

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

Criminal Revision Case No.1 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure ('the CrPC', for brevity) by the petitioner/sole accused is directed against the judgment dated 31.12.2007 of the learned I Additional Sessions Judge, Mahabubnagar passed in Criminal Appeal No.51 of 2007.

2. By the judgment dated 07.04.2007 passed in C.C.No.677 of 2006, the learned Special Judicial Magistrate of First Class (For trial of cases under Prohibition & Excise Act), Mahabubnagar, found the accused guilty of the offence punishable under Section 304-A of the IPC and had convicted him of the said offence and sentenced him to undergo simple imprisonment for a period of one year and pay a fine of Rs.500/- and suffer simple imprisonment for three months in default of payment of the said fine amount. The appeal preferred by the accused was dismissed confirming the judgment of the trial court in all respects.

3. The gravamen of the charge and the prosecution case, which is relevant, in brief, are as follows: "On 05.05.2005 at about 2 PM, the accused was driving the auto bearing Registration No.AP-22V 1156 from Mahabubnagar to Machanpally village. At that time, passengers, namely, PW2-Zareena Begum, PW3-Vislavath Deniya Naik, LW4-Vislavath Durgamma and the deceased Gopal Reddy were traveling in the said auto. On the way, when the auto had reached the limits of Kodur village near Kodur stage, the accused drove the auto at a high speed and in a rash and negligent manner and dashed to one stationed jeep. As a result, Gopal Reddy who was one of the inmates of the auto had sustained severe injuries and had succumbed to the injuries on the same day while undergoing treatment in the hospital. On the report of PW1-B.Sudershan Reddy, the subject crime was registered and was investigated into. After the

investigation, PW-8 had laid the charge sheet.”

4. I have heard the submissions of the learned counsel for the petitioner/Accused and the learned Additional Public Prosecutor. I have perused the material record.

5. Now, the points for determination are:

Whether the prosecution had established the guilt of the accused for the offence punishable under Section 304-A of the IPC as required under law and beyond all reasonable doubt? And, if so, whether the conviction and sentences imposed are sustainable under facts and in law? Whether the accused had made out valid and sufficient grounds for his acquittal?

6. **POINTS:**

6. (a) Now, the evidence that was brought on record by the prosecution during the course of trial to bring home the guilt of the accused is to be examined.

6. (b) Coming to the evidence on record, PW1 is not an eye witness to the accident. He is the son of the deceased Gopal Reddy. On coming to know of his father’s involvement in the accident, he had proceeded to the Headquarters hospital, where his father was admitted and had later succumbed to the injuries sustained in the accident. Exhibit P1 is the original report lodged with the police by the PW1. PW2-Zareena Begum and PW-3-Denya Naik are both the inmates of the auto and had actually traveled in the auto at the time of the accident. According to their evidence, they had boarded the crime vehicle at Ashok Talkies area, Mahabubnagar to go to their respective villages. They had categorically deposed about the rash and negligent driving of the auto by the accused. They had also deposed about the deceased Gopal Reddy boarding the auto at Ashok Talkies area along with them. The evidence of PW2 shows that the accused drove the auto at a high speed at the time of the accident and dashed against a stationed jeep

and that after the accident, all the passengers in the auto fell down from the auto and that PW2 had also sustained injuries in the said accident. According to her version, Gopal Reddy sustained a bleeding head injury and that he was shifted to the hospital and that later, she came to know that the deceased Gopal Reddy had succumbed to the injuries while receiving treatment in the hospital. In her evidence, it was elicited that Machanpally village is not connected by direct bus from Mahabubnagar and that the deceased Gopal Reddy was going to see his daughter who was given in marriage at Machanpally. PW3 had supported the version of PW2 in all respects. According to him, he along with his wife LW4-Vilavath Durgamma and his children had boarded the auto at Ashok Talkies to go to Kodur village. He had also identified the accused as the driver of the crime vehicle. He had stated that after crossing Bokanonipally village, the driver of the crime vehicle drove the vehicle at a high speed in spite of a word of caution to drive the auto at a slow speed and that on seeing an RTC bus coming from the opposite side, he had advised the accused-driver to stop the auto, but the driver did not listen to his words and had dashed against the jeep which was stationed ahead of the crime vehicle and that in the said accident, Gopal Reddy had sustained severe injuries. PW4 is the panch witness who was said to have been present at the time of the inquest that was held over the dead body of the deceased, Gopal Reddy. In his evidence, the inquest report was exhibited as exhibit P2. PW5 is the Motor Vehicle Inspector who had inspected the crime vehicle and gave a report opining that the accident was not due to any mechanical defect of the vehicle. Exhibit P3 is the MVI's report. PW7 is the Medical Officer, who had conducted autopsy over the dead body of the deceased. He had stated that the death of the deceased was due to multiple injuries and multiple ribs fractures and injuries to both the lungs and the brain leading to hemorrhage and shock. The PM Report of the deceased Gopal Reddy is exhibit P5. PW8 is the Assistant Sub Inspector of Police who had registered the crime, conducted investigation and laid the charge sheet. Exhibit P6 is the original FIR.

6. (c) Thus, I have analytically and carefully examined the evidence on

record. The evidence on record sufficiently established that the accused drove the crime auto at the time of the accident in a rash and negligent manner and at a high speed and dashed against the stationed jeep and that as a consequence of his rash and negligent act, the deceased Gopal Reddy who was one of the passengers in the auto had sustained grievous injuries and had succumbed to the injuries while undergoing treatment in the hospital. Therefore, it follows that the accused is guilty of the offence punishable under Section 304-A of the IPC.

