

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.726 of 2008

ORDER:

1 This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the judgment dated 06.05.2008 passed in Criminal Appeal No.27 of 2007 by the learned District and Sessions Judge Visakhapatnam wherein and whereby the learned District Judge, confirmed the finding of the learned I Additional Judicial Magistrate of I Class, Yellamanchili in C.C.No.440 of 2003 that the petitioner was found guilty for the offence punishable under Section 304-A of IPC sentenced him to suffer simple imprisonment for one year and also to pay a fine of Rs.1,000/- in default, to suffer simple imprisonment for a period of two months.

2 The contention of the learned counsel for the petitioner is three fold.

1) Even as per the testimony of P.W.1, there was no rashness or negligence on the part of the petitioner while driving the lorry and that aspect was not considered by the Courts below in right perspective, 2) The Courts below ought not to have passed conviction basing on the sole testimony of P.W.1 who is an interested witness, and 3) The findings recorded by the Courts below are perverse as the same are based on the evidence which is not legally admissible evidence.

3 *Per contra*, the learned Public Prosecutor submitted that the testimony of P.W.1 is corroborated by the testimony of P.Ws.3 and 5 who are independent witnesses. He further submitted that the Courts below have assigned cogent and valid reasons to its findings, therefore, there are no grounds to interfere with judgments of the Courts below and the present Revision Case is liable to be dismissed.

4 The case of the prosecution in nutshell is as follows:

On 06.07.2003 at about 4.00 AM, Sunkari Govindu (P.W.1) along with his sister-in-law by name Nagalakshmi were proceeding from Cheemalapalli village to Atchuthapuram on a cycle. When they reached

Kandapureddy Appalanaidu photo studio near Atchuthapuram junction, the petitioner while proceeding from Visakhapatnam to Hyderabad, had driven the lorry bearing No.AP 16 TU 158 in a rash and negligent manner and dashed the cycle of P.W.1 from behind. Due to the accident, P.W.1 and Nagalakshmi (hereinafter be referred to as 'the deceased') fell down from the cycle and the lorry ran over the deceased causing her instantaneous death. Basing on the complaint of P.W.1, PVVSN Krishna Rao-Sub-Inspector of Police Atchuthapuram Police Station (P.W.8) registered a case in Cr.No.55 of 2003 for the offence punishable under Section 304-A of IPC against the petitioner and issued First Information Report (Ex.P.13). P.Ws.3 and 5 have witnessed the incident. During the course of investigation P.W.8 prepared scene of offence Panchanama (Ex.P.11) in the presence of P.W.6. P.W.8 also conducted inquest over the dead body of the deceased in the presence of P.Ws.7 and others and prepared inquest panchanama (Ex.P.12). P.W.9 – Dr. B. Suseela conducted autopsy over the dead body of the deceased and issued Post-Mortem report (Ex.P.15). P.W.10 – Motor Vehicles Inspector inspected the crime lorry and issued Ex.P.16 certificate stating that there was no mechanical defect in the lorry at the time of accident. After completion of investigation P.W.8 laid the charge sheet against the petitioner for the offence under section 304-A of IPC. The learned I Additional Judicial Magistrate of I Class, Yellamanchili has taken the case on file under Section 304-A of IPC and numbered it as C.C.No.440 of 2003.

5 To bring home the guilt of the petitioner for the offence punishable under section 304-A of IPC, on behalf of the prosecution P.Ws.1 to 10 were examined and Exs.P.1 to P.16 were marked. On behalf of the defence, no oral or documentary evidence was adduced.

6 After having a thoughtful consideration to the oral and documentary evidence available on record, the learned I Additional Judicial Magistrate of I Class, Yellamanchili arrived at a conclusion that the petitioner was guilty for the offence punishable under Section 304-A of IPC and accordingly convicted and sentenced him to suffer simple imprisonment

for one year and also to pay a fine of Rs.1,000/- in default, to suffer simple imprisonment for a period of two months. Feeling aggrieved by the said conviction and sentence imposed by the trial Court, the petitioner preferred Criminal Appeal No.27 of 2007 on the file of the District and Sessions Judge Visakhapatnam. The District and Sessions Judge, after re-appreciating the oral and documentary evidence, came to the conclusion that the petitioner committed the offence punishable under Section 304-A of IPC and confirmed the conviction and sentence imposed by the trial Court. Hence the present Criminal Revision Case.

