

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.1403 OF 2005

ORDER:

This revision is filed under Section Sections 397 and 401 of Cr.P.C. challenging the order dt.26.11.2001 in CC.No.119 of 1999 passed by the trial Court i.e. II Addl.J.F.C.M., Khammm finding him guilty for the offence punishable under Section 304-A IPC for his rash and negligent act and the same was confirmed by the appellate court i.e. III Addl.Sessions Judge (FTC.II), Khammam in Crl.A.No.175 of 2001 dt.2208.2005.

2. The case of the prosecution in brief is that one Vemana Sinivas Rao-PW-1 of Chintaplli presented report to the police on 12.02.1999 at about 6 pm. stating that while he was waiting at Chintapalli bus stop to go to Khammam, one Vemana Gopaiah and his grand son, Kolapati Jagadeesh were waiting at Chintapally bus stop, at about 2 p.m. the driver of the lorry bearing No. AP-16-U-391 proceeding from Warangal side towards Khammam, drove the same in rash and negligent manner, hit Jagadeesh which caused grievous injuries to his left leg, head and immediately he was shifted to Government Hospital, Khammam for treatment, but the boy succumbed to injuries while undergoing treatment in the hospital. Ex.P-1 is the complaint lodged by PW-1 and on the strength of the same, police issued F.I.R. Ex.P-5 and the Sub-Inspector of Police PW-7 took up investigation, examined witnesses, recorded their statements, visited the scene of offence and observed the same, drawn the rough sketch of scene and observation report in the presence of mediators, held inquest over the deadbody of Jagadeesh on 13.2.1999 in the presence of inquest panchayatdars who in turn opined that the cause of death was due to the injuries received by boy Jagadeesh in the accident. The vehicle was also referred to the Motor Vehicle Inspector who inspected the crime vehicle and gave report stating that the accident was not due to any mechanical defects

of the vehicle and the doctor who conducted post mortem examination over the deadbody of Jagadeesh, opined that the death was due to head injury and after completion of investigation, police filed charge sheet before the magistrate, who in turn took the same on file for the offence punishable under Section 304-A IPC.

3. It is also the prosecution case that the petitioner-accused himself surrendered before the Sub-Inspector of Police on 19.02.1999 i.e. after 7 days from the date of the accident and he was remanded to judicial custody on the same day.

4. After securing presence of the petitioner-accused, learned magistrate examined the accused under Section 251 Cr.P.C., explained the gist of accusation, read over and explained to him in Telugu, he denied the same and claimed to be tried.

5. During trial, PWs.1 to 7 were examined and marked Exs:P-1 to 6. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. explained the incriminating circumstances that appeared against him, he denied the same and reported no defence.

6. Upon hearing argument of both the counsel and considering the oral and documentary evidence on record, the trial court found the accused guilty for the offence punishable under Section 304-A IPC and sentenced him to undergo rigorous imprisonment for a period of six months and the same was confirmed by the Sessions Judge in CrI.A.No.175 of 2001, dt.22.08.2005 recording specific reasons and agreeing with the fact finding recorded by the court below.

7. The present revision is filed by the petitioner raising a specific contention that the petitioner was not the driver at the time of the accident and he himself admitted that no document was recovered from the vehicle to establish that he was driver of the vehicle and apart from that Exs.P-1 and P-5 do not disclose the

name of driver of the vehicle, but based on the identification of the petitioner in the Court by PWs.1 to 3, the trial Court recorded finding that he was the driver of the vehicle and the same was confirmed by the appellate Court in the appeal. Thus, the trial court and appellate court committed serious error in concluding that the petitioner was the driver of the crime vehicle and thereby the conviction and sentence passed by the trial court and confirmed by the appellate court against the petitioner are liable to be set aside.

8. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

9. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

10. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in

accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

11. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

12. 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 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*¹. 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 misdirections as must have occasioned a failure of justice as held in *PRAHLAD v.*

¹ (1964) 1 Cr.L.J. 443 (SC)

EMPOWER². 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;

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

13. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

14. As stated above, 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

² 48, CrLJ 173, 174 (Pat)

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*³.

15. 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*⁴.

16. During hearing, Sri R.N. Hemendranath Reddy, learned counsel for the petitioner would contend that the evidence on record more particularly PW-1 who did not disclose name of the driver in Ex.P-1, identification of the accused as driver of the accident vehicle at the time of the accident cannot be believed. Similarly, the evidence of PWs.2 and 3 is not wholly reliable and on the strength of surrender of the petitioner before the Sub-Inspector of Police one week after the accident can never form the basis for recording conviction of the accused to establish that he was the driver of the vehicle at the time of the accident. Therefore, the concurrent findings of the trial court and appellate court are perverse and prayed to set aside the same.

