

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY, THE TWENTY NINTH DAY OF JULY
TWO THOUSAND AND FIFTEEN

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

CRIMINAL REVISION CASE No.405 of 2007

Between:

Bendi Nageswararao
..... PETITIONER

AND

The State of Andhra Pradesh,
Rep.by its Public Prosecutor,
High Court, Hyderabad
.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **29.07.2015**

SUBMITTED FOR APPROVAL:

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

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Ladyship/Lordship wishes to see the fair copy of the Judgment? | Yes/No |

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

CRIMINAL REVISION CASE No.405 of 2007

ORDER:

This Criminal Revision Case is directed against the judgment in Crl.A.No.100/2006, dated 15.03.2007 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari at Rajahmundry, by and under which, the conviction and sentence as imposed by the trial Court was confirmed.

2. By judgment dated 21.04.2006, the learned Additional Judicial Magistrate of First Class, Ramachandrapuram, in C.C.No.166/2003, convicted the petitioner/accused for the offence under Sections 338, 337 of IPC and under section 134 (a) & (b) r/w.187 of M.V.Act and sentenced him to suffer simple imprisonment for a period of one year for the offence under section 338 IPC, simple imprisonment for a period of six months for the offence under section 337 IPC and to pay a fine of Rs.1,000/- for the offence under Section 187 of M.V.Act for contravention of Section 134(a) & (b) of M.V.Act, in default to suffer simple imprisonment for three months and ordered that all the sentences shall run concurrently.

3. Heard the learned counsel appearing for the petitioner/accused and the learned Additional Public Prosecutor, representing the State.

4. The case of the prosecution in brief is that on 31.08.1997 when PW 1 was going towards Pasalapudi from Mandapeta on his scooter at about 12 mid night, the crime lorry bearing registration No.AP37-U1125 driven by the petitioner/accused, came in opposite direction in a rash and negligent manner and dashed the scooter of PW 1, due to which PW 1 fell down and sustained injuries to his right

leg and right hand. PW 2, who was coming on his cycle from Mandapeta noticed PW 1 with bleeding injuries, sent message to the brother of PW 1 and shifted PW 1 to the Hospital. The Station House Officer, Kakinada I Town Police Station, on receiving information from the hospital authorities, came and recorded the statement of PW 1 and registered a case in Cr.No.85/97 under section 338 of IPC, and visited the scene and got photographed the scene and drafted a mediators report. After completion of investigation, the police filed charge sheet.

5. The accused denied the accusations. During course of trial, the prosecution examined PWs 1 to 10 and produced Exs.P1 to P10.

The petitioner/accused denied the evidence on record. No defence was produced.

6. After considering the oral and documentary evidence on record, by judgment dated 21.04.2006, the trial Court found the petitioner/accused guilty of the offence punishable under Sections 338, 337 of IPC and under section 134(a) & (b) r/w.Sec.187 of M.V.Act and sentenced him, as stated supra. The petitioner/accused was unsuccessful in appeal and hence the present revision.

7. The contention of the petitioner/accused is that both the Courts below have not appreciated the evidence in proper perspective and erroneously held that the petitioner/accused is responsible for the accident. The learned counsel for the petitioner/accused submits that the rough sketch of the scene of offence and panchanama clearly show that it is PW 1 who is responsible for the unfortunate accident. The learned counsel further submits that the photographs show that the lorry of the petitioner/accused was proceeding on the left side of the road and at the turning point one cannot go in high speed and there is no rashness and negligence on the part of the petitioner/accused, that PW 1 came in opposite direction towards wrong direction i.e. towards right side of the road and hit the lorry and PW 1 alone is responsible for the unfortunate accident and therefore, the conviction of the petitioner/accused cannot be sustained.

8. On the other hand, the learned Additional Public Prosecutor submits that the Courts below properly appreciated the oral and documentary evidence on record and have correctly concluded that the petitioners/accused is guilty of the offence alleged and hence his conviction cannot be questioned, and the revision is liable to be dismissed.

9. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/accused is legal and sustainable.

Point:

10. This is a case of accident, which took place on the night of 31.08.1997 when the injured PW 1 was going on his scooter towards Pasalapudi from Mandapeta. It is alleged that the crime lorry driven by the petitioner/accused came in opposite direction to the extreme right side of the road and dashed the scooter of PW 1, as a result of which PW 1 sustained injuries. PW 1 in his evidence stated that at the time of accident, the lorry was being driven in rash and negligent manner and the driver of the lorry is responsible for the accident.

11. The prosecution also examined PWs 2 to 4 to establish their case. PW 2 is the person who came to the scene of accident subsequently and he has not witnessed the accident. It is in his evidence that when he was returning after having seen of second show movie, he found the scooter underneath the lorry and PW 1 was lying with injuries. It is further in his evidence that subsequently, the brother of PW 1 was informed who came and shifted the injured PW 1 to the hospital, he is also not the eyewitness to the accident. PW 4 who is said to be the eyewitness to the accident, did not support the case of prosecution. Except the above evidence, there is no other evidence on record to show that it is the petitioner/accused who drove the lorry in a rash and negligent manner at the relevant point of time.

12. The evidence of PW 1 does not show that the petitioner/accused is alone responsible for the accident. The sketch of

scene of offence and photographs clearly show that PW 1 drove his scooter towards right side of the road, whereas he was supposed to proceed on the left side of the road. The sketch and photographs further show that the crime lorry was coming on left side of the road. It is seen from the rough sketch of scene of offence that there is sufficient road margin including tarred portion of road on the right side rather than the left side, which shows that the crime lorry was proceeding on the left side of the road at the relevant time of accident, therefore, the petitioner/accused would not alone be responsible for the alleged accident. In general a person is not criminally liable for an act or omission unless he has himself committed or omitted the act. The Courts below have not appreciated the oral and documentary evidence available on record in proper perspective, and hence the conviction and sentence recorded by both the Courts below cannot be sustained.

13. For the reasons stated above, the Criminal Revision Case is allowed. Consequently, the judgment of the appellate Court dated 15.03.2007 in CrI.A.No.100 of 2006 as well as the judgment of the trial Court dated 21.04.2006 in C.C.No.166 of 2003 are set aside and the petitioner/accused is acquitted of the offences 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: 29.07.2015

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