

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.1233 OF 2005

ORDER:

Questioning the propriety and legality of the order dated 28.07.2005 in Criminal Appeal No.33 of 2002 passed by the VII Additional District & Sessions Judge (FTC), Krishna at Vijayawada, finding the petitioner/accused guilty for the offence punishable under Section 304-A I.P.C, sentencing him to undergo Rigorous Imprisonment for three months and fine of Rs.3,000/- with default sentence.

The petitioner/accused was the driver of lorry No.AP 16 T 6776. On 07.11.2000 at 1:30 hrs, when Shaik Munna was proceeding on Bandar Road on his Hero Majestic moped ADG 1446 and when he reached near the scene of offence, the accused being the driver of the lorry, drove the same in rash and negligent manner at highspeed, without blowing horn and dashed the moped on the backside, as a result of which the rider and the pillion rider fell down on the road and the left rear tyres of the lorry ran over the left hand of the deceased and she sustained injuries. The accused shifted the injured to VGH for treatment. On receipt of intimation, K. Venkateswarlu, Assistant Sub-Inspector of Police rushed to VGH and recorded the statement of the deceased. On 08.11.2000 the same was registered as F.I.R in Crime No.195 of 2000 and G. Muralikrishna, Sub-Inspector of Police who took up investigation, visited scene of offence, got prepared rough sketch and arrested the accused on 08.11.2000. During the course of investigation and while undergoing treatment, Chand Bee

succumbed to injuries. On the report given by Shaik Munna, F.I.R was altered to under Section 304-A I.P.C from Section 338 of I.P.C. After securing the presence of the accused, the Trial Court examined the accused under Section 251 Cr.P.C and he pleaded guilty.

During trial, on behalf of the prosecution P.Ws 1 to 9 were examined and Exs.P-1 to P-9 were marked. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C explaining the incriminating circumstances that appeared against him in the evidence of prosecution witnesses. The accused denied the same and reported no defence. Exs.D-1 and D-2 were marked on behalf of the accused.

Upon hearing argument of both the counsel, the Trial Court found the accused guilty for the offence punishable under Section 304-A I.P.C and sentenced to undergo rigorous imprisonment for a period of six months and also to pay a fine of Rs.3,000/-.

Aggrieved by the conviction in C.C.No.469 of 2001 and the sentence imposed therein, the accused preferred an appeal Crl.A.No.33 of 2002 before the VII Additional District & Sessions Judge (FTC), Krishna at Vijayawada. But, the Appellate Court reduced the sentence of rigorous imprisonment to three months and imposed fine of Rs.3,000/-.

Dissatisfied with the reduction in substantive sentence, the accused preferred the present criminal revision case on various grounds.

The main ground urged before this Court is that the Trial Court did not consider the evidence in proper perspective and moreover, the Trial Court without insisting independent evidence, recorded conviction of the petitioner/accused for the serious offence punishable under Section 304-A I.P.C and committed a grave error by imposing sentence to undergo rigorous imprisonment of six months and fine of Rs.3,000/-, which was partly allowed by the Appellate Court reducing the sentence of rigorous imprisonment to three months and imposed fine of Rs.3,000/-.

The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. 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 or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High

Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

In the present case, as per P.W.2 Md. Usman who is the eye witness to the incident, P.W.1 Shaik Munna was the rider of the Hero Majestic moped. When the rider himself testified about rash and negligent act of the petitioner/accused, his evidence has to be accepted and whether the witness to the occurrence of the accident has to be enquired or a person who was riding the moped at the time of accident, the testimony of such witness is generally considered to be very reliable, as he is a witness to the scene of offence and he is not likely to spare implications.

In **Brahm Swaroop and another v. State of Uttar Pradesh**¹ the Apex Court while dealing with conviction based on testimony of injured eye-witnesses and credibility of injured eye-witnesses held that, if evidence of injured eyewitnesses is trustworthy and believed by Court, question of motive to implicate becomes totally irrelevant and merely because witnesses were close relatives to deceased, that could not be ground to discard their evidence and testimony of injured eye witnesses is worthy of credence.

Therefore, the false implication of any person/third party would not arise. On the other hand, both the Trial Court and the Appellate Court concurrently recorded a finding that the petitioner/accused is responsible for negligent and rash driving of the lorry, leading to the death of the wife of P.W.1 in the accident.

¹ (2011) 6 SCC 288

But, it is contended that the death was not due to the impact of the accident, but due to complications after treatment. The complications arose only on account of the injuries she sustained in the accident. Therefore, it is difficult to accept the contention that the accident was not direct cause which resulted in death of wife of P.W.1. In view of the concurrent fact findings recorded by both the Trial Court and the Appellate Court, it is difficult for me to interfere with the findings of the Trial Court and confirmed by the Appellate Court.

Coming to the quantum of sentence, the punishment imposed by the Appellate Court is sentence of rigorous imprisonment for three months and fine of Rs.3,000/-. In the present case, no doubt the petitioner/accused is responsible for causing death of wife of P.W.1 by his rash and negligent act of driving lorry. In such case, the Court has to consider the mitigating circumstances and aggravating circumstances while imposing punishment on the accused.

In **Rajendra Pralhadrao Wasnik v. The State of Maharashtra**², the Apex Court set out the mitigating circumstances herein below:

Mitigating Circumstances:

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.
2. The age of the accused is a relevant consideration but not a determinative factor by itself.

² AIR 2012 SC 1377

3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.
4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.
5. The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.
6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.
7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

But, imposing punishment not commensurate with the gravity of the offence amounts to allowing the persons who are involved in serious crime to escape.

In **Shailesh Jasvantbhai & Anr vs State Of Gujarat & Ors**³, the Apex Court held that in operating the sentencing system, law

³ (2006) 2 SCC 359

should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration for imposing sentence by the Courts. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: 'State of criminal law continues to be— as it should be—a decisive reflection of social consciousness of society.' Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in

which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

If these principles are applied to the present facts of the case, the offence committed by the petitioner/accused is serious in nature, which lead to death of a woman. The petitioner who was driving lorry at the time of accident hit the moped which was proceeding ahead of the lorry and when the vehicle was proceeding ahead to the lorry, he is supposed to notice the vehicle proceeding ahead of the lorry. But, the petitioner/accused did not take minimum care, as an ordinary prudent driver and hit the vehicle on rear side, which establishes that the petitioner exhibited sheer negligence in driving the lorry and hit the motor cycle, which resulted in death of the wife of P.W.1. Therefore, in such case, it is difficult for me to reduce the sentence of imprisonment to any extent. Therefore, considering the law declared by this Court, the mitigating and aggravating circumstances, the sentence of imprisonment imposed by the Appellate Court, no further reduction of sentence is necessitated. Accordingly, the sentence of imprisonment and fine imposed by the Appellate Court is hereby

confirmed and consequently, the criminal revision case is liable to be dismissed.

In the result, the criminal revision case is liable to be dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:03.08.2017

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