

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.388 OF 2007

JUDGMENT:

This Criminal Appeal is filed by the appellant/P.W.2 by invoking the provision under Section 351(1) of the Criminal Procedure Code (for short 'Cr.P.C.'), against the order, dated 26.03.2007, passed in Cr1.M.P.No.3 of 2007, by the IV Additional District & Sessions Judge-cum-Chairman Motor Vehicles Accident Tribunal (Fast Track Court), Nizamabad, whereunder and whereby proceedings were initiated under Section 344 Cr.P.C. against the appellant/P.W.2 and the appellant/P.W.2 was sentenced to undergo Simple Imprisonment for a period of three (3) months and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for a period of seven (7) days.

2. Proceedings were initiated by the IV Additional District & Sessions Judge (FTC), Nizamabad, under Section 344 Cr.P.C., dated 10.10.2007, against Dr.L. Ramulu, S/o. Laxman, running Deepa Ortho Hospital, who was examined as P.W.2 in O.P.No.38 of 2003, on the file of the IV Additional District & Sessions Judge (FTC), Nizamabad.

3. The brief facts, that are necessary for the disposal of the present Criminal Appeal, may be stated as follows:

Kodithyala Lingaiah filed claim petition under Section 166(1)(A) of the Motor Vehicles Act read with Section 455 of the A.P. Motor Vehicles Rules claiming compensation for the alleged injuries sustained by him in a motor vehicle accident which took place on 16.07.2002 at about 10.30 p.m. at Mallaramgandi on Nizamabad to Varni road. The same was registered as O.P.No.38

of 2003. At the stage of trial, the Chairman, Motor Vehicle Accident Tribunal-cum-Principal District Judge transmitted the case to the IV Additional District & Sessions Judge (FTC), Nizamabad. The petitioner in O.P.No.38 of 2003 was examined as P.W.1 on 26.08.2006. He filed wound certificate issued by Dr.L.Ramulu mentioning that P.W.1 had sustained following injuries:

1. Fracture left femur
2. Abrasion left wrist measuring 2x2 cms.
3. Laceration fore head 6x2x2 cms.

It is also mentioned in the wound certificate the age of the injuries is 1 to 6 hours and P.W.1 was admitted on 16.07.2002 and discharged on 30.07.2002. The time of examination was mentioned in the wound certificate was 12.00 p.m. on 16.07.2002.

P.W.1 got filed a petition to summon Dr.L.Ramulu, who treated and issued Ex.A-3 – wound certificate. The trial Court issued summons to Dr.L.Ramulu. On receipt of summons, Dr.L.Ramulu appeared and examined as P.W.2. He produced the case sheet which was marked as Ex.A-9 on 15.09.2006. He stated in his evidence that on 01.07.2002, he examined K.Lingaiah, who was admitted in his hospital with non-union fracture left femur. He conducted operation on 02.07.2002, plate and screw fixation was done and he was discharged on 13.07.2002. He produced the case sheet and stated that it belongs to P.W.1. He further stated that on 01.09.2006, he examined P.W.1 and issued disability certificate for non-union fracture left femur and assessed disability 50%. He also stated that he issued Exs.A-3, A-4, A-5 & A-8. P.W.2 was examined in chief on 15.09.2006 and cross-examination

was deferred at request of the learned Standing Counsel for Insurance and the matter was adjourned to 21.09.2006. Finally, on 31.10.2006, P.W.2 was cross-examined by the learned Standing Counsel for Insurance. In the cross-examination, P.W.2 has changed the version mentioning that he cannot state whether the person who treated under Ex.A-3 and Ex.A-9 is one and the same. On closure of the evidence in O.P.No.38 of 2003, this Court has considered all relevant documents in the file and dismissed the O.P. P.W.2 has produced Ex.A-9 – case sheet before the trial Court while he was deposing evidence and he deposed that P.W.1 had non-union fracture of left femur.

4. Heard both sides and perused the material available on record.

5. The appellant herein, being a witness before the trial Court in O.P.No.38 of 2003, while deposing before the trial Court, marked a document as Ex.A-9 and after his chief-examination, the case was adjourned for cross-examination and during the cross-examination, the learned trial Judge found that there is an alteration in Ex.A-9 and the said alteration was made only with an intent to support his evidence and whereby he committed an offence of perjury. Hence, proceedings were initiated against him by the trial Court under Section 344 Cr.P.C.

6. From the perusal of the record, it is evident that the trial Court has issued a show cause notice to the appellant which clearly indicates the fact that the show cause notice is issued only in connection with alteration of Ex.A-9 – case sheet, which was marked during the course of chief examination, but the said Ex.A-9 was admittedly in the custody of the trial Court where the

said O.P. was pending. There is absolutely no evidence before the trial Court that the appellant herein is the person who made the alteration in Ex.A-9 document. The trial Court proceeded further on the premise that the alteration in Ex.A-9 was with an intent to help the appellant herein and the appellant is liable to be prosecuted for the perjury by invoking the provision under Section 344 Cr.P.C.

7. The trial Court observed that to cover the mistake, the appellant wantonly struck off the term "Non union" in Ex.A-9 - case sheet which was only helpful to him and not to anybody. The explanation submitted by the appellant also clearly shows his culpability. Therefore, the explanation submitted by him is false and not satisfactory and found guilty of perjury and the same was informed to the appellant accordingly about the perjury proved against him and proceedings were initiated under Section 344 Cr.P.C. and accordingly, the appellant was convicted for the said perjury.

8. Taking into consideration the facts and circumstance of the case, this Court is of the view that unless and otherwise there is evidence to say that the appellant is the person who altered Ex.A-9, conviction would not sustain. Hence, the conviction imposed by the trial Court is hereby set aside. If it is the case of the prosecution that not only the document, but he has given evidence contrary to the chief examination, that itself would not amount to perjury as the evidence was adduced by the appellant herein as an expert, he can be invited to answer in the cross-examination where there is a possibility of variation from the evidence adduced in the chief examination and cross-examination.

Hence, in any event the conviction and sentence imposed by the trial Court against the appellant are liable to be set aside and the appellant/P.W.2 is entitled for acquittal.

13. In the result, the Criminal Appeal is allowed by setting aside the conviction and sentence imposed by the IV Additional District & Sessions Judge (FTC), Nizamabad, against the appellant/P.W.2 for the offence of perjury, vide order, dated 26.03.2007, rendered in Crl.M.P.No.3 of 2007. The appellant/P.W.2 is acquitted for the above said offence. Fine amount paid, if any, shall be refunded to the appellant/P.W.2. Bail bonds shall stand cancelled and the sureties are discharged. Miscellaneous petitions, if any, shall stand closed.



RAJA ELANGO, J

Date: 29th September, 2016

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