

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2116 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C, questioning the propriety, legality of the order of acquittal of the second respondent/accused by the Sessions Judge, Anantapuramu in CrI.A.No.50 of 2016 dated 06.04.2017 punishable under Section 304-A I.P.C, reversing the findings of the Trial Court and setting aside the conviction and sentence imposed by the Trial Court, whereby, the Trial Court found the accused guilty for the offence punishable under Section 304-A I.P.C, convicted and sentenced him to undergo simple imprisonment for a period of one year and six months and also sentenced to pay fine of Rs.4,000/- with default sentence.

The case of prosecution in brief is that, the accused being the rider of Bajaj Discover motor cycle bearing A.P.-02-AF-4547 dashed against a person who will hereinafter be referred as the deceased while driving it in rash and negligent manner on 16.07.2012 at about 3:30 PM at Old Town, Mudigubba Village, as a result of collision, the deceased suffered severe head injuries and also fracture on his left leg. One Avula Chandramohan (P.W.1), Avula Parvathamma (L.W.2), Mallagundla Bhaskar (P.W.3), Kanama Ramachandra (L.W.4) witnessed the occurrence and identified the accused and the vehicle. They shifted the injured/deceased to the Government General Hospital, Kurnool, he succumbed to the injuries on 24.07.2012. On the basis of the

report of P.W.1, P.W.5, Station House Office, registered the case in Cr.No.102 of 2012 for the offence punishable under Section 304(A) I.P.C and filed charge sheet before the Magistrate. The case was taken on file for the offence punishable under Section 304(A) I.P.C and Section 181 of Motor Vehicles Act.

After securing the presence of the accused, the accused was examined under Section 251 Cr.P.C, explained the gist of acquisitions for the offences punishable under Section 304(A) I.P.C and Section 181 of Motor Vehicles Act, he pleaded not guilty and claimed to be tried.

During enquiry, on behalf of the prosecution P.Ws.1 to 7 were examined, marked Exs.P-1 to P-6. After closure of the prosecution, the accused was examined under Section 313 Cr.P.C, explaining the incriminating circumstances that appeared against him, he denied and reported no defence.

Upon hearing argument of both the counsel, the Additional Judicial First Class Magistrate, Kadiri, based on the evidence of P.Ws 1 & 3 concluded that the motor vehicle was driven in rash and negligent manner, at high speed by the accused, dashed against the deceased who received severe head injuries and also fracture to his left leg, which resulted in the death, while undergoing treatment and found the accused guilty for the offence punishable under Section 304-A I.P.C, convicted and sentenced him to undergo simple imprisonment for a period of one year and six months and also sentenced to pay fine of Rs.4,000/- with default sentence.

Aggrieved by the conviction and sentence under the calendar and judgment passed by the Additional Judicial Magistrate of I Class, Kadiri dated 27.04.2016 in C.C.No.243 of 2012, the accused preferred Crl.A.No.50 of 2016 before the Sessions Judge, Anantapuramu, where, the Sessions Judge, on hearing the argument, allowed the appeal, reversing the findings of the Trial Court, finding the accused not guilty for the offence punishable under Section 304-A I.P.C and acquitted the accused for the said charge.

The Appellate Court concluded that the evidence of P.W.3 would disclose that the motor vehicle was driven at a speed of 70 to 80 kms per hour and high speed is alone not the criteria to decide the rashness and negligence on the part of the accused. The report of the Motor Vehicle Inspector would show that there were no scratches on the motor vehicle and the accused also did not suffer any injury. In the process of accident, the prosecution evidence is silent as to the cause of the accident and therefore, found that the accused not guilty for the offence and acquitted him for the offence punishable under Section 304-A I.P.C.

Aggrieved by the acquittal of the second respondent/accused, the defacto complainant filed the present criminal revision case mainly on the ground that the evidence of P.W.1,3,5, 6 & 7 are suffice to establish the rashness and negligence on the part of the accused i.e. rider of the motor vehicle and the Appellate Court on hypothetical view acquitted the second respondent/accused finding him not guilty, ignoring the material evidence on record.

