

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.722 of 2007

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. challenging the judgment dated 23.05.2007 passed in Criminal Appeal No.70 of 2006 by the II Additional District and Sessions Judge (FTC), Adilabad, wherein and whereby the learned Additional District Judge, while confirming the finding of the learned Judicial Magistrate of I Class, Luxitpet in C.C.No.1112 of 2004 that the petitioner was found guilty for the offence punishable under Section 304-A of IPC, but, however, reduced the quantum of sentence of one year, as imposed by the learned Magistrate, to that of six months.

2 The contention of the learned counsel for the petitioner is two fold. **1)** The findings recorded by both the Courts below that the petitioner was found guilty for the offence punishable under Section 304-A of IPC is not sustainable either on facts or on law as no body identified the petitioner being the driver of the crime vehicle at the relevant point of time. **2)** The findings recorded by the Courts below are not supported by evidence much less legally admissible evidence.

3 *Per contra*, the learned Public Prosecutor submitted that the findings recorded by the Courts below are fully supported by the oral testimony of P.Ws.1 to 4 who are the eyewitnesses to the incident. He further submitted that the Courts below have assigned cogent and valid reasons to its findings, therefore, there are no grounds to interfere with the well considered 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:

5 On 02.06.2004 at about 9.00 AM Adluri Sanjay (P.W.1) and his daughter Narmada (deceased) were waiting at Santapur village bus stop. At that time, the petitioner, while proceeding from Mancherial to Luxitpet, had driven the auto bearing No.AP 1 U 7232 in a rash and negligent

manner and dashed the deceased and dragged her to some distance. Immediately after the incident, P.W.1 and others shifted the deceased to Government Hospital, Luxitpet where the doctor declared her dead. Thereupon, P.W.1 set the criminal law in motion. P.W.6 conducted autopsy over the dead body of the deceased and issued Postmortem Examination Report. The Motor Vehicles Inspector inspected the crime auto and issued report to that effect. After completion of investigation, the Station House Officer, Luxitpet Police Station laid charge sheet against the petitioner for the offence under Section 304-A of IPC. The learned Judicial Magistrate of I Class, Luxitpet has taken the case on file under Section 304-A of IPC and numbered it as C.C.No.1112 of 2004.

6 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 9 were examined and Exs.P.1 to P.8 were marked. On behalf of the defence, no oral or documentary evidence was adduced.

7 After having a thoughtful consideration to the oral and documentary evidence available on record, the learned Judicial Magistrate of I Class, Luxitpet 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 rigorous imprisonment for one year and also to pay a fine of Rs.500/- in default, to suffer simple imprisonment for a period of one month. Feeling aggrieved by the said conviction and sentence imposed by the trial Court, the petitioner preferred Criminal Appeal No.70 of 2006 on the file of the Court of the II Additional District and Sessions Judge (FTC) Adilabad. The learned II Additional 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, however, reduced the quantum of sentence imposed by the trial Court from one year to six months. Hence the present Criminal Revision Case.

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

A . “Whether the concurrent finding of fact

recorded by the Courts below is perverse and not sustainable in law?

B. Whether there are any grounds to interfere with the findings recorded by the Courts below?"

POINTS 1 & 2:

9 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.

10 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.

11 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.

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

13 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.

14 As seen from the testimony of P.W.1, his daughter died due to the injuries sustained by her in the road accident that occurred on 02.06.2004. As seen from the testimony of P.W.5, police conducted inquest panchanama over the dead body of the deceased in their presence and prepared inquest panchanama - Ex.P.2. As per the testimony of P.W.7 the investigating officer, he conducted inquest over the dead body of the deceased in the presence of P.W.5 and others and prepared inquest panchanama - Ex.P.2. The oral testimony of P.Ws.5 and 7 is corroborated with each other with regard to the conducting inquest over the dead body of the deceased. The panchayatdars opined that the deceased died of injuries sustained by her in the road accident.

15 The testimony of P.W.6 reveals that on 02.06.2004 he conducted autopsy over the dead body of the deceased and issued Ex.P.4 – Postmortem Examination Report. As per the testimony of P.W.6, the cause of death of the deceased is due to cardio pulmonary arrest due to hemorrhage and shock. By examining P.Ws.5 to 7 and marking Exs.P.2 and P.4, the prosecution clearly proved that the deceased died of injuries

sustained in the road accident that occurred on 02.06.2004.

16 As per the testimony of P.W.5, P.Ws.7 conducted scene of offence panchanama in their presence and prepared Ex.P.3. His testimony further reveals that P.W.7 prepared rough sketch of the scene of offence - Ex.P.6. In the cross examination of these two witnesses, nothing is elicited to shake their testimony so far as preparation of Ex.P.5 scene of offence panchanama and Ex.P.6 rough sketch of the scene of offence. As per the recitals of Exs.P.5 and P.6, the incident took place near the Santapur village bus stop leading from Mancherla to Luxitpet of Adilabad district, which is on National High Way No.6. The auto bearing No.AP 1 U 7232 was seized at the scene of offence. As per the recitals of Ex.P.3, the bumper of the auto was damaged as the front portion of the auto hit the deceased. As per the recitals of Ex.P.3 blood stains were found at the scene of offence. By examining P.Ws.1 to 5 and marking Exs.P.1, P.2, P.3, P.5 and P.6, the prosecution has clinchingly established that the accident occurred at the bus stop of Shantapur village involving the auto bearing No.AP 1 U 7232.

