

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.976 OF 2008

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 01.07.2008, in CrI.A.No.26 of 2007, on the file of the District & Sessions Judge, Visakhapatnam, whereunder and whereby the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of one (1) year and also to pay a fine of Rs.1,000/-, in default to suffer Simple Imprisonment for a period of two (2) months for the offence punishable under Section 304-A IPC and the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of six (6) months and also to pay a fine of Rs.500/-, in default to suffer Simple Imprisonment for a period of one (1) month recorded in judgment, dated 03.07.2007, in C.C.No.169 of 2003, by the Judicial Magistrate of I Class, Yellamanchilli, was confirmed.

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

On 06.02.2003 at about 7.30 a.m., the accused driver of lorry bearing No.AP 16X 6599 drove his lorry in a rash and negligent manner and dashed against an auto bearing No.AP 31V 8676 at Lakkavaram junction and as a result the auto fell into a road side ditch and as a result P.W.1 – Nagireddi Suryanarayana, P.W.2 – Mylapalli Bhulaxmi and P.W.3 – Pera Someri, who were travelling in the auto received injuries and one Duli Appanna received severe injuries. Initially a case in Crime No.3 of 2003

under Sections 338 & 337 IPC was registered. Duli Appanna died while undergoing treatment and the FIR was altered to Sections 304-A & 337 IPC. The investigation done by the Sub-Inspector of Police, Yellamanchili Rural Police Station discloses that the incident occurred due to the rash and negligent driving of the accused and the accused is guilty of the offence punishable under Sections 304-A and 337 IPC.

3. The accused was examined under Section 251 Cr.P.C. and when the substance of accusation for offences under Sections 304-A & 337 IPC were framed, read over and explained to the accused, he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 to 13 and got marked Exs.P-1 to P-18.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the evidence of P.Ws.1 to 13. He denied the same. On behalf of the accused, no oral or documentary evidence was adduced.

6. The trial Court, after considering the evidence on record, found the accused guilty of the offences punishable under Sections 304-A & 337 IPC and sentenced him as stated above. On appeal, the said conviction and sentence was confirmed. Hence, the present Criminal Revision Case.

7. Now the point for determination is whether the judgment of the lower appellate Court is correct, legal and proper?

8. Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent and perused the material available on record.

9. P.W.1 deposed that on the date of the incident, he was travelling along with the deceased and others in the auto near Lakkavaram Junction and the auto had a turtle as the driver of the auto drove the auto to a side on seeing the lorry. He could not say as to how the lorry came in the opposite direction. He was declared as hostile by the prosecution.

10. P.W.2 deposed that she was also travelling in the auto and one lorry came in the opposite direction and dashed against the auto, as a result of which, the auto had a turtle. She could not say the rashness or negligence of the driver of the lorry and did not identify the driver and therefore, he was declared as hostile by the prosecution.

11. P.W.3 stated that on the date of the incident, he was travelling in the auto and near Regupalem the lorry came in the opposite direction and dashed against the auto, as a result of which, the auto had a turtle. He claims to have received multiple injuries and he was treated in the hospital. In the cross-examination, he stated that he learnt about the incident after he fell down from the auto. He also stated that the repair work was going on the road and it was dug upto 3 feet.

12. P.W.4 is the cleaner of the lorry driven by the accused. According to him, when the lorry reached the scene, there was fog and the auto came in the opposite direction and without observing the lorry, it dashed the lorry and fell into a ditch. The lorry was

stopped and injured were taken to the hospital. He was declared hostile by the prosecution.

13. P.W.5 is the son of the deceased and spoke about the death of his father in the motor accident, which he did not see.

14. P.W.6 is the owner of the auto and according to him, he was taking the deceased and other injured and near the scene of incident, the lorry came from Yelamanchali side and dashed against the auto, as a result of which, it had a turtle. The deceased was taken to the hospital and he died and he informed the same to the police under Ex.P-4. In the cross-examination, it was elicited that the road was dug near the scene of incident.

15. P.W.7 deposed about taking of the photographs at the scene of incident.

16. P.W.8 is the driver of the auto and he spoke about the lorry coming and dashing against the auto and the auto having a turtle. The lorry was not stopped when an old man received injuries, who died later. In the cross-examination, it was stated that there was some fog at the time of the incident. He denied the suggestion that due to the fog, the incident happened.

17. The evidence of P.W.9 is about his presence at the time of the inquest held over the dead body of the deceased.

18. The evidence of P.W.10 – the Motor Vehicle Inspector is about his inspection of the vehicle and issued Ex.P-10 certificate.

19. The evidence of P.W.11 is about the conducting of post-mortem examination over the dead body of the deceased and issuing the post-mortem report – Ex.P-11.

20. P.W.12 spoke about the examination of the injured persons – P.Ws.1 to 3. The evidence of P.W.13 is about the investigation done by him.

21. Learned counsel for the petitioner submitted that the learned trial Judge failed to take note of the significant variations amongst the evidence of witnesses as to how the accident took place. While as per the evidence of P.W.1, the accident took place when the auto driver took the auto a side on seeing the lorry as a result of which, the auto fell down, whereas as per P.Ws.2 and 3, the lorry dashed against the auto and as per P.W.4, the auto driver did not observe the lorry. Because of the fog as a result of which the auto fell down, while as per P.Ws.6 and 8, the auto is not at all moving, but remain stationery. Thus, there is absolutely no corroboration amongst the witnesses as to how the accident took place. The learned trial Judge should have seen that basically a duty is cast upon the prosecution to prove the rash and negligence by way of cogent evidence. Apart from the above discrepancies, the fact that road widening work is going on because of which the vehicles are moving in a single file would negative the case of prosecution that the lorry was driven in a rash and negligent manner. The learned Judge ought to have seen that in cases under Section 304-A IPC, not only the ocular testimony, but the other extenuating facts and circumstances should also be taken into consideration and the prosecution case is totally silent as to the width of the road, density of traffic etc., which could have thrown some light on the aspect of rashness and negligence and prays to set aside the conviction and sentence recorded by the trial Court.

22. Learned Public Prosecutor, on the other hand, submitted that the conviction and sentence recorded by the trial Court are in accordance with law and there is no need to interfere with the same.

23. Considering the facts and circumstances of the case and the submissions of the learned counsel for the petitioner, this Court is of the view that the occurrence of the incident is in the year 2003 and there is lapse of 13 years and sentence of imprisonment is also on the higher side, the Criminal Revision Case is disposed of with the following direction:

24. The conviction imposed by the trial Court and confirmed by the lower appellate Court is hereby confirmed. However, the sentence of imprisonment imposed on the petitioner is hereby set aside. However, the fine amount of Rs.1,000/- imposed on the petitioner by the trial Court for the offence under Section 304-A IPC is hereby enhanced to Rs.5,000/- (Rupees five thousand only). However, the sentence of fine imposed on the petitioner by the trial Court for the offence under Section 337 IPC shall not be interfered with.

25. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous Petitions, if any, pending in this criminal revision case stands closed.

RAJA ELANGO, J

Date: 2nd September, 2016

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