

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

Criminal Revision Case No.439 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 07.03.2007 of the learned III Additional Sessions Judge, Karimnagar passed in Criminal Appeal No.63 of 2007.

2. By the judgment dated 09.04.2007 passed in C.C.No.419 of 2002, the learned Judicial Magistrate of First Class, Sircilla found the accused guilty of the offence punishable under Section 304-A of the Indian Penal Code and had convicted him of the said offence and sentenced him to undergo simple imprisonment for a period of six months and pay a fine of Rs.1,000/- and suffer simple imprisonment for a period of three months in default of payment of the said fine amount. The before mentioned 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 23.06.2002, PW1-Thalla Chinna Balaraj Goud, who is a resident of Sheribheebhept of Dhomakonda Mandal came along with family members and elders to Samudralingapur village to attend the marriage of his brother-Thalla Anjaiah. On the same day, at about 04.30 PM, the deceased boy, who is son of PW1 and who is aged about seven years was proceeding on the road at the village bus-stop for taking water. While so, one lorry bearing No. API 2574, coming from Sircilla and proceeding towards Kamareddy, being driven by its driver/the accused at a high speed and in a rash and negligent manner dashed against the deceased boy and the wheel of the lorry ran over his body. As a result, the deceased boy died on the spot having succumbed to the injuries sustained in the accident. LW4-Anna Ramagoud, PW3-Jangam Ramagoud and PW4-

Mohammedd Sharfuddin had witnessed the accident. PW1, who was busy with the marriage works having come to know of the accident, came along with his wife and brother to the spot. Having noticed that his son had died in the accident, he had lodged a report with the Station House Officer, Gambhiraopet Police Station. During the course of the investigation, inquest was held over the dead body of the deceased and thereafter, the dead body was sent to the Government Area Hospital, Sircilla for post mortem examination. On the requisition of the police, the Motor Vehicle Inspector, Sircilla had inspected the lorry involved in the accident and had issued his report. The Medical Officer, Government Area Hospital having conducted autopsy over the dead body of the deceased issued a Post Mortem Examination report opining that the cause of death is shock and haemorrhage as a result of injuries to chest and abdomen. The accused lorry driver was arrested on 25.06.2002. On completion of the investigation, the charge sheet was laid.”

4. During the course of trial, PWs 1 to 9 were examined and exhibits P1 to P8 were marked. No oral and documentary evidence was adduced on the side of the defence.”

5. 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.

6. 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?

7. **POINTS:**

7. **(a)** The learned counsel for the petitioner/accused contended as follows: 'The courts below had erred in accepting the evidence of PWs 1 to 3 though they are not the eye witnesses to the accident. The prosecution had failed to examine any witness who had witnessed the accident to prove the complicity of the accused. PW4 was inside a hotel at the time of the accident. Therefore, there was no possibility for him to witness the accident. His evidence that he had witnessed the accident is not credible and is liable to be rejected. The prosecution had failed to prove by adducing the required standard of evidence, the complicity of the accused. The evidence adduced on record does not show that the prosecution had established by necessary evidence attracting the ingredients of the penal provision warranting conviction of the accused. There is no evidence that the accused was under intoxication at the time of the accident. Therefore, the courts below had erred in holding that the accused was the driver of the crime vehicle and that he was in an intoxicated condition at that time and that he drove the vehicle in a rash and negligent manner and had caused the accident. The courts below ought to have rejected the photographs of the scene of offence taken at the instance of the police by PW2 as the same do not depict the actual situation at the scene of the accident.'

7. **(b)** On the other hand, the learned Public Prosecutor had contended that the evidence of PWs 3 and 4 is sufficient by any standards to come to a safe conclusion that the prosecution had established its case beyond all reasonable doubt against the accused for the offence punishable under Section 304-A of the IPC 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 that the revision is devoid of merit and is liable to be dismissed.

7. **(c)** 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. PW1 is not an eye witness to the accident. As per the exhibit P1, report lodged by PW1 with the police, he was busy in the house with the marriage works by the time of the accident, and that, having come to

know of the involvement of his son in the accident, he had rushed to the scene along with his wife and his younger brother and found that his son had died having sustained a head injury and other injuries in the accident. Therefore, a perusal of the material record would show that PWs 1 and 2, who are the parents of the deceased boy were busy with the marriage works at the house and were not present at the scene at the time of the accident.

