

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.L R.C No.2249 of 2017

ORDER:

Assailing the judgment in Criminal Appeal No.175 of 2015 on the file of Principal Sessions Judge, Khammam dated 02.08.2017, the petitioner preferred this Revision under Section 397 and 401 of Cr.P.C wherein the appellate Court affirmed the conviction recorded by the trial Court by reducing the substantive sentence of imprisonment for the offences punishable under Section 304-A IPC to simple imprisonment for a period of six (06) months and to pay a fine of Rs.1,000/-while giving set off under Section 428 Cr.P.C.

2. It is the case of prosecution that while PW1 Lakshman and his mother Naga Laxmi were proceeding in Eicher Van bearing No.16-TY-6596 on 14.06.2012 boarded at Rajamundry with household articles, in the early hours of 15.06.2012 at about 04-30 a.m., when the vehicle reached Thanikella Village, the accused drove the van in rash and negligent manner, dashed against a road side tree resulting in grave injuries to Nagalaxmi over her head and legs and she was admitted in the hospital and on the same day, while undergoing treatment she succumbed to injuries. On 16.06.2012 PW.1, son of the deceased, who was traveling along with her in the same vehicle, lodged a complaint against the driver and the same was registered in Cr.No.103 of 2012 for the offences punishable under Section 304-A IPC issued FIR and took up investigation.

During investigation, the police recorded the statements of witnesses and post mortem examination was conducted by the medical officer and issued P.M.E report opining that the death was

due to head injury and Motor Vehicle Inspector opined that accident was occurred not due to any mechanical defects of the vehicle. After completion of investigation, police filed charge sheet against the petitioner for the offences punishable under Section 304-A IPC.

3. After hearing both public prosecutor and defense counsel, charge was framed against the accused for the offences punishable under Section 304-A IPC read over and explained to him, he pleaded not guilty, claimed to be tried.

4. During the course of trial P.W.1 to P.W.4 were examined and marked documents Exs.P.1 to Ex.P7 on behalf of prosecution. After closure of prosecution evidence, the accused was examined under Section 313 of Cr.P.C. explaining the incriminating evidence of prosecution witnesses, he denied and reported no evidence.

5. Upon hearing the arguments of both the counsel, the trial court found accused guilty for the offence punishable under Section 304-A IPC and convicted him and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,000/-, while giving set off under Section 428 Cr.P.C.

6. Aggrieved by the calendar judgment in C.C.No.208 of 2012 dated 24.12.2012, petitioner preferred Criminal Appeal No.175 of 2015 before the Principal Session Judge, Khammam and the same was dismissed by the Sessions Judge, by judgment dated 02.08.2017 confirming the conviction while reducing the sentence of simple imprisonment to a period of six months.

7. Feeling aggrieved by the same, the present Revision is filed on various grounds, firstly on the ground that prosecution failed to establish the identity of the accused as driver of the vehicle and secondly on the ground that the independent witness turned hostile and did not support the case of the prosecution and eye witness, is no other than son of the deceased Naga lakshmi, and his evidence cannot be relied on in absence of independent corroboration as the independent witness turned hostile. Therefore, conviction recorded by the trial Court is based on the evidence of PW1, who is a related witness and the same is unsustainable in law and prayed to set aside the conviction of accused for the offences punishable under Section 304-A IPC.

8. Learned counsel for the petitioner during hearing at the stage of admission, would draw attention of this Court to the testimony of PW1 which discloses the name of the petitioner as driver of the vehicle as Panthangi Lingaswamy and he can identify the driver of the crime vehicle, if shown to him. Counsel for petitioner contended that the prosecution failed to establish the identity of the petitioner as driver of the vehicle at the time of the accident as the identity of the accused is not established by the evidence of PW1. Apart from that P.W.3 who is the native of Thanikella Village and who witnessed the incident did not support the prosecution case. Consequently based on sole testimony of related witness PW1, conviction cannot be recorded. But the trial Court and the appellate Court committed serious error in recording such findings regarding identification of the petitioner as driver of the vehicle at the time of the accident and therefore requests this

Court to set aside the conviction and acquit him for the offence punishable under Section 304-A IPC.

