deceased boy, who was aged about 11 years, along with his family members got down from the bus and crossing the road, the lorry bearing No.AP 12T 7561 came in a high speed and in a rash and negligent manner and dashed the deceased, due to which the deceased died instantaneously and his head was crushed under the wheels of the lorry and intestines came out. On the report of LW.1 the crime was registered for the offence punishable under Section 304-A IPC against the accused and after completion of investigation, a charge sheet was filed before the IV Additional Magistrate of First Class, Nellore.

During the course of trial, on behalf of the prosecution PW.1 to 9 were examined and Exs.P.1 to P.7 were marked. When the accused was examined under Section 251 Cr.P.C., his plea was one of denial.

The trial Court, after perusing the material and after appreciating the evidence on record, found the accused guilty of the charge framed against him and convicted and sentenced him, as stated supra. The accused was unsuccessful in the appeal also. Therefore the accused filed the present revision case.

Learned counsel appearing for the revision petitioner submits that it is a case where the prosecution has failed to bring home the guilt of the accused. The prosecution failed to prove beyond reasonable doubt that it is the accused who drove the crime vehicle, more particularly, in a rash and negligent manner resulting in the death of the deceased boy. The learned counsel also submits that without there being any evidence both the Courts below erred in coming to a conclusion that the accused is guilty of the charge framed against him. The documents relied upon by the Court below are not in conformity with the evidence adduced by the witnesses. Therefore, the judgment rendered by both the Courts below warrant interference of this Court.

On the other hand, learned Public Prosecutor argued that the prosecution has brought home the guilt of the accused beyond reasonable doubt and that both the Courts below have rightly held that the evidence on record clinchingly establishes the guilt of the accused, and hence, the judgments rendered by the Courts below do not warrant any interference.

Now the point for consideration is – whether the prosecution could bring home the guilt of the accused beyond reasonable doubt so as to sustain the conviction and sentence imposed against him or the same needs to be modified.

The factum of death taking place on 25.03.2001 at about 15 hours and the place of offence are not in dispute. It is not also not in dispute that the young boy was dashed by the crime lorry and his head was crushed under the wheels of the lorry resulting in instantaneous death of the deceased boy. It is the case of the prosecution that the accident has been witnessed by PWs.1 to 4. These witnesses deposed with regard to the accident occurred and guilt or otherwise of the accused.

PW.1 in his evidence has stated that it is the accused who drove the lorry at the relevant point of time in a high speed and in a rash and negligent manner and dashed against the deceased boy. But the suggestion made to him that the accused was not driving the lorry at the relevant point of time was not denied by him.

Similarly PW.2 spoke that it is the accused, who drove the lorry at the relevant point of time and dashed against the deceased. He was also given a suggestion that the accused never drove the lorry and he never dashed against the deceased, but the same was denied.

PWs.3 and 4 are independent witnesses. PW.3 deposed about the accident having been taken place and also about the rash and negligent driving of the driver of the crime vehicle. In his cross-examination he admitted that the vehicles, which are at a distance, are not visible from his shop. He was conspicuously silent about the accused driving the crime lorry at the relevant point of time.

Similarly, PW.4, the other independent witness, categorically asserted that he does not know as to who was driving the crime lorry at the relevant point of time. However, he specifically asserted that he witnessed the accident after hearing the sound. Nothing specific has been elicited in his cross-examination.

The other witnesses are official witnesses and they spoke about the accident that has taken place and the death of the deceased. The Investigating Officer, who took up investigation from LW.15 two days after the incident i.e., on 27.02.2001, also did not say anything as to under what circumstances he came to the conclusion that it is the accused who was driving the lorry at the relevant point of time.

Another important aspect is that as per the report of the Motor Vehicle Inspector the accident took place on 25.05.2001 and the crime vehicle was inspected on 26.02.2001 at about 11.30 a.m. by PW.5. At column 16 of the said report, Dasari Srinivasa Rao was mentioned as the owner of the lorry and at column 17 it is specifically mentioned that the particulars of the driver were not produced. It is manifest from the report that even one day after the incident when the crime vehicle was found stationed at the scene of offence and inspected by the officials of the Transport Department, there is no information whatsoever as to the person, who was at the steering wheel at the relevant point of time. In a case of this nature, it is obligatory on the part of the prosecution to prove beyond reasonable doubt that it is the accused, who was driving the vehicle, and thereafter, it should be established that the vehicle was being driven in a rash and negligent manner to mulct him with the consequences.

The record does not show that it is the accused who was driving the vehicle at the relevant time. The contention of the accused is that it is not he, who was driving the vehicle and he has been falsely implicated in the crime. Even though the name of the owner of the crime lorry was very much on record, the prosecution has not examined him so as to connect the accused with the crime lorry.

As rightly submitted by the learned counsel appearing for the revision petitioner, the sole basis for determining the complicity of the accused is the trip sheet said to have been seized by the investigating officer, which is neither marked as document nor has been confronted to the prosecuting witnesses and the investigating officer, who is stated to have seized the trip sheet, did not whisper anything about it in his evidence. The nature of offence throws any amount of doubt as to whether it is the accused and the accused alone who was responsible for the unfortunate incident which resulted in the death of a tender aged boy.

Both the courts below have not appreciated the evidence on record in proper perspective and erroneously convicted the accused holding that it is the accused who was responsible for the death of the deceased. The lower appellate Court did not properly appreciate the evidence and the material available on record, and hence the orders passed by the courts below are liable to be set aside.

Accordingly the Criminal Revision Case is allowed setting aside the judgment of the IV Additional Judicial Magistrate of First Class, Nellore, in C.C.No.144 of 2001, and the accused is acquitted of all the charges framed against him. He shall be released forthwith, if he is not required in any other crime. The fine amount, if any paid, shall be refunded to him.

JUSTICE M.S.K. JAISWAL.

15th June, 2015

Js.