

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2571 of 2017

ORDER:

The present Criminal Revision Case is preferred questioning the judgment, dated 01.09.2017, in Criminal Appeal No.189 of 2015 passed by the I-Additional Sessions Judge, Kurnool, whereby and whereunder, the Sessions Judge has confirmed the conviction recorded by the Judicial Magistrate of First Class, Kurnool, for the offences punishable under Sections 304-A, 337 and 338 IPC and the sentences of Simple Imprisonment for a period of one year, six months and three months, respectively, for the offences under Sections 304-A, 338 and 337 IPC, respectively, and fine amounts imposed for the offences under Sections 304-A and 338 IPC. Against the concurrent findings recorded by the courts below, the accused preferred the present revision.

Heard Sri Nazeer Khan, learned counsel for the revision petitioner - accused. It is his submission that there has been no proper appreciation by the courts below and there is no identity of the revision petitioner as the driver of the lorry bearing No.AP 02 W 2777. It is also his submission that the Bolero vehicle was not supposed to be stationed and the evidence on record does not show that the driver of the Bolero vehicle has taken all care and caution as required under the provisions of Section 81 of the Motor Vehicles Act, 1939. It is the further submission of the learned counsel that since there was fog in the morning, due to moisture in the atmosphere, the Bolero vehicle could not be noticed by the revision petitioner – accused and there was no rash and negligent

driving on the part of the revision petitioner and, therefore, sought to set aside the conviction and sentences of imprisonment. His last submission is that in case this Court finds that there is no perversity in the findings recorded by the courts below, a lenient view be taken.

The facts, in brief, which are necessary for disposal of the present revision case, are that on 13.02.2012, the deceased Bairapuram Srinivasa Reddy, belonging to Orvakal village and resident of Kurnool Town, left Kurnool town on Bolero Camper vehicle bearing No. AP 21 Y 4627, while PW.7 was driving the same, and on the way to Orvakal village, they picked up PWs.1, 3, 4 and 5 and LW.12 – Golla Shankaraiah and, at 7.30 a.m., when they reached N.H.18 road at Essar Petrol Bunk near Hussainapuram village, Orvakal Mandal, the lorry bearing No.AP 02 W 2777 driven by the revision petitioner in a rash and negligent manner while proceeding towards Kurnool side, dashed the Bolero Camper, which was parked on the left side of the margin of NH 18 road, due to which, the said Srinivas Reddy died instantaneously and the other witnesses sustained injuries. That has been the case of the prosecution in a nutshell.

The learned Judicial Magistrate of First Class, Kurnool, having examined the revision petitioner, who pleaded not guilty, proceeded with the trial and examined PWs.1 to 13 and marked Exs.P1 to P12 on behalf of the prosecution. Of course, as usual, no evidence was let in by the accused. Amongst the witnesses examined by the prosecution, PWs.1, 3, 4 and 5 are the eye witnesses, who sustained injuries, PW.2, who is the father of the deceased, is a circumstantial witness and the rest of the

witnesses are scene of occurrence panchayatdars, inquest panchayatdars, doctors and Investigating Officers.

The learned trial Judge, having found the evidence of PWs.1, 3, 4 and 5 consistent to prove the rash and negligent driving on the part of the accused, arrived at the finding that the prosecution could prove the guilt of the accused for the offences alleged against him and, thereby, recorded the conviction and inflicted the aforesaid sentences of imprisonment as well as fine amounts.

When the accused carried the matter to the appellate court in Criminal Appeal No.189 of 2015, the learned I-Additional Sessions Judge, Kurnool, by his judgment dated 01.09.2017, having re-appraised the evidence on record, arrived at the finding that there is no error crept in the judgment and findings recorded by the trial Court. The learned appellate Judge has also dealt with the answers given by the witnesses in their cross-examination, but, however, forming the opinion that there is no perversity in the judgment and findings recorded, confirmed the conviction as well as the sentences of imprisonment and fine amounts.

When there have been concurrent findings recorded by the courts below, unless utter perversity is projected, the revision petitioner cannot succeed.

When intrinsically examined the findings recorded by the courts below, certainly, nothing is brought out in the cross-examination of PWs.1, 3, 4 and 5 to hold that the prosecution failed to prove the offences against the accused beyond all reasonable doubt. Their

evidence is cogent and convincing to prove the rash and negligent driving of the revision petitioner causing the accident and occasioning the death of the deceased and injuries to others. Therefore, the findings recorded by the courts below do not suffer from any patent illegality warranting interference. Hence, the findings recorded and the conclusion arrived at by the courts below in recording conviction and inflicting the sentence of imprisonment by the trial court and confirming the same by the lower appellate court are confirmed.

Learned counsel for the revision petitioner would submit that since the offence took place in the year 2012 and the revision petitioner was attending the courts since 2012 and went to the prison to serve out the sentence, pleads to take a lenient view.

It is true, the Calender Case relates to the year 2012 and the appeal was disposed of in the month of September, 2017. Keeping in view, the fact that the revision petitioner faced the trial court and the appellate court and even he was committed to the prison to serve out the sentence, it is desirable to convert the sentence of Simple Imprisonment of one year inflicted on the revision petitioner for the offence punishable under Section 304-A IPC to that of Simple Imprisonment for a period of six months. Except this modification, the conviction recorded and the sentences of Simple Imprisonment for three months and six months for the offences punishable under Sections 337 and 338 IPC, respectively, and the fine amounts imposed on the revision petitioner by the trial Court and affirmed by the lower appellate court are confirmed. The

sentences of Simple Imprisonment inflicted on the revision petitioner for the offences punishable under Sections 304-A, 337 and 338 IPC shall run concurrently. If the petitioner has served out the sentences of imprisonment, including pre-trial detention, he shall be released immediately.

Accordingly, the Criminal Revision Case is allowed in part.

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

15.11.2017

Note: Dispatch the order to the concerned court forthwith.

B/o

v v

JUSTICE SHANKAR NARAYANA

