

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.834 OF 2007

JUDGMENT:

The revision petitioner is accused in Calendar Case No.16 of 2004 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram, and alleged to have committed the offences punishable under Sections 304-A, 338 and 337 of the Indian Penal Code, 1860 (for short 'IPC').

2. The learned Magistrate, by her judgment, dated 30.09.2005, in C.C. No.16 of 2004, recorded the conviction under Section 255 (2) of the Code of Criminal Procedure, 1973 (for short 'Code') for the offences under Sections 304-A, 338 and 337 IPC and sentenced the revision petitioner – accused to undergo rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to suffer simple imprisonment for one month for the offence under Section 304-A IPC; sentenced him to undergo rigorous imprisonment for three months and to pay fine of Rs.500/- in default to undergo simple imprisonment for one month for the offence under Section 338 IPC; and further sentenced him to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one month for the offence under Section 337 IPC.

3. He questioned the conviction and sentences of imprisonment by preferring Criminal Appeal No.130 of 2005 before the Sessions Judge, Vizianagaram. The learned Sessions Judge, by

his judgment, dated 22.06.2007, while confirming the conviction recorded for all the three offences, however, reduced the sentence of rigorous imprisonment from six months to four months for the offence punishable under Section 304-A IPC, but, maintained the sentences of imprisonment and fine so far as other offences are concerned.

4. Aggrieved over the confirmation of conviction, the revision petitioner – accused preferred the present Criminal Revision Case under Sections 397 and 401 of the Code.

5. Heard Sri Balaji Medamalli, learned counsel for the revision petitioner, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

6. The learned counsel for the revision petitioner would submit that the spot, where the accident took place was a curve and, as such, the rash and negligent driving ought to have been investigated in proper manner and the evidence ought to have been evaluated by the Courts below in proper perspective, more particularly, in the direction of whether there was any contributory negligence by both the drivers to the accident, and just basing on the presumptions and assumptions, the Courts below ought not to have convicted the revision petitioner.

i) Yet another submission made by him is that the Motor Vehicles Inspector has not inspected the Andhra Pradesh State Road Transport Corporation's Bus, though, he has inspected the lorry, and it

would lead to miscarriage of justice. Therefore, he sought to set aside the conviction recorded and the sentences of imprisonment and fine inflicted on the revision petitioner.

7. Though, the contentions now canvassed by the learned counsel for the revision petitioner would touch the factual aspect, and when concurrent findings have been recorded by the Courts below on independent evaluation of evidence let in by the prosecution and arriving at that the guilt of the accused is proved beyond all reasonable doubt by the prosecution, absolutely, there cannot be any ground to interfere with the findings, on the basis of which, the conviction has been recorded and sentences of imprisonment have been inflicted. The rider being in case the revision petitioner is successful in showing that the findings recorded are patently illegal or utterly perverse, certainly, interference invariably warrants.

8. Even touching merits, as many as 18 witnesses have been examined by the prosecution to prove the guilt of the accused and Exs.P-1 to P-23 were marked. The defence, however, exhibited Ex.D-1, which is signature of one Ali in Ex.P-3. A perusal of the analysis made by the learned Magistrate shows that PWs.2, 3, 4, 5 and 11 are the injured, who sustained injuries in the said accident. PW.1 is the *de facto* complainant being the driver of the RTC bus. His evidence shows that on 09.09.2003, when he was driving the RTC bus from Palasa to Visakhapatnam and reached near Poosapatirega at

about 11.30 a.m., the revision petitioner, who was driving the lorry bearing registration No.ATK 9959 coming in opposite direction, drove it in a rash and negligent manner and hit against his bus on its right side. As a result, a woman died due to crush injury instantly, and six others were sustained injuries. When there is evidence through PW.1, who identified the revision petitioner as driver of the lorry, and the evidence of PWs.2, 3, 4, 5 and 11, nothing more is required to arrive at that their evidence is sufficient to prove the rash and negligent driving of the revision petitioner and his identity being spoken to by PW.1, more particularly, the evidence of PWs.1 and 2 would prove that the revision petitioner was driving the lorry in a rash and negligent manner and, in fact, PW.2, one of the passengers, was shouting that the revision petitioner was driving the lorry in a rash and negligent manner and raised the alarm.

9. When such was the situation and evidence on record coupled with the evidence of Motor Vehicles Inspector, it would rule out any mechanical defect in the lorry being the cause for occasioning the accident, nothing more is required to hold that the prosecution could prove the guilt of the accused beyond all reasonable doubt. Thus, when looked at the analysis of the evidence lent in by the prosecution and dealt with by the Courts below, basing on which findings have been recorded, they do not at all suffer from any legal infirmity. Therefore, the submissions made by the learned revision

petitioner that the APSRTC bus was not subjected to inspection by the Motor Vehicles Inspector and that PW.1 contributed to the accident are not worthy of acceptance as there is no material on record in the cross-examination of any of the witnesses to prove the contribution of PW.1 to the accident, nor can it be said that failure to inspect the bus would give rise to grave suspicion to view the prosecution case with reasonable doubt.

10. There is no merit in the present Criminal Revision Case and, therefore, the same is dismissed, confirming the conviction recorded and sentences of imprisonment and fine imposed by the learned Magistrate as confirmed by reducing the sentence of imprisonment concerning the offence punishable under Section 304-A IPC, as referred to in the above.

11. In Crl.R.C.M.P. No.1227 of 2007, the learned counsel for the revision petitioner indicated that the revision petitioner was confined in the Central Prison, Visakhapatnam. This Court suspended the sentences of imprisonment alone, by order, dated 28.06.2007, and it appears he was let out on bail. Therefore, the revision petitioner - accused is directed to surrender before the Additional Judicial Magistrate of First Class, Vizianagaram, on or before 07.12.2017. In case, he fails to surrender, as directed, the learned Magistrate shall secure his presence and put him in Prison to serve the remaining sentences of imprisonment.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

November 09, 2017.
Mgr