9. Per contra, the Public Prosecutor supported the entire calendar judgment of the trial Court and affirmed by the appellate Court in appeal requesting this Court to dismiss the appeal affirming the judgment in Criminal Appeal No.175 of 2015.

10. Considering the rival contentions and perusing the material available on record, following are the points that arise for consideration.

1. Whether conduct of Test Identification Parade is necessary to establish identity of the petitioner/accused, as driver of the vehicle at the time of the accident?
2. Whether an independent corroboration is required to establish guilt of the accused for the offence punishable under Section 304-A IPC?

POINT NOs.1 & 2:

11. It is the case of the prosecution that PW1 along with his mother was traveling in the vehicle bearing No.A.P.16-TY-6596 and that the vehicle when reached Thanikella Village at about 4.30 a.m on 15.06.2012, hit against a road side tree due to rash and negligent driving by the driver of the vehicle and in the said accident, mother of PW1 received grievous injuries to her head and legs as she sat by the side of the driver and she succumbed to the injuries while undergoing treatment in the Government hospital.

12. To establish the identity of the driver and occurrence of the accident, the prosecution examined PW1 who was traveling along with his mother Naga Lakshmi in the vehicle at the time of

accident. His examination in chief is specific that on 14.06.2016 night he along with his mother boarded Eicher van to go to Zaheerabad, while proceeding to Zaheerabad, when the vehicle reached Thanikella Village on 15.06.2012 at about 04-30 a.m., due to rash and negligent act of the driver of the vehicle, the vehicle hit the road side tree resulting in grievous injuries over the head and legs of his mother Naga Lakshmi and she was shifted to Government hospital, Khamman for treatment and she succumbed to the injuries. He specifically asserted that the crime vehicle bearing No.A.P.16-TY-6596 was driven by P.Linga Swamy and that he would identify the driver of crime vehicle if shown to him. Taking advantage of the same, he contended that no Test Identification Parade was conducted to establish and identify the driver. But curiously, in the cross examination no suggestion was put to the witnesses, that petitioner was not the driver of the vehicle involved in the accident. When petitioner has failed to put any suggestion based on the defense set up by him, the Court can accept the testimony of PW1, that accused is the driver of the vehicle at the time of accident by applying the principles laid down in the judgment of Calcutta High Court **A.E.G. Carapiet vs. A.Y.Derderian¹**, followed by Apex Court in **M.B. Ramesh (D) by L.Rs.Vs. K.M. Veeraje Urs (D) by L.Rs. and Ors²**.

13. The defense set up by the petitioner that he was not the driver, cannot be accepted for the reason that no suggestion was put to the witness/ PW1 that at the time of accident petitioner was not the driver of the vehicle. Petitioner did not disclose his specific

¹ AIR1961Cal359

² 2013VI AD (S.C.) 488

defense before the trial Court, but for the first time the said defense was raised.

14. The testimony of PW1 is wholly reliable for the reason that he was the person who was traveling along with his mother at the time of accident and in his entire cross examination no suggestion was put to him denying his presence in the vehicle at the time of accident. Therefore, petitioner did not dispute the presence of PW1 in the vehicle at the time of accident.

15. Apart from that, PW 1 is none other than son of the deceased Naga lakshmi and lodged a complaint with the police one day after the accident as he was in a hurry to save life of his mother who has received grievous injuries in the accident. Therefore based on the relationship, the evidence of PW1 cannot be discarded or thrown overhead. The Court has to appreciate the evidence based on the circumstances including the defense set up by the petitioner in the cross examination of the witnesses in a criminal case.