7 Now the points for determination in the Criminal Revision Case are:

A. "Whether the prosecution proved the guilt of the petitioner for the offence punishable under Section 304-A of IPC or not?

B. Whether the findings recorded by the Courts below are perverse warranting interference of this Court?"

POINTS 1 & 2:

8 Both the points are intertwined with each other and hence I am inclined to address these two points simultaneously in order to avoid recapitulation of facts of the case.

9 In order to appreciate the rival contentions, I feel it apposite to refer the case law on this aspect.

K. Chinnaswamy Reddy v. State of A.P.^[1],

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no

jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

In **State of Haryana Vs. Rajmal and Another**^[2] the apex Court held as under:

14. In *State of A.P. v. Pituhuk Sreeinvasa Rao* {(2000) 9 SCC 537} this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting concurrent finding of the facts cannot be accepted when it was without any reference, to the evidence on record or to the finding entered by the trial court and appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

15. It has been also held by this Court in *Amar Chand Agarwala v. Shanti Bose and Anr.* {(1973) 4 SCC 10} that the revisional jurisdiction of the High Court under Section 439 Code of Criminal Procedure is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice.

10 As per the principle enunciated in the cases cited supra, it has not been open for the High Court to interfere with the concurrent findings of the courts below especially by re-appreciating the evidence in its revisional jurisdiction.

11 Let me consider whether there is any legal flaw in the findings recorded by the courts below.

12 It is needless to say that to impose criminal liability under Section 304-A of IPC, it is necessary that the death should have been direct result of a rash and negligent act of the accused and that act must be proximate and efficient cause without intervention of the another's negligence.

13 As seen from the testimony of P.W.1, he submitted complaint to the Station House Officer, Atchuthapuram Police Station who in turn registered a case in Cr.No.55 of 2003 for the offence punishable under Section 304-A of IPC. As seen from the testimony of P.W.8, basing on

Ex.P.1 he issued Ex.P.13 FIR. There is no delay in lodging the complaint.

The oral testimony of P.W.4 reveals that he took photos of the scene of offence. The material available on record clinchingly establishes that P.W.1 set the criminal law in motion immediately after the accident. As per the testimony of P.Ws.1, 2, 3, 5 and 7, the deceased died due to the injuries sustained by her in a road accident that occurred on 06.07.2003.

As seen from the testimony of P.W.9 she conducted autopsy over the dead body of the deceased and issued Ex.P.15 Post-Mortem report. As per the testimony of P.W.9 the deceased died due to head injury. As per the oral testimony of P.W.8, he conducted inquest over the dead body of the deceased in the presence of P.W.7 and prepared Ex.P.12 inquest report. The panchayatdars opined that the deceased died of injuries sustained by her in the road accident. By examining P.Ws.1, 2, 4, 5, 7 and 9 and marking Exs.P.3 to P.10, P.12 and P.15, the prosecution clearly proved that the deceased died in the road accident that occurred on 06.07.2003.

14 As per the testimony of P.Ws.1, 2, 4, 5 and 6, the accident occurred near Atchuthapuram junction. As per the oral testimony of P.W.8 he prepared scene of panchanama Ex.P.11 in the presence of P.W.6. The testimony of P.W.6 clearly reveals that P.W.8 prepared scene of offence panchanama in his presence. The oral testimony of P.Ws.6 and 8 coupled with Ex.P.11 clearly reveals that the accident occurred at Atchuthapuram junction. There is no dispute with regard to the identity of the scene of offence. As seen from the testimony of P.W.10, he inspected the crime lorry bearing No.AP 16 TU 158 and issued Ex.P.16 report stating that the accident was not due to any of the mechanical defects in the crime lorry.

15 The next question that falls for consideration is 'Whether the petitioner had driven the lorry in a rash and negligent manner, which resulted in the death of the deceased?'

16 As seen from the testimony of P.W.1 on the date of accident at about 3.00 PM himself and his sister-in-law Nagalakshmi were proceeding on a

cycle to Atchuthapuram in order to ascertain whether mason work is available or not. His evidence further reveals that when they reached Appalanaidu photo studio, the petitioner drove the lorry in a rash and negligent manner and dashed the cycle from behind. As seen from the testimony of P.Ws.3 and 5 immediately after the accident they rushed to the scene of offence and found the lorry bearing No.AP 16 TU 158 at the scene of offence. The deceased died on the spot. P.W.3 is the owner of photo studio. P.W.5 is running a medical shop near the scene of offence. The accident occurred on the main road in front of the shops of P.Ws.3 and 5. As per the testimony of P.Ws.3 and 5, the place of accident is a busy locality. A perusal of the scene of offence observation report Ex.P.11 and rough sketch of scene of offence Ex.P.14 and the photos Exs.P.3 to P.9 clearly reveals that the place of accident is a busy locality.