6. (d) However, before parting with the case, it is necessary to mention that the learned counsel for the petitioner/accused had vehemently contended that the evidence adduced is not sufficient to come to a safe conclusion that the accused is the driver of the crime vehicle at the time of the accident and that in any view of the matter, there is no evidence to show that the driver of the vehicle drove the auto at the time of the accident, at a high speed and in a rash and negligent manner. He would further contend that the testimonies of the witnesses are interested testimonies and that the courts below had failed to take note of the discrepancies in regard to the contents of the FIR and the statement of PW1 recorded under Section 161 of the CrPC and the evidence of PW8, which would lay bare that the accused was not the driver of the auto and that he was falsely implicated in the crime. He had also urged that the name of the accused was not shown in the FIR as the driver of the subject auto and that if really, the accused was the driver of the auto, he too, would have sustained injuries in the accident. But, the fact that he did not sustain any injuries in the accident would show that he was not driving the auto at the time of the accident.

6. (e) On the other hand, the learned Public Prosecutor had contended that the evidence of PWs 2 and 3 who had traveled in the auto as passengers at the time of the accident is sufficient by any standards to come to a safe conclusion that the prosecution established its case beyond all reasonable doubt against the accused for the offence punishable under Section 304-A of the IPC. He had pointed out that PW2 stated in her evidence that she had sustained minor injuries and that she had received

treatment in the village and that the evidence of PW3 corroborates the testimony of PW2 in all respects and that therefore, the evidence of the said witnesses is sufficient to base a conviction and that there is no merit in the contentions of the accused raised in this revision and the revision is devoid of merit and is liable to be dismissed.

6. (f) Coming to the contention that the accused did not sustain any injuries and that therefore, he is not the driver of the auto which was involved in the accident, it is to be noted that no record is placed before the Court about the accused sustaining or not sustaining any injuries. Whether the accused had sustained injuries or not is not the sole determinative factor and it cannot be a ground to hold that he is not the driver of the crime vehicle. PWs 2 and 3 have categorically deposed about the manner of the accident and had identified the accused as the driver of the crime auto at the time of the accident. Though they have identified the accused for the first time in open court, the fact is that they have traveled in the same auto driven by the accused for a considerable distance. It is also in the evidence of PW3 that he had advised the driver of the auto to drive cautiously and that he even asked him to stop the auto on seeing an RTC bus coming from the opposite direction. Therefore, from the evidence, it is clear that this witness had conversed with the driver of the auto during the course of journey and till the auto met with an accident. In this case, the owner of the auto could not be examined as he had died.

6 (g) Coming to the discrepancy in the exhibit P1 report, it is necessary to refer to exhibit D1. In exhibit D1, PW1 had stated that 'yesterday on 05.05.2005 during morning time, his deceased father had left the village to see his daughter Rukminamma.....'. Placing reliance on exhibit D1, it was sought to be contended that exhibit P1 was lodged on 06.05.2005 and not on 05.05.2005, referring to the words, i.e., 'yesterday on 05.05.2005'. It is true that instead of stating today, i.e., 05.05.2005 the above words 'yesterday on 05.05.2005' were employed in the report. Therefore, it is contended that this discrepancy is fatal to the case of the prosecution and is

sufficient to come to a conclusion that the accused was falsely implicated in the crime. PW8, the Investigating Officer admitted that PW1 stated as in exhibit D1, but had denied the suggestion that PW1 lodged complaint on 06.05.2005 and had asserted that at 8 PM on 05.05.2005, PW1 had filed exhibit P1 complaint and later he had examined PW1 at the police station and had recorded his statement under Section 161 of the CrPC. In the well-considered view of this court, this discrepancy in regard to the time/date of lodging of the report by PW1 is not a material discrepancy and the same does not affect the credibility of the account of the accident given by the eye witnesses, PWs 2 and 3, about the time and manner of the accident. Viewed thus, this Court finds that there is no illegality or irregularity or impropriety in the judgments of the courts below finding the accused guilty of the offence with which he was charged. The points are accordingly answered in favour of the prosecution and against the accused.

6. (h) Coming to the quantum of sentence, the learned counsel for the petitioner/accused had alternately contended that the sentence of imprisonment of one year is on a high side and that the accused is a poor auto driver aged about 45 years and that he is having wife and children who are dependent upon him and that he is the sole bread winner of the family and therefore, a lenient view may be taken and the sentence may be reduced to one already undergone. However, taking into consideration the manner of the accident, which had resulted in the death of one person, this Court is not inclined to reduce the sentence to a bare minimum of few weeks which the accused had already undergone. However, taking into consideration the extenuating and mitigating circumstances and the explanatory statement offered on behalf of the accused, this court is of the well-considered view that the sentence can be modified and reduced to one month while confirming the fine amount imposed for both the offences by the courts below.

7. Accordingly, the Criminal Revision Case is dismissed. However, the substantive sentence of simple imprisonment of one year imposed on the petitioner is modified and reduced to one month simple imprisonment while maintaining the fine amounts imposed. The accused is entitled to the benefit

of set off. It is submitted that the accused is at large being on bail. Therefore, the accused is directed to surrender before the trial Court within two weeks from the date of the receipt of a copy of this order. On failure of the accused to do so, the trial Court shall take steps for his apprehension and send him to prison for serving the remaining period of sentence.

Miscellaneous petitions, pending if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

19th January 2015
RAR