16. To say that the said eye witness cannot be relied upon to base conviction of the accused, nothing is elicited by the counsel for the petitioner before the trial Court to disprove the presence of PW1 in the vehicle at the time of accident. In the absence of eliciting nothing, the Court is bound to accept the testimony of PW1, who is wholly reliable witness. Witness being a close relative of the deceased who is living along with her and traveling in the vehicle at the time of accident is a natural witness and his testimony is to be accepted. Therefore, the identity of the petitioner as a driver of the vehicle was not in controversy before

the Court below and for the first time, the said defense was raised before this Court on the ground that no Test Identification Parade was conducted and when the same question came up before the Apex Court in judgment arising in Criminal Appeal No.1838 of 2009 decided on 16.08.2012 between **Ravi Kapur vs. State of Rajasthan**, the Court observed that the whole idea of a Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an Identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

It is equally correct that the Code of Criminal Procedure does not oblige the investigation agency to necessarily hold the Test Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the Court for the first time. One of the views taken is that identification in Court for the first time alone may not form the basis of conviction, but this not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier

identification proceedings. This rule of prudence is, however subjected to exceptions.

17. Similarly in another judgment in ***Sheo Shankar Sigh vs. State of Jharkhand and another***³ the Division Bench of Apex Court held that failure to hold Test identification parade does not have effect of weakening evidence of identification in Court, as to what should be the weight attached to such an identification is a matter which Court will determine in peculiar facts and circumstances of each case. Version of two eye witnesses that it was accused who had shot deceased. However, only one of witnesses associated with Test Identification Parade in which he identified accused. Failure of prosecution to offer an explanation for not holding Test Identification Parade for other witness will not ipse jure fatal to case of prosecution.

18. In view of the principles laid down in the above decisions, Test Identification Parade is a part of investigation and used primarily to strengthen the case of prosecution and this rule of prudence is however subject to exceptions. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance to corroborate identification in the Court. Thus, it is only a relevant consideration which may be examined by the Court in view of other attendant circumstances and corroborative evidence with reference to the facts of the given case. Therefore, failing to conduct Test Identification Parade *ipso facto* not fatal to the prosecution case to establish that the petitioner was driver of crime vehicle at the time

³ AIR 2011 SC 1403

of accident, more particularly when there is no suggestion put to the witnesses i.e., PW1 that petitioner was not driver of the crime vehicle at the time of accident, by applying the principles laid down in **A.E.G. Carapiet vs. A.Y.Derderian** and other judgment referred supra. Therefore failure to conduct Test Identification Parade as contemplated under Section 9 of the Indian Evidence Act is not fatal to the case of prosecution.

19. Even in the examination of the petitioner under Section 313 Cr.P.C., petitioner did not deny that he was driver of the vehicle at the time of accident. Therefore, taking into consideration, the cumulative effect of evidence on record, regarding his answer in the 313 Cr.P.C., examination, it is difficult to disbelieve the contention of the prosecution that the petitioner was the driver of the vehicle at the time of accident.

20. Another contention raised by the counsel for the petitioner is PW3 who is a native of Thanikella Village who allegedly witnessed the incident did not support the prosecution case. Therefore in the absence of corroborative evidence to the evidence of PW1 recording conviction of the petitioner for the offences punishable under Section 304-A IPC is a serious illegality committed by the trial Court and appellate Court in confirming the same. But said contention is unsustainable for the reasons that PW1, the son of the deceased, was traveling in the same vehicle at the time of accident and has categorically testified that one P.Linga Swamy was the driver of the vehicle bearing No.A.P.16-TY-6596, as corroboration is a rule of prudence. Because no other independent witness supported the prosecution case, the evidence of witnesses who were traveling in the crime vehicle cannot be brushed aside, in

view of the ***Brahm Swaroop and another v. State of Uttar Pradesh***⁴. PW1 is the person who was traveling in the crime vehicle and the same is not denied in the entire cross examination of PW1. In such case, he is the natural witness and his evidence cannot be discarded as PW3 did not support the case of prosecution. Therefore failure of PW3 to support the prosecution case is not fatal. Hence, I find that lack of independent corroboration is not a ground to set aside the conviction and sentence imposed by the trial Court and confirmed by the lower appellate Court.

21. In view of the above discussion, points 1 and 2 are answered, against the petitioner and in favour of the respondents.

22. In the result, this CrI.R.C. is dismissed at the stage of admission, confirming the conviction and sentence recorded by the trial Court and confirmed by the appellate Court.

23. Consequently, miscellaneous petitions pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 08.08.2017
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⁴ 2011(6) SCc 288