

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.724 of 2006

ORDER:

Questioning the conviction recorded under Section 251-A (12) of the Code of Criminal Procedure (old) for the offences punishable under Sections 304-A and 338 IPC, while acquitting for the contravention of Rule 267 read with Section 177 of the Motor Vehicles Act, and the sentence of Rigorous Imprisonment for one year for the offence punishable under Section 304-A IPC and fine of Rs.1,000/- for the offence punishable under Section 338 IPC, with default sentence to undergo Simple Imprisonment for six months, inflicted by the learned Additional Judicial First Class Magistrate, Kothagudem, by the judgment dated 12.05.2005 in C.C.No.34 of 2000, as affirmed by the learned III Additional Sessions Judge (FTC-II), Khammam, vide the judgment dated 27.03.2006 in CrI.A.No.28 of 2005, the accused preferred the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code').

2. Heard Sri P. Anand Seshu, learned counsel for the revision petitioner. He has raised as many as three points. The first is, that there is no identity of the revision petitioner as the driver of the accident lorry at the relevant time by any of the witnesses; second, that the courts below convicted the revision petitioner only basing on the positive photographs filed by the Investigating agency, and the third, that the rashness and negligence were not proved by the prosecution as the tractor and trailer were also involved in the accident and, therefore, the

courts below went wrong in appreciating the evidence on record in correct perspective and, hence, sought to set aside the conviction recorded and the sentence of imprisonment and fine inflicted by the courts below.

3. Per contra, the learned Additional Public Prosecutor for the State of Telangana would refute the submissions of the learned counsel for the revision petitioner contending that the evidence of PW.3, who is the owner of the accident lorry, is clear enough to show that the revision petitioner was the driver engaged by him and, on the date of accident, the revision petitioner took the crime lorry bearing No. AAT 4647 loaded with onion at Hyderabad to go to Kothagudem, and that, on telephonic message, PW.3 rushed to Enkur and there he found the lorry turned turtle and one Eswar, who was employed as cleaner, died in the said accident. It is also the submission of the learned Additional Public Prosecutor that the Investigating Officer, in fact, arrested the revision petitioner and that since the revision petitioner sustained injuries in the same accident, he was admitted in the Hospital for treatment and, therefore, there is no merit in the submissions made by the learned counsel for the revision petitioner.

4. Perused the judgments passed by the courts below. Both the courts below have analysed the evidence of PW.3 viewing him as a critical witness in the case and his evidence as of vital significance to prove that the revision petitioner was the driver of the lorry at the relevant time. The findings recorded by the learned Magistrate as well as

the appellate Judge would clearly show that PW.3 asserted that the revision petitioner was the driver of his lorry at the relevant time and the cleaner by name Eswar, who died in the accident, was engaged by him. This apart, the very fact that the revision petitioner sustained injuries and was admitted in the very same hospital where the other injured persons who sustained injuries in the same accident were admitted, is an inferential fact, which cannot be lost sight of, and unless he was the driver of the accident lorry and sustained injuries when the lorry turned turtle, there was no reason or occasion for his presence in the nearby Government Hospital. Not only these circumstances, but also the assertion of PW.3 would completely condemn the case of the revision petitioner and to hold that the submission of the learned counsel for the revision petitioner is not worthy of acceptance.

5. Concerning the second submission that only based on positive photographs, the courts below have recorded conviction is also again without any merit. The conviction is based on identity of the revision petitioner, more particularly, based on the evidence of PW3, the employer of the revision petitioner.

6. The last submission that there was no rashness and negligence, as the tractor and trailer were also involved and the prosecution failed to charge the driver of tractor and trailer, is concerned, when there is positive evidence of the Investigating Officer and the evidence of PW.3 and the very manner in which the accident took place resulting in the lorry turning turtle and occasioning the death

of the cleaner itself would speak the rash and negligent driving on the part of the revision petitioner. Nothing more is required to arrive at this conclusion. Therefore, the findings recorded by both the courts below do not suffer from any patent illegality nor can they be construed as utterly perverse warranting interference.

7. Learned counsel for the revision petitioner would make a request to impose lenient punishment in view of the fact that the Calender Case and the Criminal Appeal relate to the year 2000 and 2005, respectively, and the present revision relates to the year 2006.

8. It appears, the revision petitioner was remanded to judicial custody on 26.11.1999 and it is not known on what date he was granted bail and was released. However, there is material to show that when Criminal Appeal was disposed of on 27.03.2006, he was committed to District Jail, Khammam, to serve out the sentence and he was only released on 20.04.2006 pursuant to the order passed by this Court suspending the sentence and granting bail. Thus, the revision petitioner must be in prison for a period of less than one month. However, keeping in view that the accident took place in the year 1999 and the present Criminal Revision Case has been pending for the past eleven years, it is just reasonable to reduce the sentence of Rigorous Imprisonment from one year to six months, while confirming the conviction recorded by the courts below.

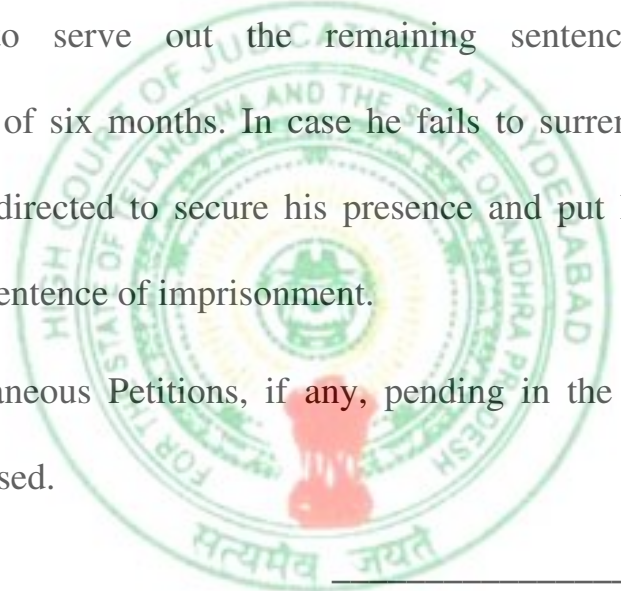
9. Accordingly, the Criminal Revision Case is partly allowed and the sentence of Rigorous Imprisonment of one year inflicted on the

revision petitioner by the trial Court for the offence punishable under Section 304-A IPC as affirmed by the lower appellate Court, is reduced to Rigorous Imprisonment of six months by confirming the conviction recorded by the courts below for the said offence. Except to the extent of modifying the sentence as stated in the above, the judgments of the courts below are maintained in all other respects.

10. The revision petitioner is directed to surrender himself before the Additional Judicial First Class Magistrate, Kothagudem, by 12.01.2018, to serve out the remaining sentence of Rigorous Imprisonment of six months. In case he fails to surrender, the learned Magistrate is directed to secure his presence and put him in prison to serve out the sentence of imprisonment.

Miscellaneous Petitions, if any, pending in the present revision case, stand closed.

11.12.2017
v v

A. SHANKAR NARAYANA, J