17 The oral testimony of P.W.9 coupled with Ex.P.8 M.V.I report clearly reveals that there was no mechanical defect in the crime auto bearing No.AP 1 U 7232 at the relevant point of time.

18 The next question that arises for determination is whether the prosecution has established beyond all reasonable doubt that at the relevant point of time the petitioner had driven the auto bearing No.AP 1 U 7232 or not?

19 As per the version of the prosecution, P.Ws.1 to 4 are the direct witnesses to the incident. P.W.1 is none other than the father of the deceased. Therefore, the possibility of deposing false by P.W.1 cannot be ruled out completely. As per the testimony of P.Ws.2 to 4, P.W.1 and his daughter were standing near the bus stop of Shantapur village. At that time the petitioner had driven the auto bearing No.AP 1 U 7232 in a rash and negligent manner and dashed the daughter of P.W.1. As per the testimony

of P.W.1, himself and his daughter were waiting near the bus stop of Shantapur village for bus. In the meanwhile, the petitioner had driven the auto bearing No.AP 1 U 7232 in a rash and negligent manner and dashed his daughter. The testimony of P.Ws.1 to 4 clearly goes to show that the auto dragged the deceased to some distance and stopped. P.Ws.1 to 4 in unequivocal terms deposed that they have identified the petitioner when he stopped the auto at the scene of offence. At the time of recording of evidence in the Court, P.Ws.1 to 4 have identified the petitioner being the driver of the auto bearing No.AP 1 U 7232 at the relevant point of time. It is not positively elicited in the cross examination of P.Ws.1 to 4 that the petitioner was not the driver of the auto bearing No.AP 1 U 7232 at the time of accident. No suggestion was put to P.Ws.1 to 3 that at the relevant point of time the petitioner did not drive the auto bearing No.AP 1 U 7232. In the cross examination of P.W.4, denied the suggestion that the petitioner did not drive the crime vehicle. The very purpose of cross examination of a witness in criminal case is to demolish the version of the prosecution or to substantiate the stand of the defence so as to improbabilize the version put forth by the prosecution. There are no material contradictions or omissions in the testimony of P.Ws.1 to 4 which goes to the very root of the version of the prosecution thereby to discard their testimony.

20 Simply because P.W.1 happens to be the father of the deceased, by itself, is not a valid ground to discard his testimony in toto. Whatever deposed by P.W.1 is fully supported by P.Ws.2 to 4 who are independent witnesses. Nothing is elicited in the cross examination of P.Ws.2 to 4 that they deposed false against the petitioner due to previous animosity. The testimony of P.Ws.1 to 4 is corroborated with each other on all material aspects more particularly with regard to the identity of the petitioner. The testimony of these four witnesses inspires the confidence of the Court.

21 The trial Court had scrutinized the testimony of the prosecution witnesses meticulously and found the petitioner guilty of the offence punishable under Section 304-A of IPC. The appellate Court which reappraised the oral and documentary evidence had arrived at a

conclusion, independently, that the petitioner committed the offence punishable under Section 304-A of IPC. If the findings of courts below are not supported by any evidence or based on evidence which is not legally admissible, then those findings can be termed as perverse. The findings recorded by both the Courts below are supported by the oral and documentary evidence, more so, legally admissible evidence. There is no legal flaw in the findings recorded by the Courts below which warrant interference of this Court while exercising jurisdiction under sections 391 and 401 Cr.P.C. Viewed from factual or legal aspects, there are no grounds much less valid grounds to interfere with the findings recorded by the Courts below.

22 The learned counsel for the petitioner submitted that a lenient view may be taken and reduce the quantum of sentence imposed against the petitioner. It is settled principle of law that the sentence imposed shall commensurate with the gravity of the offence committed by the accused. In the instant case, due to the rash and negligent driving of the petitioner, the life of a girl came to end at the young age of 8 years. The appellate Court, while taking into consideration the socio economic conditions of the petitioner, has reduced the quantum of sentence from one year to six months. Taking into consideration the facts and circumstances of the case, I am of the considered view that it is not a fit case to further reduce the quantum of sentence as imposed by the appellate Court against the petitioner.

23 In the result, the Criminal Revision Case is dismissed. The bail granted by this Court on 06.06.2007 is hereby cancelled and the petitioner is directed to serve the remaining period of sentence, if any. The trial Court is directed to take steps in this regard. As sequel to dismissal of this Criminal Revision Case, miscellaneous petitions if any pending in this Criminal Revision Case shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date:09-03-2016

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

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