

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

Criminal Revision Case No. 1130 of 2007

Judgment:

This Criminal Revision Case is directed against the judgment, dated 05.07.2007, passed in Criminal Appeal No. 47 of 2006 by the learned II Additional Sessions Judge, Nalgonda, at Suryapet, whereby and whereunder the learned Sessions Judge confirmed the conviction and sentence imposed against the revision petitioner/accused for the offences punishable under Section 304-A IPC and Section 187 read with 134 of the Motor Vehicles Act (for short 'the Act'), by the learned Judicial Magistrate of First Class, Suryapet, in CC No. 785 of 2003, dated 08.02.2006.

2. The case of the prosecution, in brief, is that on 31.10.2003 at about 3.00 PM, the *de facto* complainant (PW.1) and his father namely Pajjuri Pedda Ramulu (deceased) were returning to their house in Namavaram stage from their agricultural lands on Khammam – Suryapet road and while the deceased was crossing the road at Namavaram stage, a DCM Van bearing registration No.AP-9W-801, driven by the revision petitioner/accused in a rash and negligent manner, came and hit the deceased, due to which, he sustained head injury and died instantaneously. Based on Ex.P1 - report given by the *de facto* complainant, a case in Crime No.58 of 2003 was registered against the revision petitioner/accused and, after completion of investigation, the Sub-Inspector of Police, Mothey Police Station, Nalgonda District, filed charge sheet against the revision petitioner/accused for the offences punishable under Section 304-A IPC and Section 187 read with 134 of the Act.

3. The revision petitioner/accused was examined under Section 251 Cr.P.C., and he denied the allegations made against him in the

charge sheet and claimed to be tried.

4. During the course of trial, on behalf of the prosecution PWs.1 to 9 were examined and Exs.P1 to P9 were marked. On behalf of the accused none were examined and no documents were marked. The accused denied the incriminating material appearing against him in the evidence of prosecution witnesses.

5. The learned Magistrate, on consideration of the entire oral and documentary evidence on record, found the revision petitioner/accused guilty of the offences under Section 304-A IPC and Section 187 read with Section 134 of the Act and, accordingly, the revision petitioner/accused was convicted for the offence under Section 304-A IPC and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for a period of six months and he was also convicted for the offence under Section 187 read with Section 134 of the Act and sentenced to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of one month.

6. Aggrieved by the said conviction and sentence, the revision petitioner/accused filed Criminal Appeal No. 47 of 2006 and the learned Sessions Judge, by impugned judgment, dismissed the said appeal and confirmed the conviction and sentence passed by the lower Court. Hence, the revision petitioner/accused has filed the present revision case.

7. Learned counsel for the revision petitioner/accused submitted that both the Courts below have not properly appreciated the material on record. He further submitted that it is not known as to why the FIR was sent to the Court by post, when the dead body of the deceased and the crime vehicle were sent to Suryapet on 01.11.2003 itself. His further submission is that no blood stained clothes were seized from

the body of the deceased and the scene of offence do not show any blood stains. He further submitted that, absolutely, no material whatsoever has been produced by the prosecution to show that it is the revision petitioner/accused who drove the crime vehicle at relevant point of time and, in that view of the matter, both the Courts below have erred in holding the revision petitioner/accused guilty of the alleged offences.

8. On the other hand, learned Additional Public Prosecutor submits that the prosecution has placed the best possible evidence on record and that both the Courts below have properly appreciated the entire evidence on record and convicted the accused for the offences alleged, which do not warrant any interference of this Court.

9. Having perused the entire oral and documentary evidence on record and the findings of both the Courts below, I find myself not in agreement with them for the following reasons.