During hearing, learned counsel for the petitioner herein/defacto complainant had neither appeared nor got the matter represented by any counsel and advance arguments, but this Court cannot dismiss the revision for default. However this Court can decide the revision on merits in view of the law declared in **Nisha Sharma and others v. Vinod Kumar Sharma**¹ wherein it is made clear that the revision cannot be dismissed for default and even the petitioner or his advocate did not appear before the Court, the Court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

It is the case of the petitioner/defacto complainant from the beginning that the vehicle was driven at a high speed in rash and negligent manner by the accused and hit the deceased and the sustained head injuries and fracture to his leg, which resulted in the death, while undergoing treatment at Government General Hospital, Kurnool. One Avula Chandramohan (P.W.1), Avula Parvathamma (L.W.2) and Kanama Ramachandra (L.W.4) witnessed the occurrence and identified the accused and the vehicle. Avula Chandramohan was examined as P.W.1 and Mallaundla Bhaskar was examined as P.W.3. The other two persons were not examined as witnesses. The evidence of P.W.s 1 & 3 is the basis for arriving at conclusions recorded by the Trial Court. P.W.1 allegedly witnessed the accident and according to his testimony, the vehicle was driven in rash and negligent manner

¹ 1990 Cri.L.J. NOC 57 (Delhi)

and dashed against the deceased from his behind. P.W.3 evidence is consistent that, while P.W.s1 & 2 were discussing something, standing by the side of the road, the accused drove the motor vehicle in rash and negligent manner and at high speed, dashed against the deceased.

On the strength of the evidence of P.Ws 1 & 3, the Trial Court recorded conviction of the accused for the offence punishable under Section 304-A I.P.C, since the death of the deceased is not in question and it is supported by Ex.P-2-Inquest Report, Ex.P-6-Post Mortem Certificate and evidence of P.W.7- Dr. T. Sai Sudheer who conducted autopsy over the dead body and issued post mortem certificate Ex.P-6 stating that the cause of the death was due to injuries received in the accident. Apart from that, the evidence of P.W.6, Motor Vehicle Inspector Sri Y. Viswanatha Reddy supports the case of prosecution that the accident was not due to any mechanical defects of the motor vehicle.

To record conviction of the accused for the offence punishable under Section 304-A of I.P.C., it is the duty of prosecution to prove the culpable rashness or negligence of the accused. Mere proof of negligence by itself is not a ground to record conviction of the accused for the said offence.

The word 'culpable rashness and negligence' was not defined anywhere in the Indian Penal Code. The Apex Court defined 'culpable negligence' in an unreported judgment in **Mohammed Aynuddin @ Miyam Vs. State of Andhra Pradesh**, wherein the Supreme Court defined what is culpable rashness and negligence

on the part of bus driver in the accident and held in the above decision as follows:

"A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precautions guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

In view of the law declared by the Apex Court in the judgment referred supra, to record conviction of the accused punishable under Section 304-A, 337 or 338 I.P.C, it is the duty of the prosecution to establish that the accused caused accident by his culpable rash and negligent act. But, the Trial Court did not record any findings that he is guilty of culpable rashness and negligence, which is *sine quo non* to convict the accused for the offence punishable under Section 304-A I.P.C. Therefore, the Appellate Court in its judgment, reversed the finding of the Trial Court on the ground that, as none of the witness did speak about culpable rashness or negligence, found the accused not guilty for the offence, though not directly, but indirectly recorded such finding. It is also found that the circumstances pointed out by him would create doubt on the prosecution case and the Appellate Court had set-aside the conviction and sentence passed by the Trial Court. When the Appellate Court came to such conclusion, normally, this Court would not interfere with such findings, unless such findings are manifestly perverse or apparently erroneous, in

view of the limited jurisdiction conferred on this Court under Sections 397 & 401 Cr.P.C.

Apart from that, Subsection (3) of Section 401 Cr.P.C created an interdict on the power of this Court to convert an acquittal into conviction while exercising power under Sections 397 & 401 Cr.P.C. At best, this Court can order re-trial of the case from the stage at which it was stopped, in exceptional circumstances. But, this Court cannot directly permit the Subordinate Court to impose sentence which is directly not possible. Here, I find no exceptional circumstance in this case to order re-trial of the case, setting aside the judgment of the Appellate Court in Crl.A.no.50 of 2016 dated 06.04.2017 acquitting the second respondent/accused, finding him not guilty. In the absence of any such exceptional circumstances, I am afraid to order re-trial of the case and consequently, this Court cannot convict the accused for the offence punishable under Section 304-A I.P.C, converting the acquittal into conviction.

Hence, I find no ground to allow this criminal revision case, setting aside the order passed by the Sessions Judge, Anantapuramu in Crl.A.No.50 of 2016 dated 06.04.2017.

In the result, the criminal revision case is dismissed at the admission stage.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.10.2017
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