Though PWs 1 and 2, the parents of the deceased boy, have stated to the effect that they had witnessed the accident, their evidence in that regard cannot be countenanced in view of the recital in exhibit P1. Be that as it may, in exhibit P1, it is stated that the elder brother Jangam Ramagound and one Mohammed Sharfuddin had witnessed the accident. The said witnesses were examined as PWs 3 and 4. **PW3** had testified as follows: 'About three years back, at about 4 PM, when I was in the hotel, the deceased boy, Talla Nagaraju Goud, was on the road side after taking water from the hotel. Meanwhile, a lorry bearing No. API 2574 proceeding from Sircilla side towards Kamareddy came in a rash and negligent manner and dashed the deceased boy. As a result, the boy fell down on the ground and the lorry ran over his body. He had sustained grievous injuries and had died on the spot.

The incident was witnessed by PWs 1 and 2 and others who are present at the scene.' During the course of his evidence, he had identified the accused by his name as the driver of the lorry. In his cross-examination, he had asserted that he came to the house of Narsa Goud at that village along with others and that the said house of Narsa Goud is at a distance of 100 yards from the scene of offence and that he had informed the police that the parents of the deceased were also present at the scene of offence and that at the time of the incident, the parents of the deceased were present on the road side. When it was suggested to him that PWs 1 and 2 are his caste-men and they are not his relatives, he had denied the said suggestion. He had denied the further suggestions that the accident had not happened on the road and that he is deposing falsely to help the parents of the deceased boy to get some compensation. **PW4** also had testified to the effect that the crime lorry came in a rash and negligent manner and dashed the deceased boy and that as a result the deceased had sustained injuries and had died. He had further

testified that at that time, the lorry was transporting cattle and that he can identify the driver of the crime lorry if shown to him. However, the witness could not identify the accused as the driver of the crime lorry. While stating that his vision is poor and that he cannot identify the driver of the lorry, he had wrongly identified another person present in the court as the driver instead of identifying the accused as the driver. In his cross-examination, he had stated that the hotel is located near bus-stand and that he was informed by public the name of the driver as Mazhar and that they had also caught hold of the driver. When it was suggested to him that he did not witness the incident and that he is deposing false, he had denied the said suggestions. It was further elicited in his cross-examination that he can see up to a distance of 15 yards. Though PW3 had stated that the parents of the deceased boy were present at the scene at the time of the accident, his evidence cannot be countenanced in that regard. The only contention of the accused is that since PW3 is present in the hotel, it is not possible for him to witness the accident. However, his evidence shows that the deceased boy was on the road side after taking water from the hotel and that in the meanwhile, a lorry came in a rash and negligent manner from Sircilla side and dashed the deceased boy. He had identified the accused as driver of the crime lorry. PW4 had also stated that he was informed by the public present that one Mazhar is the driver. He had also stated that the persons present there caught hold of the driver. Even if the evidence of PWs 1 and 2 is to be excluded from consideration in the circumstances urged by the learned counsel for the accused, there is evidence of PWs 3 and 4 on record, which is sufficient to come to a safe conclusion that the accused was the driver of the crime lorry and that he drove the lorry in a rash and negligent manner at the time of the accident and had caused death of the deceased boy by his rash and negligent acts. **PW6** is the mediator who is said to have been present at the time when the inquest was held on the body of the deceased. Exhibit P4 is the crime detail form with rough sketch and a perusal of the same would show that the dead body of the deceased was lying at a distance of 10 feet from the high school and that the crime lorry was stopped at a distance of 125 yards away from the incident and that the place of incident is a place near the

Z.P. High School and the bus shelter on the main road running from Kamareddy to Sircilla. Having regard to the evidence on record, this Court is of the considered view that there is no merit in the contentions advanced on behalf of the accused and that the contention that there is no required standard of evidence to base a conviction is untenable. Therefore, on a careful examination of the evidence on record, this Court is satisfied that the findings of the courts below are correct, legal and proper and are therefore, sustainable under facts and in law.

6. (d) Coming to the measure of sentence, the learned counsel for the accused had alternately contended that the accused was aged about 33 years in the year 2008 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 that if he is sentenced to a long term of imprisonment, not only his future but also the future of his children would be ruined and that therefore, a lenient view may be taken and the sentence may be reduced to one already undergone. Having regard to the mitigating and extenuating circumstances and the explanatory statement offered on behalf of the accused, this court deems it just and proper to modify and reduce the sentence, but not to one already undergone.

7. Accordingly, the Criminal Revision Case is dismissed. However, the substantive sentence of simple imprisonment of six months imposed on the petitioner is modified and reduced from six months to simple imprisonment for one month while maintaining the fine amount imposed by the Court below. 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.

12th February 2015
RAR

M. SEETHARAMA MURTI, J