10. PW.1 is the son of the deceased. According to PW.1, the accident took place on 31.10.2003 at about 3.00 PM. He claims to be present by the side of the body of his father till the police reached the spot. He went to police station and lodged a complaint Ex.P1. But, a perusal of the evidence of PW.8 – Investigating Officer it falsifies the claim of PW.1 to that effect. According to the Investigating Officer, on 31.10.2003 at about 3.30 PM, while he was in the police station, PW.1 came to the police station and lodged Ex.P1 report, on the basis of which he registered a case in Crime No.58 of 2003 and issued FIR Ex.P8 and took up investigation. It is further noticed from the evidence of PW.1 that after the impact, the crime Van bearing registration No.AP-9-801 proceeded ahead to a distance of 30 yards and stopped there and, thereafter, the driver of the Van ran away from there. Therefore, he could not have any opportunity to see as to who was the driver of the crime vehicle at relevant point of time. Though, PW.1

stated in his chief examination that he can identify the driver of the DCM Van, if shown, but in his cross-examination he admitted that he has not seen the driver of the DCM Van as he was present by the side of the body of his father.

11. PW.2 is stated to be another son of the deceased and an eye witness to the incident. PW.2 also did not say about the person as to who was driving the DCM Van at relevant point of time. The only independent eye witness examined by the prosecution is PW.3 and he categorically stated that he cannot give the number of the DCM Van and he cannot identify the driver of the DCM Van. Therefore, the evidence of PWs.1 to 3 is not sufficient to connect the accused with the alleged crime. Except PWs.1 to 3, no other witness was examined to elicit the truth as to who was the driver of the crime vehicle at relevant point of time.

12. Apart from that, the scene of offence panchanama - Ex.P3 shows that the dead body of the deceased was lying on extreme left side of the road and the Van was stopped at a distance of 30 yards from there. No skid marks are noted in the scene of panchanama. Admittedly, the deceased died on the spot, having sustained bleeding injuries. No blood stains were found by the Investigating Officer near the scene of offence when he conducted scene of panchanama and before the dead body was shifted to the hospital.

13. Further, the inquest panchanama was conducted by the Investigating Officer in between 4.30 PM and 6.00 PM on 31.10.2003. Curiously, the dead body was received through a police constable by the hospital, which is at a considerable distance, for post-mortem examination at 5.30 PM on 31.10.2003, as is evident from the medical evidence on record.

14. The FIR was lodged at 3.30 PM on 31.10.2003 and the same

was received by the jurisdictional Magistrate on 03.11.2003, that too it was sent by post. The distance between the police station and the Court is not much, which makes the police to send the FIR of this nature by post, more particularly, when every day the Court constable will be going to attend the Court.

15. Further, the Motor Vehicle Inspector, who is examined as PW.7, has not inspected the crime vehicle at the scene of offence. According to him, the vehicle was shifted to his office at Suryapet and he examined the same at his office on 01.11.2003 at 4.00 PM and issued MVI report Ex.P7. From the particulars that were gathered from the MVI report, the name of the owner of the vehicle was mentioned and the driver of the vehicle was noted as accused. No other incriminating material appears to have been found in the crime vehicle. In order to connect a person driving a crime vehicle with the alleged crime, even in the absence of any oral or direct evidence of any eye witness, the best possible nexus in between the crime vehicle and the accused is a trip sheet, which is invariably supposed to be carried along with the crime vehicle. Admittedly, neither the Motor Vehicle Inspector nor the police officials have seized any such trip sheet so as to connect the accused with the crime vehicle.

17. As already stated, the evidence of PWs.1 to 3 is supposed to prove the guilt of the accused, but neither of them has identified the accused or the person who drove the vehicle at relevant point of time. Similarly, no documentary evidence is produced to show that the accused was driving the crime vehicle at relevant point of time.

18. In the circumstances, I am of the considered view that both the Courts below have failed to appreciate the material on record in proper perspective and erred in finding the accused guilty of the offences punishable under Section 304-A IPC and Section 187 read with Section 134 of the Act. Hence, the conviction and sentences passed

by both the Courts below against the revision petitioner/accused for the said offences cannot be sustained and the revision petitioner/accused is entitled for acquittal.

19. In the result, the Criminal Revision Case is allowed setting aside the impugned judgments. Consequently, the conviction and sentence passed by both the Courts below against the revision petitioner/accused stands set aside. The fine amount, if any, paid by the revision petitioner/accused, shall be returned to him.

20. As a sequel thereto, the miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

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M.S.K. JAISWAL, J.

Date: 07.01.2016
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