17. Due to the injuries received in the accident, and involvement of lorry bearing No. AP-16-U-391 are not in dispute. But, the only question raised before this court is regarding the identity of the driver. The appellate court specifically recorded a finding that the petitioner was the driver of the vehicle at the time of the accident and the reason for recording such finding was his surrender before the Sub-Inspector of Police and unless he was not the driver of the vehicle, he is not expected to surrender before the police in connection with above crime when the crime was registered against unknown driver of vehicle bearing No.

³ 1977 Cr.L.J. 1101

⁴ (1986) 3 SCC 445

AP-16-U-391. This is a strong circumstance to believe that the petitioner was the driver of the crime vehicle.

18. When the crime was registered against unknown person, normally during investigation the investigating agency has to conduct test identification parade of accused to establish a particular fact that he was the driver of the vehicle since such evidence is relevant under Section 9 of the Evidence Act. To conduct such test identification parade, the investigating agency has to follow the procedure under Criminal Rules of Practice, but failure to hold T.I. parade by itself is not a ground.

19. Undoubtedly, no Test Identification Parade was held by the police during investigation, identifying the accused, but that by itself is not a ground to acquit the accused.

20. In the recent judgment reported in between Ravi Kapur Vs. State of Rajasthan⁵, Their Lordships Justice Swatantra Kumar and Justice Fakkir Mohamed Ibrahim Kalifulla discussed about the importance to hold test identification parade for identifying the accused in a case filed for the offence punishable under Section 304-A of the Indian Penal Code in paras 55 to 59. However, Their Lordships in paras 56 and 57 observed as follows:

“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 investigating 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 is 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

7. AIR 2013(1) ALD (CrI.) page 303 (SC)
(MANU/SC/0659/2012)

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."

21. In another judgment reported in Sheo Shankar Singh Vs. State of Jharkhand and another⁶, Their Lordships Justice V.S.Srpurkar and Justice T.S.Thakur held in paras 37 and 40 as follows:

"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 prove fatal to case of prosecution."

22. In view of the principles laid down by the Apex Court, holding test identification parade is not imperative and identification of accused in the court is sufficient if their evidence is wholly reliable. But, a strange circumstance in the present facts of the case is surrender of the petitioner before the Sub-Inspector of Police after 7 days from the date of occurrence of the accident. This is a strong corroborative piece of evidence to the testimony of PWs.1 to 3 who identified the accused in the court during trial. Therefore, based on the identification of the accused by PWs.1 to 3 and surrender of the accused before the police on 19.02.1999 is sufficient to hold that the petitioner was the driver of the vehicle at the time of the occurrence of the accident, otherwise there was no need for him to surrender before the police and he was not expected to know at least the occurrence of the accident. Therefore, the cumulative effect of these facts would establish that he was the driver of the vehicle. Therefore, the finding of the trial court regarding the identification of the accused and confirmed by the appellate court cannot be faulted merely because there was no reference in Exs.P-1 and P-5.

23. Ex.P-1 is only complaint lodged with the police by PW-1 intimating about the occurrence of cognizable offence. It is only to set criminal law into motion

⁶ AIR 2011 SC page 1403

and it need not contain minute details and apart from that the vehicle was proceeding from Warangal side towards Khammam and that the petitioner was native of Khammam. But, whereas the accident occurred in the village Chintapally and PW-1 is not expected to know the name and other details of driver. At the same time, in normal course of events, after the occurrence of ghastly accident which led to death of boy, the driver will not remain at the scene of offence in view of serious consequences that flow from such incident. Therefore, it is difficult for any one to disclose the name of the driver in the complaint lodged with the police i.e. Ex.P-1 in this case. Consequently, on the ground of non-disclosure of the name of the driver in Exs.P-1 and P-5, it is difficult to hold that the petitioner was not the driver of the vehicle at the time of the accident.

24. Learned counsel for petitioner fairly conceded about the death of boy and receiving injuries in the accident. So, I need not record any findings with regard to negligence etc. and cause of death of Jagadeesh, a boy of 6 years old.

25. In view of my foregoing discussion, the petitioner was the driver of the accident vehicle at the time of the accident and death was due to injuries received by Jagadeesh in the road accident. Therefore, I find no illegality or perversity or apparent error in the concurrent findings recorded by both the courts warranting interference of this court and consequently, the appeal deserves to be dismissed as it lacks merits.

26. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

M.SATYANARAYANA MURTHY, J

DATE: 31-08-2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRLRC. NO.1403 OF 2005

Date:31.08.2017

ccm