17 The learned counsel for the petitioner strenuously submitted that P.W.1 himself has turned the cycle without giving any indication which resulted in the accident. The learned counsel for the petitioner submitted that the accident occurred due to the negligence of P.W.1 and there was no negligence on the part of the petitioner.

18 The Court has to take into consideration the testimony of a witness in entirety in order to ascertain the truthfulness or otherwise of the version put forth by the prosecution. It is settled principle of law that the findings of the court should not be based on a stray sentence either in the chief examination or cross examination of a witness. It is not elicited in the cross examination of P.Ws.1, 3 and 5 that the petitioner was not the driver of the lorry bearing No.AP 16 TU 158 at the relevant point of time. The fact remains that the petitioner dashed the cycle of P.W.1 from its behind. As seen from the evidence of the prosecution witnesses, the accident occurred on the road leading from Yallamanchili to Atchuthapuram B.T. road. The width of the road is 20 feet at the scene of offence. It is a known fact that the vehicular traffic will be heavy in the busy locality. It is the duty of the driver of the vehicle to visualize the vehicular movement more particularly, in a busy locality so as to avert accident. There is every

possibility for the petitioner to observe P.W.1 who is proceeding ahead of his lorry. Had the petitioner taken reasonable care and caution, there is every possibility for him to avert the accident. The driver of the vehicles particularly heavy vehicles has to maintain reasonable distance. Therefore, if the petitioner has acted like an ordinary prudent man, there is every possibility for him to avert the accident in view of the recitals of Exs.P.11 and 14.

19 In the cross-examination of P.W.1 nothing is elicited to shake his testimony so far as negligent act of the petitioner is concerned. The oral testimony of P.W.1 is supported by the oral testimony of P.Ws.4 and 5 so far as the manner of accident is concerned. There is no inherent infirmity in the testimony of P.W.1 so as to discard the same. The testimony of P.W.1 inspires the confidence of the Court so far as the manner of accident and the negligent act of the petitioner is concerned. The trial Court scrutinized the oral and documentary evidence meticulously in order to ascertain whether the prosecution has established the guilt of the petitioner for the offence under Section 304-A of IPC. The findings recorded by the trial Court are based on sound reasoning. The appellate Court without being influenced by the findings recorded by the trial Court, has re-appreciated the oral and documentary evidence in right perspective and came to the conclusion that the prosecution established the guilt of the petitioner for the offence punishable under section 304-A of IPC. The findings recorded by both the courts below are supported by the evidence more so legally admissible evidence.

20 Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the courts below are perverse. There is no legal flaw in the findings recorded by the Courts below warranting interference of this Court. I am in complete agreement with the findings recorded by the Courts below.

21 The learned counsel for the petitioner submitted that the accident took place about 13 years back and hence some lenient view may be taken with regard to imposition of punishment on the petitioner.

22 No doubt, the accident occurred on 06.07.2003. The petitioner might have undergone lot of mental agony while attending the trial Court as well as the appellate court. By the date of accident the petitioner was aged about 28 years. So by now he must be aged 41 years. The petitioner has to look after the welfare of his family members. The petitioner is the only bread winner of his family.

23 Taking into consideration the facts and circumstances of the case I am of the considered view that it is a fit case to reduce the quantum of sentence.

24 In the result, the Criminal Revision Case is allowed in part. However, the sentence of simple imprisonment for a period of one year as imposed by the Courts below against the petitioner is reduced to that of six months. However, the imposition of fine amount of Rs.1,000/- is maintained. The bail granted to the petitioner by order dated 14.05.2008 of this Court shall stand cancelled and the petitioner is directed to undergo the remaining period of sentence, if any. The trial Court is directed to take steps to see that the petitioner shall undergo the remaining period of sentence. As a sequel, miscellaneous petitions, pending in this Criminal Revision Case, if any, shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 15-03-2016

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[\[1\]](#) AIR 1962 SC 1788

[\[2\]](#) (2011) 14 SCC 326