

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.998 of 2005

ORDER:

This criminal revision case is preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the legality, propriety and regularity of the order dated 27.06.2005 passed in CrI.A.No.170 of 2003 by the Metropolitan Sessions Judge, Vijayawada, whereby the conviction and sentence imposed by II Metropolitan Magistrate, Vijayawada in C.C.No.728 of 2001 was modified.

The case of the prosecution, in brief, is that the accused being the driver of the lorry bearing No.AP 31 T 2577, on 28.06.2001 at about 12.30 hours, at Donabanda near Crusher while reversing lorry from the ramp road for unloading the sand, dashed to the right side middle portion of the bus which was proceeding towards Vijayawada on N.H.road, as a result the body of bus anglers struck and dragged the bus to back side, due to which the bus body iron sheets were removed, the seats were broken and fell down on the road and three passengers from the bus fell down and the front tyres of the lorry ran over them causing their instantaneous death, and some of the passengers sustained grievous and multiple injuries. On the report of driver of bus, a case in Crime No.224 of 2001 was registered and after investigation police filed charge sheet.

Upon securing the presence of the accused, the trial Court on compliance of Section 207 of Cr.P.C. framed charges against accused for the offences punishable under sections 304(A), 338 and 337 of I.P.C. and Section 134 (a) (b) read with 187 of M.V. Act, read over and explained to the accused in Telugu, the accused pleaded not guilty and claimed to be tried.

During trial, P.Ws.1 to 22 were examined and marked Exs.P.1 to P.24.

After closure of the prosecution evidence, the petitioner was examined under Section 313 Cr.P.C. explaining incriminating material available against him, but he denied the same and reported no defence.

Upon hearing argument of both counsel, the trial Court found the accused guilty and sentenced to undergo rigorous imprisonment for two (2) years and to pay a fine of Rs.1,000/- in default simple imprisonment for four months for the offence punishable under Section 304 (A) of I.P.C. and further sentenced to undergo rigorous imprisonment for six months for the offence punishable under Section 338 of I.P.C. and further sentenced to undergo rigorous imprisonment for three (3) months for the offence punishable under Section 337 of I.P.C. and further sentenced to pay a fine of Rs.300/- for the offence punishable under Section 134 (a) read with 187 of M.V.Act in default simple imprisonment for 15 days and further sentenced to pay a fine of Rs.300/- for the offence

punishable under Section 134 (b) read with 187 of M.V.Act in default Simple imprisonment for 15 days.

Aggrieved by the conviction and sentence passed by the trial Court, the petitioner/accused preferred an appeal No.170 of 2003 before the Sessions Court, and the same was allowed in part upholding the conviction imposed by the trial Court for the offence punishable under Section 304-A, 338, and 337 of I.P.C. and under Section 134 (a) & (b) read with 187 of M.V.Act and the accused is sentenced to undergo three months rigorous imprisonment for the offence punishable under Section 304-A of I.P.C., two months rigorous imprisonment for the offence punishable under Section 338 of I.P.C. and one month rigorous imprisonment for the offence punishable under Section 337 of I.P.C., which is impugned in this revision.

The main contentions raised before this Court in the revision are that the photos taken at the scene of offence do not show the correct position and as per the material on record two vehicles must stand in 90 degrees angle to each other, whereas the accident photographs show that the RTC bus and the lorry were standing one after the other just like in a queue on left side of road and the dead bodies were lying in front of the tipper. Therefore, the prosecution story cannot be accepted, it is further contended that the material on record does not disclose the occurrence of accident, but both the Courts believing the oral evidence, convicted the accused.

Finally, prayed to set the aside the order passed in Criminal Appeal No.170 of 2003.

When the matter reached, Sri S.Nageswara Reddy, learned counsel for the petitioner did not appear 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.

This revision is filed under Section 397 and 401 of Cr.P.C. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court

¹ 1990 Cri.L.J. NOC 57 (Delhi)

will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in “**State of West Bengal v. Tulsidas**²”. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in “**Prahlad v. Emporer**³”.

Further, the High Court can, in exercise of its revisional powers, either *suo motu* on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

² (1964) 1 Cr.L.J. 443 (SC)

³ 48, Cr.LJ 173, 174 (Pat)

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised, as held by Apex Court in “**S.P.S. Jayam & CO. v. Nehrusadan**”⁴.

In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in “**Bansilal v.Laxman**”⁵.

The trial Court and the appellate Court believed that the accident occurred due to rash and negligent driving and recorded a fact finding concurrently, such fact findings cannot be interfered with, unless there is manifest perversity or apparent error in such findings. Here, it is the case of the petitioner that the photographs do not disclose the correct position of the vehicle, but the photographs are taken after the

⁴ 1977 CrL.J. 1101

⁵ (1986) 3 SCC 445

occurrence of the accident and the manner of accident was explained by P.W.1 and what precautions he had taken to prevent the accident, so also the negligence attributed to the petitioner while reversing the lorry by him to unload the sand from the ramp on the highway. Besides evidence of P.W.1, independent witness P.W.5 stated that the accident was occurred in front of his shop, he further deposed that one cleaner of the tipper was giving signals to the tipper and the bus was stopped and he heard the sound and saw the damage to the bus. This itself would show that there is any amount of negligence on the part of the driver of the lorry and driver when reversing the lorry for unloading, the degree of precaution taken by him should be more than normal precaution, but the petitioner did not take necessary care and caution required as a ordinary prudent driver and failure to take necessary care and caution while reversing lorry would amount to rashness and negligence. Therefore, the trial Court and the appellate Court recorded a concurrent fact finding.

Motor Vehicles Inspector's report disclosed that the damage was caused to the bus and it is not the case of collision between two vehicles and the accident occurred only when the lorry reversed to unload the sand therein. Therefore, the question of contributory negligence does not arise, on the other hand death of three passengers in the bus and sustaining injuries by more than three passengers is on account of the accident is not disputed. When two vehicles are

involved in the accident, the Court has to decide who is at fault for causing such accident by rash and negligent driving. No doubt, two vehicles proceeding in one direction one after the other, the driver of the vehicle proceeding ahead to the other, while reversing the vehicle, the driver has to take necessary care and caution. But here it is a case where the driver of the lorry suddenly stopped the same and reversed the same for specific purpose of unloading while cleaner gave signal and stopped the bus, that itself is suffice to conclude that the driver of the lorry failed to take necessary care and caution; as a result of which three passengers in the bus died instantaneously and other passengers sustained injuries.

Undoubtedly, the driver of the bus is also required to take necessary care and caution. When the lorry proceeding ahead of the bus, suddenly stops and takes reverse turn, it would be difficult for the driver of the bus to control the same even though the cleaner of the lorry gives signal to stop the bus. Therefore, no negligence is attributable to the driver of the bus.

Both the trial Court and the appellate Court recorded concurrent fact findings holding that the petitioner is guilty; of rash and negligence and caused death of three passengers in the bus besides causing both grievous and simple injuries to the other passengers. Therefore, such fact findings cannot be interfered with, since it is supported by oral and documentary evidence on record.

Hence, I find no ground to interfere with the findings recorded by the trial Court and affirmed by the appellate Court and the revision is devoid of any merits. Consequently, the revision case is liable to be dismissed.

In the result, the criminal revision case is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

07.09.2017
Ksp

JUSTICE M. SATYANARAYANA MURTHY

